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## **Decision on the sale of placements by credit institutions**

(Official Gazette 127/2014)

Pursuant to Article 150, paragraph (7) of the Credit Institutions Act (Official Gazette 159/2013) and Article 43, paragraph (2), item (9) and Article 77 of the Act on the Croatian National Bank (Official Gazette 75/2008 and 54/2013), the Governor of the Croatian National Bank hereby issues the following

## **Decision on the sale of placements by credit institutions**

### **1 GENERAL PROVISIONS**

#### **Subject matter and scope of the Decision**

##### **Article 1**

(1) This Decision determines placements which are the subject of the sale, the conditions for the sale and for the return of placements as well as the documentation that a credit institution delivers to the Croatian National Bank.

(2) The provisions of this Decision shall apply to all credit institutions which have their head offices in the Republic of Croatia and are authorised by the Croatian National Bank.

(3) The provisions of this Decision shall apply *mutatis mutandis* to branches of third-country credit institutions authorised by the Croatian National Bank to establish branches of third-country credit institutions.

#### **Definitions**

##### **Article 2**

The terms used in this Decision shall have the following meaning:

(1) The 'sale of a placement' means any contract the purpose of which is to transfer a placement or risks and benefits arising from the placement from the selling credit institution (hereinafter referred to as 'seller') to the acquirer, and which results in derecognition of the placement from the balance sheet of the credit institution in accordance with the International Financial Reporting Standards.

2) The 'return of placements' or the 'return of risks and benefits arising from placements' (hereinafter referred to as 'return of placements') to the balance sheet of the seller means the activities that the seller uses to:

a) conclude a contract on the purchase of placements or the purchase of risks and benefits arising from placements which were fully or partially the subject of the contract on the sale of placements, regardless of whether the contract on the purchase of placements was concluded with the acquirer or a third party. It also means other methods which would cancel the effects of the transfer of placements or the transfer of risks and benefits arising from placements;

b) partially or completely produce the economic effect on its balance sheet and on risk exposure which is less favourable or equal to the moment prior to the conclusion of the contract on the sale of placements; or

c) acquire shares or holdings in the acquirer's capital.

The return of placements also means the activities used on a consolidated basis of the group of credit institutions in the RC or on the group basis to produce the effects referred to in sub-items a) to c) of this item.

3) 'Placements' means financial assets in a form of granted loans, interest receivables and all other receivables as prescribed in Article 4, paragraph (2) of the Decision on the classification of placements and off-balance sheet liabilities of credit institutions (Official Gazette 41A/2014), excluding investments in debt securities.

The placements which are the subject matter of this Decision shall include financial assets classified by a credit institution, in accordance with its business policies, into categories of financial assets which are, according to International Accounting Standard 39 – Financial Instruments: Recognition and Measurement, designated as:

a) loans and receivables;

b) held-to-maturity investments;

c) available-for-sale financial assets; and

d) financial assets at fair value through profit or loss, excluding financial assets classified as assets held for trading.

4) The 'material amount of placements for the purpose of the sale of placements' means the nominal book value, prior to the reduction by the determined value adjustments, of one or more individual placements whose cumulative amount for the period of 12 months preceding the day of notifying the Croatian National Bank is equal to or greater than 10% of the seller's eligible capital. Exceptionally, for a seller whose eligible capital exceeds three billion kuna, the 'material amount of placements for the purpose of the sale of placements' means the nominal book value, prior to the reduction by the determined value adjustments, of one or more individual placements whose cumulative amount for the period of 12 months preceding the day of notifying the Croatian National Bank is equal to or exceeds 300 million kuna. The material amount of placements shall be determined in relation to one acquirer and the group of clients connected with it in the manner defined in Article 4, paragraph (1), item (39) 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 and L 208, 2. 8. 2013, hereinafter referred to as 'Regulation (EU) No 575/2013').

5) The 'material amount of placements for the purpose of the return of placements' means the nominal book value, prior to the reduction by the determined value adjustments, of one or more individual placements whose cumulative amount for the period of 24 months preceding the day of notifying the Croatian National Bank is equal to or greater than 10% of the seller's eligible capital. Exceptionally, for a seller whose eligible capital exceeds three billion kuna, the 'material amount of placements for the purpose of the return of placements' means the nominal book value, prior to the reduction by the determined value adjustments, of one or more individual placements whose cumulative amount for the period of 24 months preceding the day of notifying the Croatian National Bank is equal to or exceeds 300 million kuna. In determining the material amount of placements account shall be taken of all amounts acquired from the

activities referred to in item (2) of this Article regardless of whether they are acquired from one or more acquirers or from third parties.

