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**REPUBLIC OF ALBANIA  
BANK OF ALBANIA  
SUPERVISORY COUNCIL**

**DECISION  
Prot. 26, dated 28.3.2019**

**"ON  
APPROVAL OF THE REGULATION "ON LICENSING, REGULATION AND OVERSIGHT OF  
SECURITIES' SETTLEMENT OPERATORS"**

Pursuant to Article 1, paragraph 4 (b), Article 43 (c), Article 53 (4), last paragraph and article 72 of the Law No. 8269, dated 23.12.1997 "On the Bank of Albania", as amended; of Article 3, 5, 6, 7, 8, 9, 10, 11, 12 and 14, and chapter III of the Law No. 133/2013, dated 29.04.2013 "On the payment system", having regard to the proposal of Governor and the Payment Systems and Accounting and Finance Department, the Supervisory Council of the Bank of Albania,

**DECIDED:**

1. Approval of the regulation "On licensing, regulation and oversight of securities' settlement operators", according to the text attached to the decision.
2. Subjects to this Regulation are responsible for the implementation of this Regulation.
3. Payment Systems and Accounting and Finance Department is responsible for the implementation of this Regulation.
4. The Governor's Office is responsible for publishing this Regulation in the Official Journal of the Republic of Albania and Research Department for publishing this Regulation in the Official Bulletin of the Bank of Albania.

This decision shall enter into force 15 (fifteen) days after its publication in the Official Journal of the Republic of Albania.

**SECRETARY**

**CHAIR**

**Elvis ÇIBUKU**

**Gent SEJKO**

## **CHAPTER I**

### **General provisions**

#### **Article 1**

##### **Scope**

This Regulation shall guarantee the security, sustainability, well-functioning and efficiency of securities settlement systems and in the Republic of Albania.

#### **Article 2**

##### **Purpose**

The purpose of this regulation is to set out the criteria, terms, documentation and procedures for:

- a) licensing of system operators for the settlement of securities in the Republic of Albania.
- b) the granting of prior approval by the Bank of Albania and the obligations of operators to inform the Bank of Albania throughout the conduction/exercising of their activity;
- c) Regulation and oversight of operators during the conduction/exercising of system operation of securities' settlement in the Republic of Albania.

#### **Article 3**

##### **Legal grounds**

This Regulation is issued pursuant to:

- a) Article 1, paragraph 4 (b), Article 43 (c), Article 53, point 4, last paragraph, and Article 72 of the Law No. 8269, dated 23.12.1997, "On the Bank of Albania", as amended";
- b) Articles 3, 5, 6, 7, 8, 9, 10, 11, 12 and 14 and Chapter III of the Law No. 133/2013, dated 29.04.2013 "On payment system";
- c) Agreement "On the cooperation, licensing, regulation and oversight of securities' settlement systems and clearing house", No. Prot. 4915, dated 05.10.2018 between the Bank of Albania and the Financial Supervisory Authority.

#### **Article 4**

##### **Subjects**

This Regulation shall be applied on the legal persons that apply for a licence as operators of settlement securities systems in the Republic of Albania.

#### **Article 5**

##### **Activity of entities**

Subjects of this regulation are licensed and are supervised for the securities' settlement activity through a system for securities' settlement, as defined in the legislation in force for the payment system.