6) A group shall comprise all undertakings included in the consolidated financial statements prepared by the seller in accordance with the Accounting Act.

7) The whole group shall comprise all undertakings included in the consolidated financial statements prepared by the seller's ultimate parent undertaking in accordance with the International Financial Reporting Standards or other relevant accounting standards or regulations.

8) A 'group of credit institutions in the RC' means a group of credit institutions in the RC as defined in Article 278 of the Credit Institutions Act and Article 18, paragraph (8) and Article 19, paragraph (1) of Regulation (EU) No 575/2013, and a group of credit institutions in the RC that the Croatian National Bank determines in its decision in accordance with Article 279 of the Credit Institutions Act and Article 18, paragraph (6) of Regulation (EU) No 575/2013.

9) A 'group of credit institutions' means a group of credit institutions as defined in Article 17 of the Credit Institutions Act.

10) A sub-group shall comprise undertakings at each level at which, based on the application of regulations or the International Financial Reporting Standards or other relevant accounting standards, a group that prepares consolidated statements is identified.

11) 'Eligible capital' means eligible capital as defined in Article 4, paragraph (1), item (71) sub-item (b) of Regulation (EU) No 575/2013 which the seller reported to the Croatian National Bank in the last delivered statement. In case of significant changes in eligible capital during the reporting period (e.g. recapitalisation, reported loss), the material amount of placements shall be determined in relation to the modified eligible capital.

### **Subject of the contract on the sale of placements**

#### **Article 3**

(1) The seller may contract the sale of past due placements or the sale of risks and benefits arising from past due placements.

(2) The seller may contract the sale of undue placements or the sale of risks and benefits arising from undue placements, where the sale of undue placements which were agreed between the seller and the debtor with a variable interest rate may be contracted only in case the change of that interest rate does not depend solely on the seller's will.

### **Obligations of the seller prior to adopting a decision on the sale of placements**

#### **Article 4**

Prior to adopting a decision on concluding a contract on the sale of placements the seller shall:

1) draw up an assessment of the effects of the sale of placements, *inter alia*, on its financial performance, business continuity, reputation, risk exposure, solvency, and liquidity, as well as consumer protection if the subject of the sale are placements granted to consumers;

2) verify whether the amount of placements intended for sale meets the condition on the material amount of placements referred to in Article 2, item (4) of this Decision.

## **2 GENERAL CONDITIONS FOR THE SALE OF PLACEMENTS**

### **General conditions for the sale of placements Article 5**

(1) The seller may conclude a contract on the sale of placements if the following general conditions have been met:

- 1) the sale of placements has economic purpose;
- 2) the seller drew up the assessment of the effects of the sale of placements referred to in Article 4, item (1) of this Decision;
- 3) the financing of the sale of placements shall be carried out in accordance with Article 6 of this Decision;
- 4) during the entire process of collection of the placements transferred under a contract on the sale of placements, the subject of which are placements granted to consumers, the acquirer shall be contractually committed to act in accordance with the provisions of the Consumer Credit Act, the Credit Institutions Act in the part referring to consumer protection, and other applicable provisions.

(2) The seller may conclude a contract on the sale of placements with the acquirer from the whole group if, in addition to the conditions referred to in paragraph (1) of this Article, the following general conditions have been met:

- 1) the essential objective of the sale of placements is not to avoid minimum capital requirements, other prudential requirements or other requirements prescribed in the Credit Institutions Act and subordinate legislation adopted under that Act, Regulation (EU) No 575/2013, or in other relevant regulations of the European Union, for the seller on an individual basis, and on a consolidated basis for the group of credit institutions in the RC, or for the group of credit institutions, including each sub-group;
- 2) the essential objective of the sale is not to generate income which the seller could not otherwise generate on an individual basis, on a consolidated basis for the group of credit institutions in the RC, for the group and for the whole group, including each sub-group;
- 3) at least 30 days prior to concluding a contract on the sale of placements, the seller notifies the Croatian National Bank in writing of the intention to conclude that contract. The notification shall specify the name of the acquirer, the name of the debtor whose placements are being sold, together with the amount of placements prior to the determined value adjustments, the amount of the value adjustment and the amount of the agreed price.

### **Financing the sale of placements Article 6**

(1) The seller shall stipulate in the contract that the acquirer is to fulfil its obligation to pay the agreed price by paying the full amount to the seller's account immediately after concluding the contract on the sale of placements, and within 60 days at the latest.