## **Article 6**

### **Definitions**

1. For the purposes of this Regulation, terms defined in Article 5 of the Law "On payment system" shall have also the same meaning in this regulation.
2. In this Regulation, the words in singular may be interpreted in plural and vice versa, whenever this is required by the content of the provision or the context.
3. Terms in masculine imply the feminine and vice versa.
4. In addition to paragraph 1 of this Article, for the purposes of this Regulation, the following terms shall apply:
  - a) "Administrator" - means the natural person as defined in the Law No. 9901, dated 14.04.2008 "On Entrepreneurs and Companies", as amended;
  - b) "Liquid assets" - means cash and similar instruments to cash, i.e. Certificate of deposits or other similar instruments issued by the bank, which include the obligation to be reimbursed at nominal value;
  - c) 'Authority' – is the Financial Supervisory Authority
  - d) "Bank" means the Bank of Albania;
  - e) "Settlement bank" – means a bank holding accounts with regard to payments, where the discharge of obligation arising from a payment system takes place;
  - f) "credit exposure" means an amount or value at risk that a participant will not settle for full value, either when due or at any time thereafter;
  - g) "Clearing"-the process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement, potentially including the netting of orders and the establishment of final positions for settlement.
  - h) "Extreme but plausible market conditions" means a comprehensive set of historical and hypothetical conditions, including the most-volatile periods that have been experienced by the markets the system operates;
  - i) "Law on the system" - means the Law No. 133/2013, dated 29.04.2013 "On payment system";
  - j) "Liquidity provider" - means a provider of cash or assets, participant of the system or external party;
  - k) "Operator"- means the legal person that alone or in collaboration with other legal persons, operates a payment system for securities' settlement; The form of organization as a joint stock company derives from the provisions of the Registry in the applicable law "On Securities";
  - l) "relevant stakeholders" means participants or operators of the system, that have an impact on or are affected by the risk in a system, and, on a case-by-case basis, other affected market actors;;
  - m) "investment risk" means the risk of loss faced by an operator or participant when the operator invests its own or its participants' resources, e.g. collateral;
  - n) "credit risk" means the risk that a counterparty, whether a participant or other entity, will be unable to fully meet its financial obligations when they fall due or at any time in the future;
  - o) "custody risk" means the risk of incurring a loss on assets held in custody by a custodian's or sub-custodian's in the event of negligence, fraud, poor administration or inadequate record keeping;
  - p) "liquidity risk" means the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations when they fall due, although it may have sufficient funds to do so in the future;

- q) "General business risk" means any potential impairment of the financial position of the system as a business concern as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital.
- r) "market risk" means the risk of losses, in both on- and off-balance sheet positions, arising from movements in market prices;
- s) "legal risk" means the risk arising from the failure of application or improper application of laws or regulations, usually resulting in a loss;
- t) "operational risk" means the risk that deficiencies in information systems or internal processes, human error, management failures of situations, or disruptions caused by external events or outsourced services will result in the reduction, deterioration or breakdown of services provided by a system;
- u) "principal risk" means the risk that a counterparty will lose the full value involved in a transaction, i.e. either the risk that a seller of a financial asset will irrevocably deliver the asset, but not receive payment, or the risk that a buyer of a financial asset will irrevocably pay for, but not receive the asset;
- v) "System" - is the system for the settlement of securities;
- w) "Linked Systems" - two or more systems, which through contractual or operational arrangements link their infrastructure / systems directly or through a broker;
- x) "Deferred Net Settlement (DNS) system - means a system which settles on a net basis at the end of a defined settlement cycle, e.g. at the end, or during a business day. This system may have a guarantee or may not have one, implying the guarantee or not of net positions;
- y) "Securities settlement systems" means a formal arrangement or regulatory base, obligatory between three or more participants, with common rules and standardised arrangements for the execution of financial instruments transfer orders between the participants; Execution includes the calculation (clearing) of the obligation of the participants and of their repayment;
- z) "Settlement" - is the completion / execution of a transaction or processing in order to meet the obligations of the participants through the transfer of funds and / or securities. The settlement may be final or temporary.

## **CHAPTER II**

### **Licensing**

#### **Article 7**

#### **Licensing Authority**

The Bank shall be the sole responsible authority for the licensing of operators of securities settlement system in compliance with the provisions laid down in the Law on the System and in this Regulation.

#### **Article 8**

#### **Capital requirement**

1. The minimum initial capital amount to be licensed as a securities settlement system operator is ALL 50,000,000.

2. The minimum capital for the registry, which provides clearing and settlement services, should be at least the largest capital between the minimum capital required by the Authority for the registry and the minimum capital required by the Bank for the securities settlement system.
3. The amount of initial minimum capital:
  - a) should not be loan, credit or money paid in advance from third parties;
  - b) should not include the payments and/or expenses for the purchase or for the renting of premises and work devices for the operation of the securities settlement system.
4. The Bank may request explanations and carry out further verifications related to the source for the establishment of contributions/funds that shall serve as minimum initial capital.
5. The Bank, in consultation with the Authority, has the right at any time to require the operator to increase its capital and financial resources and to adopt improvements in processes and procedures to ensure the safety , orderly and continuous operation of the system.
6. The minimum capital, along with other financial resources (profit and reserves) of the system, is proportional to the risks that the conducted activity carries and should at any time be sufficient to ensure:
  - a) that the system is safeguarded against operational, legal, custody, investment and business risks;
  - b) meeting the critical needs during disruption or restructuring of the activity for a period of at least 6 (six) months under the assumptions of stress scenarios.
7. The operator regularly approves and re-evaluates the necessary policies:
  - a) in relation to the increase of additional capital based on the share capital approach or according to the provisions of paragraph 6 of this Article;
  - b) which guarantee the disruption or restructuring of the activity and services in the proper way in cases where it cannot increase the capital.
8. The policies set out in paragraph 7 are sent to the Bank, which may require the operator to review them again when they are considered insufficient to ensure a safe and efficient operation of the system.

## **Article 9**

### **Licence**

1. The license is perpetual, not transferable or tradable.
2. The licence shall include the trade name of the operator, the naming "Securities settlement system", the issuance number and date.
3. The Licence shall be approved and signed by the Governor of the Bank.

## **Article 10**

### **Requirements related to the documentation**

1. The application to obtain a license for securities settlement system shall be submitted in writing by the entity's shareholders or administrator (as provided in Form No. 1, attached to the Regulation) or by a legally authorised person (as provided in Form No. 2, attached to this Regulation).

2. The application shall be endorsed by the following documents:
  - a) Statute of the company;
  - b) Articles of incorporation in case of a recently founded company;
  - c) List of shareholders and their share in the company capital; as to clearly identify the last controlling shareholders, their registration place and their share in the company's capital;
  - d) Extract of the entity registration as a legal person in the National Registration Centre<sup>1</sup>, setting out the activity for which it applies to be licensed;
  - e) The following certificates issued by the competent authorities according to the territorial jurisdiction for the shareholders, the administrator and/or the legal representative, that the person:
    - i. is not under a criminal investigation;
    - ii. is not standing a trial for a criminal offence;
    - iii. has not been convicted by a final court decision ; and
    - iv. is not under a mandatory execution process as certified by the Central Register of Bailiff's Office at the Ministry of Justice, for outstanding asset liabilities.

The aforementioned documents must be issued no earlier than 3 (three) months form the submission of the application to the Bank.

- f) documents related to the capital and its source:
  - i. a notarised statement by the shareholders certifying that the source of the initial paid-in capital is not a loan, credit or money paid in advance from third entities;
  - ii. a notarised statement of shareholders on the source of the initial paid in capital creation and on any increase to the capital during the conduct of the activity, accompanied by the following documentation: evidence of the source of the creation of funds submitted in a legally acceptable form (report issued by the authorised chartered auditor; annual balance-sheet; gifts or other sources designated for the purchasing of the entity's shares; and the certificate issued by the competent authorities providing data on the balance-sheet of the company and compliance with taxation duties;
  - iii. certificate issued by a bank or branch of a foreign bank licensed by the Bank, certifying that the entity has deposited at the bank the amount of the required capital in accordance with Article 8, paragraph 1, and criteria or point 2 or 3 as appropriate. This amount shall be disbursed upon the notification by the Bank, at the end of the licensing procedure;
- g) Documents relating to the shareholders when they are legal persons:
  - i. Statute and extract taken from the Commercial Register (for foreign legal persons- legally equivalent documents in accordance with the foreign legislation/jurisdiction);
  - ii. Decision of the decision-making body of the company on the participation in the operator's capital;

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<sup>1</sup> Or any equivalent institution where businesses are registered.