(2) By way of derogation from paragraph (1) of this Article, in exceptional cases the Croatian National Bank may, at the seller's request, allow other methods and time limits for settling the agreed price.

(3) The seller may not, directly or indirectly, finance the sale of its placements or the sale of risks and benefits arising from placements, except where the exposure arising from the financing:

1) is fully secured by cash deposited with the seller, matched to that exposure both in terms of currency and maturity; or

2) is secured by debt securities of central governments or central banks to which a 0% risk-weight is assigned under Article 114 of Regulation (EU) No 575/2013, and their market value has been discounted by 20%, while the securities are matched to that exposure both in terms of currency and maturity.

(4) Indirect financing referred to in paragraph (3) of this Article shall be the following financing:

1) through a person who financed the sale for the account of the seller; and

2) any activity of the seller that supports the financing of the sale.

### **3 SPECIFIC CONDITIONS FOR THE SALE OF PLACEMENTS**

#### **Specific conditions for the sale of material amounts of placements**

##### **Article 7**

(1) The seller may conclude a contract on the sale of placements for the material amount of placements referred to in Article 2, item (4) of this Decision if, in addition to the general conditions referred to in Article 5 of this Decision, the following specific conditions have been met:

1) a permanent transfer of placements or transfer of risks and benefits arising from placements is ensured in accordance with Article 9 of this Decision;

2) the seller does not, directly or indirectly, assume responsibility for the quality of sold placements, including their collectability and the credit rating of the debtor, which was the basis for determining the agreed sale price;

3) the management and collection of sold placements will be carried out in accordance with Article 10 of this Decision;

4) in the case referred to in Article 11 of this Decision, the seller is protected from risks which may arise from potential disputes with debtors.

(2) A seller who concluded several individual contracts on the sale of placements with one acquirer and with the clients connected with in the manner defined in Article 4, paragraph (1), item (39) of Regulation (EU) No 575/2013, whose cumulative amount in the preceding 12 months is not material in accordance with Article 2, item (4) of this Decision, shall, when concluding a new contract on the sale of placements which would make the cumulative amount of placements material, comply with the specific conditions referred to in paragraph (1) of this Article in addition to the general conditions referred to in Article 5 of this Decision.

#### **Notification to the Croatian National Bank of the sale of the material amount of placements**

## **Article 8**

(1) The seller shall notify the Croatian National Bank in writing of compliance with the general conditions referred to in Article 5 and with the specific conditions referred to in Article 7, paragraph (1) of this Decision and deliver the documentation referred to in Article 12 of this Decision at least 60 days prior to concluding the contract on the sale of the material amount of placements referred to in Article 2, item (4) of this Decision.

(2) Based on the notification and the documentation referred to in paragraph (1) of this Article, the Croatian National Bank shall deliver to the seller its opinion on compliance with the conditions referred to in this Decision within 60 days at the latest.

## **Permanence of the transfer of placements or risks and benefits arising from placements**

### **Article 9**

(1) The seller shall ensure that placements or risks and benefits arising from placements are permanently transferred to the acquirer.

(2) For the purpose of ensuring the permanence of the transfer of placements or risks and benefits arising from placements, if reasons arise for the termination of the contract on the sale of placements, the seller and the acquirer shall agree not to request the return of what was given, but each contractual party shall be entitled to damage compensation due to the termination of the contract.

## **Managing and collecting sold placements**

### **Article 10**

(1) If the seller assumes the responsibility to manage and collect sold placements, it should receive adequate compensation for performing those activities, covering at least all actual costs of those services.

(2) If the seller assumes the responsibility to manage and collect sold placements, it shall clearly define in the contract on the sale of placements that it shall, when collecting sold placements, apply the same business policies and procedures it applies when collecting its own placements. The seller shall ensure that all risks and costs from those processes are transferred to the acquirer.

(3) If the acquirer manages and collects sold placements, the seller shall contractually commit the acquirer to conduct those procedures in a way so as to respect and protect the integrity and reputation of all debtors whose liabilities were the subject of the sale of placements, and so as not to put them in a position less favourable than the one they held as debtors to the seller.

(4) For the purpose of this Article, the collection of placements shall also include the activities necessary for the collection of instruments of collateral in the event of bankruptcy and pre-bankruptcy settlement.