- iii. Certificate issued by the respective authorities on compliance with fiscal obligations (for foreign legal persons - legally equivalent documents in accordance with the foreign legislation/jurisdiction).
- h) Documents for the shareholders in case they are merchants registered as natural persons or individuals:
- i. for merchants registered as natural persons, extract from the Commercial Register and certificate issued by the taxation authorities affirming the regular payment of fiscal obligations.
  - ii. for individuals:
    - identification document (name, surname, nationality, citizenship), correct address and a signed CV;
    - list of businesses where the shareholder has qualifying holding, extract taken from the Commercial Register for each case, and data related to any insolvency and/or bankruptcy case.
- i) Documents for the administrator:
- i. decision by the decision-making bodies of the company on the administrator's assignment;
  - ii. identification document,
  - iii. signed CV;
  - iv. university diploma and documents that certify other qualifications of the administrator;
  - v. at least one reference letter issued by a previous employer; and
  - vi. personal statement for regular compliance with fiscal obligations.
- j) A detailed description of entity's activity and audited financial statements for the last three years or for the entire period of the company's activity, except of the case when the company is in the establishment process.
- k) Business plan, for a period not less than 3 (three) years, with the following content:
- i. a development plan and the economic concept of the entity's activity, which should be based on realistic assessments and justify the entity's abilities to use technical and financial resources, and the systems and procedures in place to guarantee the normal and stable functioning of the activity, for which the entity requests to be licensed;  
the forecast on the income and expenses for the 3 (three) first years of the activity shall take place according to Form No. 3, attached to this Regulation.
  - ii. an analysis of risks to which the entity and/or participants are exposed to or might be exposed in the future; principles and measures for the management of risks;
  - iii. a description of technical devices and necessary sources to carry out the activity, including adequate computer and information systems, accounting and registration systems;

- iv. information related to the premises/location where the entity envisages to carry out the activities, respective equipments and the security measures for their protection; and
  - v. description of organisational chart including the organisational scheme.
- l) Regulations/manuals and documents related to the scheme management, including:
- i. organisational structure and main responsibilities for each function or organisational unit;
  - ii. systems and procedures for the identification, management, control and report of risks that the system operator or participant are exposed to or might be exposed in the future;
  - iii. internal audit mechanisms and systems, administrative and accounting procedures, which include the methods and instruments for the effective monitoring and control of risk; including the risk that the system might be used for money laundering and terrorism financing;
  - iv. measures which ensure the continuity and stability for providing system services;
  - v. procedures and measures for rightfully addressing potential conflicts of interest that might arise during the conduct of the activity;
  - vi. description of the organisation and management of information system, including the manner for the protection and maintenance of information and personal data for participants or other entities, which are interested to be included in the system;
  - vii. rules on the functioning of the system;
  - viii. the services the operator foresees to contract / subcontract with third parties;
  - ix. standard project-agreement with participants, laying down the general rules and standard procedures for the clearing and settlement of transfers. The applicant shall submit at least three agreements signed with three participants, upon the condition on the entry into force after receiving the licence;
  - x. general criteria on the acceptance, exclusion and oversight of participants; as well as the rights and obligations of parties;
  - xi. establishment of the settlement agent and the way of guaranteeing that the transfer order is irrevocable;
  - xii. acceptance method/manner of the transfer order, its form and structure;
  - xiii. acceptance method/manner as well as the form and structure of the information on the transactions in the settlement accounts;
  - xiv. deadlines for the acceptance of transfer orders, and the determination of the moment when the transfer order is considered as entered in the securities' settlement system.
  - xv. definition of moment when the transfer order is considered irrevocable by the securities' settlement system;
  - xvi. methods which guarantee funds for the settlement of the accepted transfer orders in the system;
  - xvii. commissions and fees applicable on participants/sub participants.
3. The documentation specified in paragraph 2 shall be submitted in the Albanian language, in original or in a copy certified by a public notary. In case of documents

issued by the respective public authorities in foreign countries, the submitted documents shall be legalised by the relevant responsible authorities.

4. The documents shall be submitted to the Bank in a sealed envelope, or delivered via registered mail/ or other electronic forms approved by the Bank.
5. The entity, in addition to the documents laid down in this Article, shall submit to the Bank the Forms No. 4 and No. 5, attached to this Regulation.
6. Forms 1- 5, attached in this Regulation are an integral part of it.

### **Article 11**

#### **Requirements for the administrators**

The administrators of the operator shall meet at least the following criteria:

- a) hold a degree from a university, or at a minimum to have concluded the second cycle of studies in the institutions of High-level education (in case of administrators graduated in Albania), as a rule in economics or information technology;
- b) have a professional experience of no less than 3 (three) years in the financial field or in any other related field considered as compatible by the Bank;
- c) enjoy high ethical and professional reputation;
- d) have never caused or been responsible for the bankruptcy of an entity that carries out an economic activity;
- e) are not under criminal investigation or found guilty by a final court decision for committing a criminal offence resulting in a severe risk for the society;
- f) have not been subject of procedures on declaring insolvency or bankruptcy, and are relieved of the payment of the previous asset-related obligations;
- g) have not been convicted by the Bank in the past 5 (five) years for seriously breaching the banking legislation.

### **Article 12**

#### **Criteria for granting or refusing a licence**

1. The Bank shall grant the licence only after it is convinced the operator complies with the requirements laid down in the Law “On Payment System” and on the Regulation.
2. In cases when the operator is to operate a securities' settlement system as part of the Registry activity, the operator receives a license from the Bank only after being licensed by the Authority for this activity;
3. The Bank shall refuse to grant the license if the requirements laid down in the Law “On Payment System” and in the Regulation are not met, particularly in the following cases:
  - a) in its view, the proposed business plan does not convey confidentiality on the realisation of the system activity;
  - b) at least one of the administrators does not meet each of the criteria set out in article 11 of this regulation;
  - c) at least one of the shareholders:
    - i. has been subject of procedures declaring the insolvency or bankruptcy,

- ii. has provided details about his identity;
  - d) at least one of the shareholders is certified that:
    - i. is subject of a criminal investigation or has been convicted by a final court decision for a criminal offence with severe risk for the society;
    - ii. is subject of a criminal investigation or has been convicted by a final court decision for a criminal offence related to money laundering or terrorism financing;
    - iii. is barred by a court decision from exercising the profession;
  - e) does not possess the minimum initial capital requested by the Bank.
  - f) the manner in which the activity will be carried out by the entity does not sufficiently address the exposures to various risks;
  - g) no persuasive evidence is provided in relation to ensuring the continuity and sustainability in providing system services, managing the information system, as well as the way of preserving and protecting information and personal data.
4. The Bank shall collaborate with the Authority and with other national and international authorities to exchange information and coordinate the operations in the framework of licensing the operator for securities' settlement.
  5. Within 15 (fifteen) business days from the date of taking the decision in accordance with paragraph 1 or 3 of the Article, the Bank shall inform the decision on granting the licence to the entity, or shall inform in writing, the entity on the refusal by describing the related reasons.
  6. In the case of a decision to grant a license, the Bank notifies in writing the entity also of its obligation to obtain approval from the Authority for the clearing and settlement activity prior to the commencement of the activity.

### **Article 13**

#### **Procedures and deadlines for reviewing the application for licensing**

1. The Bank shall review the documents submitted in accordance with the requirements laid down in the Law on the System and the Regulation.
2. If the submitted documents are incomplete and/or fail to comply with the requirements set out in the Regulation, the Bank shall notify the entity, within 30 business days, on the shortfalls or the non-compliance with the provisions of the Law on the System and the Regulation, along with the request for additional information or documents.
3. The Bank shall grant or refuse to grant the licence within 3 (three) months from receiving the application for licence.
4. The receiving date of the application shall be the date when the applicant has met all the requirements, in accordance with Article 10 of the Regulation. The Bank shall notify the entity, in writing, of this date.
5. The Bank shall suspend the consideration of the application, in the event the data and/or documents required for the licensing are not completed within 6 (six) months from the submission of the initial application for licence. In case of suspending the consideration of the application for licence, the Bank shall notify the entity in writing.

6. After the submission of the complete documents in accordance with the Law on the Payment System and the Regulation, and after the completion of the additional information in accordance with paragraph 2 of the Article, the Bank shall:
  - a) consider and review the submitted documentation;
  - b) assess the professional capacity of administrators; and
  - c) if deemed necessary, meets with the operator to discuss the submitted business plan and other issues related with the proposed activity; and
  - d) assess the systems in collaboration with the external experts if deemed necessary.
7. The Bank may inspect the premises/offices where the entity shall conduct the activity, to fully verify the compliance of the technical and security conditions.
8. The Payment System, Accounting and Finance Department, in collaboration, as the case may be, with the Legal Department, the Supervision Department, the Information Technology Department and the Security Department at the Bank, shall review the documents for granting the licence and inspect the work premises/offices.