## **Holders of rights and obligations under sold placements**

### **Article 11**

If the contract on the sale of placements regulates the relationship between the seller and the acquirer in a way that the seller remains the holder of all rights and obligations under placements, and at the same time obliges itself to exercise all rights arising from placements in its own name but for the account of the acquirer, the seller shall analyse and protect itself from the risks that may arise from potential disputes concerning relationships with debtors after the conclusion of the contract on the sale of placements such as, for example, a case where the debtor files charges against the seller for its behaviour in the process of collection of placements after the sale of placements or after the enforcement of the contract on the sale of placements.

## **Documentation**

### **Article 12**

(1) In addition to the notification referred to in Article 8 of this Decision, the seller shall deliver to the Croatian National Bank the following documentation:

- 1) a draft of the contract on the sale of placements that the seller plans to conclude with the acquirer, including the date of the planned conclusion of the contract;
- 2) an explanation of the economic purpose and the reasons of the transfer of placements or risks and benefits arising from placements;
- 3) the results of the assessment of the effects of the sale of placements referred to in Article 4, item (1) of this Decision;
- 4) a description of the method of financing or the financing source for the purchase of placements or risks and benefits;
- 5) a list of clients connected with the acquirer in the manner defined in Article 4, paragraph (1), item (39) of Regulation (EU) No 575/2013, and a description of the way in which they are connected.

(2) In addition to the data and documents referred to in paragraph (1) of this Article, the Croatian National Bank may require, and the seller shall be obliged to deliver, other documentation that the Croatian National Bank considers necessary to assess whether the conditions for the sale of placements prescribed in the Credit Institutions Act and this Decision have been met.

(3) Regardless of the subsequent request by the Croatian National Bank referred to in paragraph (2) of this Article, the period of 60 days for issuing the opinion of the Croatian National Bank referred to in Article 8, paragraph (2) of this Article shall commence on the date of delivery of the notification and complete documentation referred to in paragraph (1) of this Article.

## **Concluding a contract on the sale of placements**

### **Article 13**

(1) The seller may conclude a contract on the sale of placements after receiving the opinion of the Croatian National Bank referred to in Article 8, paragraph (2) of this Decision, which confirms that all conditions prescribed in this Decision have been met. The seller may conclude such a contract within the following four months after receiving the opinion of the Croatian National Bank.

(2) If the Croatian National Bank assesses that any condition prescribed in this Decision has not been met, it shall invite the seller to take actions to meet that condition within 30 days at the latest. If the seller meets the condition in due time, the Croatian National Bank shall issue its opinion in accordance with paragraph (1) of this Article. If the seller fails to meet the condition in due time, the Croatian National Bank shall in its opinion warn the seller about the failure to meet the required conditions referred to in this Decision.

(3) If, in the period after the delivery of the notification to the Croatian National Bank referred to in Article 8, paragraph (1) of this Decision and prior to issuing the opinion of the Croatian National Bank, any facts and circumstances related to the sale of placements should change, the seller shall notify the Croatian National Bank of those changes, and the Croatian National Bank shall take those new facts and circumstances into consideration when providing its opinion on compliance with the conditions referred to in this Decision. Exceptionally, if the Croatian National Bank assesses that changes in facts and circumstances are important for assessing the compliance with the conditions proscribed in this Decision, it shall notify the seller within a reasonable time that a new term referred to in Article 8, paragraph (2) of this Decision commences.

(4) If, in the period after the Croatian National Bank issues its opinion and prior to concluding the contract on the sale of placements, any facts and circumstances related to the sale of placements should change, the seller shall notify the Croatian National Bank of those changes. A new term referred to in Article 8, paragraph (2) of this Decision shall commence on the date of delivery of the notification. Exceptionally, should the Croatian National Bank assess that the change in facts and circumstances had no impact on the provided opinion on compliance with the conditions, it shall notify the seller thereof within a reasonable time.

(5) The seller shall notify the Croatian National Bank of the conclusion of the contract on the sale of placements and submit to it a copy of that contract within seven days.

(6) The seller shall without delay deliver to the Croatian National Bank any possible amendment to the contract on the sale of placements.

(7) The seller shall notify the Croatian National Bank of any possible withdrawal from the conclusion of the contract on the sale of placements.

## **4 CONSUMER PROTECTION**

### **Consumer protection Article 14**

When concluding contracts on the sale of placements which refer to placements granted to consumers, regardless of the amount of placements, the seller shall ensure that those consumers are not put by the acquirer, or a third party to which the acquirer has transferred placements or risks and benefits arising from placements, in a less favourable position with regard to consumer protection than the position they held as debtors to the seller. The seller and the acquirer or the third party to which placements have been further transferred shall be jointly liable for any

damage to the consumers that may arise from their legally or factually less favourable position than the position they held as debtors to the seller.