#### **Article 14**

##### **Publication of the decision/order on granting the licence**

The Bank shall publish the decision/order on granting the licence as operator of the system at the way deemed most adequate by the Bank.

#### **Article 15**

##### **Application fee**

1. The entity applying for a licence to operate the system shall pay an application processing fee in the sum of ALL 30,000 to the Bank, upon the submission of the application and of the relevant documents.
2. The fee shall not be reimbursed in case the Bank refuses to grant the licence.

#### **Article 16**

##### **Revocation or suspension of the licence**

1. The Bank may revoke or suspend the licence:
  - a) based on Article 7, paragraph 1, on Law on the System;
  - b) in the case of failure to meet the measures laid down in Article 49, paragraph 1, letters "a" and "b" of the Regulation, which in the Bank's opinion may jeopardise the financial stability of the country;
  - c) in the case of proposal by the Authority and having an agreement with the Bank, following joint consultations; and
  - d) if it is requested by the licensed operator itself.
2. The cases provided for in paragraph 1, letters "a" and "b" of this article are also consulted with the Authority.

3. In the event of revocation of the license from the Bank, the operator establishes and implements procedures that ensure that settlement and transfer of assets of clients, participants and other infrastructure is carried out in a timely and appropriate manner.
4. In the event the revocation or suspension of licence is requested by the operator:
  - a) the operator shall inform the Bank 3 (three) months prior to the suspension or interruption of the activity;
  - b) the application for suspension or revocation by the operator should include an action plan which provides all the necessary measures for the timely meeting of all the operator's obligations to participants, which arise from the processing of transactions in the system.
5. The Bank shall immediately after being informed of the conditions and reasons for the suspension or revocation of the license under paragraph 4 of this Article, consult with the Authority on the decision to suspend or revoke the license.
6. The Bank may partially suspend the Operator for certain business, activities or financial instruments that are deemed to conflict with the supervisory principles set out in this Regulation and other by-laws of the Bank and affect the stability and security of the system.
7. The decision to revoke or suspend the licence shall be immediately communicated, in writing, to the operator and published in the way deemed most adequate by the Bank.
8. The operator shall not carry out the activities specified in the licence after the entry into force of the Bank's revocation or suspension decision/order, or for as long as suspension period lasts.
9. The Governor of the Bank shall approve and sign the decision/order on the revocation or suspension of licence.

### **Chapter III**

#### **Prior approvals and obligations for notification**

#### **Article 17**

##### **Prior approvals**

1. Without the prior approval by the Bank and following that of the Authority, the system operator, may not:
  - a) decrease the capital;
  - b) appoint one or more administrators;
  - c) enter into an agreement with third parties to outsource a certain service related to the activity for which it is licensed;
2. The Bank shall grant or refuse the prior approval, in accordance with paragraph 1, within 2 (two) months from the complete submission of the application, conform the list of documents laid down in Article 18 of the Regulation.

3. The First Deputy Governor of the Bank shall grant or refuse the prior approvals.

**Article 18**  
**Documents required for the prior approvals**

1. The system operator, to obtain the prior approvals set forth in Article 17 of the Regulation, shall submit a written application to the Bank, accompanied by the following documents:
  - a) on the reduction of the capital:
    - i. the decision of the assemble to decrease the capital; and
    - ii. the accompanying report along with the reasons for this change.
  - b) on the appointment of the administrator/administrators:
    - i. the decision of the decision-making body for the appointment of the administrator/administrators; and
    - ii. documents requested under the letter “i”, paragraph 2, of Article 10 of the Regulation.
  - c) For agreement with third parties (outsourcing) and links with other infrastructures:
    - i. Respective contracts (agreed upon the condition to enter into force after the Bank grants the prior approval), which shall contain the obligation of the sub-contractor/contractor to report to the Bank, and the right of the Bank to supervise them, depending on the importance that the sub-contracted/contracted service have for the security of securities’ settlement system.
    - ii. the decision of the steering body for the signing of agreements with third parties (outsourcing);
    - iii. analysis/assessments and documents of the managing bodies of the operator, which ensure:
      - that the quality of services and continuity of the activity are not threaten or will not be compromised under the transfer of the activities;
      - that the service provider enjoys the reputation, the required experience and a sound financial position; and
      - the acknowledgement and control of risks that may arise from the transfer of the activities.
2. The Bank may request, when necessary, other documents, in addition to those stipulated in this Article.

**Article 19**  
**Obligation to notify**

1. The operator shall immediately inform the Bank in the cases of:
  - a) contingency events, insolvency or disruption of participants' activity in the system;
  - b) contingency events in case of problems in the scheme functioning, including the implemented corrective measures;
  - c) particular events that cover specific data requested by the Bank to oversee the system's operations;

- d) the assessment that justified reasons exist to interrupt or suspend any of the system activities;
  - e) the assessment that there are reasons for revoking the licence;
  - f) any change in the participants' list and sub-participants of the system.
2. The operator shall inform the Bank within 30 (thirty) days on the following:
    - a) change of the name;
    - b) change of the statute;
    - c) increase of capital;
    - d) changes in capital structure;
    - e) changes in the organisational structure;
    - f) change of the head office and address;
    - g) departure of administrators;
    - h) amendments to internal regulations/methods/any other documentation that serves to the well-functioning of the system;
    - i) feasibility study for each new project;
    - j) any change in the content of the contracts with the participant and contracts with other operators; and
    - k) any other change that is required to be registered in the Commercial Registry.
  3. In case of changing the name, following the application submitted by the operator, the Bank shall grant a new licence format where the new name is reflected.

## **Chapter IV**

### **Principles that regulate the operator's activity**

#### **Article 20**

#### **Compliance with the principles**

1. The operator shall carry out its activity in compliance with the best international standards and practices of the European Central Bank (ECB) and of the Bank for International Settlements (BIS), driven by the principles of prudential management.
2. To comply with the prudential management, the operator shall:
  - a) take the needed measures to limit direct and indirect risks; including measures of fraud and negligence;
  - b) provide high levels of transparency and correctness; and
  - c) take measures on the constant and effective functioning of the system.
3. The principles on prudential management, which will serve for the oversight of the operators, are laid down as summarised in Articles 22 to 43 and will be detailed by a special by-law act of the Bank.
4. In case of important changes in the system functioning, existing services and introduction of new ones, the operator shall organise adequate consulting forms,

for assessing the impact of the initiative and the adequacy of the supplied functionalities.

5. In order to provide the secure and effective services by the system, the operator shall meet the specific technical, organisational and functional criteria, laid down in the by-law acts issued by the Bank.
6. The Bank, for the purposes of overseeing the licensed systems, based on this Regulation, shall publish the oversight policies and the specific procedures on the oversight of the system.
7. The implementation of the oversight principles set forth in this regulation and in other by-law acts of the Bank by the operator is monitored / overseen by the Bank in cooperation with the Authority under the Agreement "On cooperation in licensing, regulation and oversight of securities settlement systems and securities clearing houses ".

## **Article 21**

### **Premises and technical conditions**

1. The system operator provides appropriate facilities for the exercise of its activity. These premises are considered appropriate if they meet the technical requirements to ensure a steady continuity of the activity and meet the following criteria:
  - a) the technical resources are dedicated to certain activities;
  - b) ensure compliance with the technical rules for the installation and use of available equipment, as well as performance of the staff under the optimal conditions;
  - c) are equipped with an anti-theft and fire alarm system;
  - d) are equipped with security measures, which guarantee storage of data even in cases of fire;
  - e) has the main source of electricity and also a *back-up*;
  - f) guarantees other security elements of the premises according to international standards.
2. When the system operator uses rented premises/objects, the lease contract must be of a fixed-term of not less than three years.
3. The system operator must possess the appropriate technical equipment to carry out the licensed activity.
4. Technical equipment is considered appropriate if it permits a continuous, reliable and stable administration of the activity related to the operation of the system.