## **5 THE RETURN OF PLACEMENTS OR THE RETURN OF RISKS AND BENEFITS ARISING FROM PLACEMENTS**

### **The return of placements to the seller's balance sheet**

#### **Article 15**

(1) The seller may effect the return of placements the amount of which is material in accordance with Article 2, item (5) of this Decision in exceptional cases, if the Croatian National Bank assesses that the following conditions have been met:

- 1) the seller drew up an assessment of the effect of the return of placements, *inter alia*, on the financial performance of the seller, reputation, risk exposure, solvency, and liquidity, both on an individual basis and on a consolidated basis for the group of credit institutions in the RC or for the group; and
- 2) the return of placements has an economic purpose and does not put the seller in a less favourable position than the position before effecting the sale of placements, both on an individual basis or on a consolidated basis for the group of credit institutions in the RC or for the group.

(2) The Croatian National Bank shall deliver its opinion on compliance with the conditions referred to in paragraph (1) of this Article to the seller within 90 days after receiving the notification and complete documentation referred to in paragraph (4) of this Article.

(3) If the seller returned to the balance sheet the placements that were the subject of several individual contracts on the sale of placements whose cumulative amount for the period of the preceding 24 months is not material in accordance with Article 2, item (5) of this Decision, prior to taking a new activity referred to in Article 2, item (2) of this Decision which would make material the cumulative amount of placements to be returned, it shall be obliged to meet the conditions referred to in paragraph (1) of this Article.

(4) The documentation referred to in paragraph (2) that the seller is obliged to deliver to the Croatian National Bank shall include:

- 1) an explanation of the economic purpose and the reasons of the return of placements;
- 2) a description of the method of effecting the return of placements;
- 3) a draft of the contract governing the return of placements;
- 4) the financing sources for the return of placements;
- 5) an assessment of the effect of the return of placements, *inter alia*, on the financial performance of the seller, reputation, risk exposure, solvency, and liquidity;
- 6) an assessment of the quality of placements and a comparison with their quality at the moment of the sale.

(5) In addition to the data and documents referred to in paragraph (4) of this Article, the Croatian National Bank may require, and the seller shall be obliged to deliver, other documentation that the Croatian National Bank considers necessary to assess the effects of the return of placements.

(6) Regardless of the subsequent request by the Croatian National Bank referred to in paragraph (5) of this Article, the period of 90 days for issuing the opinion of the Croatian National Bank referred to in paragraph (2) of this Article shall commence on the date of delivery of the notification and complete documentation referred to in paragraph (4) of this Article.

## **6 TRANSITIONAL AND FINAL PROVISIONS**

### **Material amount of placements with regard to procedures in progress**

#### **Article 16**

(1) With regard to the sale of placements for which the seller, up to the date of the entry into force of this Decision, submitted an application for the issuance of an opinion of the Croatian National Bank referred to in Article 8, paragraph (2) of the Decision on the sale of placements by credit institutions (Official Gazette 67/2013), a material amount of placements for the purpose of the sale of placements shall be calculated in accordance with Article 2, item (4) of the Decision on the sale of placements by credit institutions (Official Gazette 67/2013).

(2) With regard to the sale of placements for which the seller, up to the date of the entry into force of this Decision, submitted an application for the issuance of an opinion of the Croatian National Bank referred to in Article 15, paragraph (2) of the Decision on the sale of placements by credit institutions (Official Gazette 67/2013), a material amount of placements for the purpose of the return of placements shall be calculated in accordance with Article 2, item (5) of the Decision on the sale of placements by credit institutions (Official Gazette 67/2013).

(3) With regard to the sale of placements for which the seller, up to the date of the entry into force of this Decision, submitted an application for the issuance of an opinion of the Croatian National Bank referred to in Article 15, paragraph (2) of the Decision on the sale of placements by credit institutions (Official Gazette 67/2013), the condition referred to in Article 6, paragraph (3), item (2) of this Decision that debt securities must be matched to the exposure both in terms of currency and maturity shall not apply.

### **Cessation of the effect of the previous Decision**

#### **Article 17**

On the date of the entry into force of this Decision, the Decision on the sale of placements by credit institutions (Official Gazette 67/2013) shall cease to have effect.

### **Entry into force**

#### **Article 18**

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

No.: 275-020/10-14/BV  
Zagreb, 17 October 2014

Croatian National Bank Governor

**Boris Vujčić**