## **Article 22**

### **Legal risk**

1. For reasons of licensing and oversight of the operator, as well as for informing the customers, the system operator approves and applies clear, understandable rules, procedures and contracts.

2. The Operator shall drafts rules, procedures and contracts, which shall guarantee security even in the event of the insolvency of a participant.

### **Article 23 Governance**

1. The operator shall have documented objectives which support the safety and the efficiency of the system. The objectives shall support financial stability as well as the existence of an open and efficient financial market.
2. The operator shall have documented and effective rules for the governance which shall establish clear and direct lines of responsibility and accountability. These rules should be presented to the owners, competent authorities, participants and to a more general level and to the public. The operator shall make a summary of these rules available to the public.
3. The roles and responsibilities of the steering board are clearly defined and take into account:
  - a) The establishment of strategic objectives for the system.
  - b) The establishment of documented procedures for the functioning of the system, including the procedure for identification, addressing and managing conflict of interest.
  - c) Periodic review of the board as well as of its member's performance.
4. The steering board consists of members with appropriate skills and incentives, which enable them to fulfil the multiple roles they have.
5. The roles and responsibilities of the administration are clearly defined. The administration of the system operator shall have sufficient experience, skills and integrity that ensures the efficient operation and administration of risk and avoidance of exposures.
6. The Board establishes and oversees a framework for risk management, which:
  - a) includes tolerance policies to system risk;
  - b) defines the responsibilities and accountability for decisions related to risk management;
  - c) addresses the decision-making process in case of crisis or emergencies;
  - d) addresses the internal audit functions.The decision-making structures shall guarantee that the risk management and internal audit functions have the competency, independence and adequate access to the decision-making process.
7. The decision-making body shall guarantee that major decision related with the functions, rules and strategies of the system, and in particular related to the clearing and settlement processes, operational structure, the objective of cleared and settled products, as well as the technology and procedures used shall reflect the legitimate requirements of participants, sub participants and interested parties. The participants, sub-participants and when necessary the broader public, shall be included in consultation processes for such decisions.

### **Article 24**

## **Framework for the comprehensive management of risks**

1. The system operator shall have an appropriate framework for the management of legal, credit, liquidity, operational risk and general business risk, and other risks the system is faced with. For this purpose, the system operator shall have risk management policies, procedures and systems that identify, measure, monitor and manage the range of risks in the system which are periodically reviewed.
2. The operator provides incentives and, where appropriate, capacity for participants and their clients to manage and reduce their risks.
3. The operator regularly reviews the material risk it carries and presents it to other entities, such as related/linked systems, settlement banks, liquidity providers or technical service providers as a result of interdependence and develops appropriate management tools to address these risks.
4. The operator shall define its services and operations with critical character for the purpose of managing these risks. The operator builds specific scenarios that predict situations that hinder the provision of critical services and operations, and based on these scenarios, the operator evaluates the effectiveness of the options selected for system recovery.

## **Article 25 Credit risk**

1. The operator shall establish a framework for the measurement, monitoring and management of credit exposure to participants as well credit risk arising by the clearing and settlement processes in the system.
2. The operator shall identify all the sources of credit risk, continuously measures and monitors the credit exposure and uses appropriate measures for the administration of this risk.
3. An operator, including a net settlement system with a repayment guarantee, which during the operation of the system causes credit exposure to participants, shall cover the exposure to each participant with collateral, guarantee funds, or other financial resources.
4. The operator, including a net settlement system without repayment guarantee, where participants face credit exposures arising from the clearing and settlement process in the system, shall have rules and contractual arrangements for the participants that foresee the solutions of such situations. These contractual rules and agreements shall ensure that participants have sufficient financial resources to cover this exposure against the two participants, who together with their affiliates in aggregate terms create the highest exposure to the system.
5. The operator shall establish rules and procedures to address losses from default of one or more participants to cover their obligations toward the system. Rules and procedures shall address the allocation of uncovered losses that may potentially occur, including the repayment of funds that the operator has borrowed from

liquidity providers. These rules shall include rules and procedures to supplement any financial resource used by the operator in stress situations.

## **Article 26 Collateral**

1. The operator generally shall accept collateral of low credit, liquidity and market risks.
2. The operator shall establish prudent valuation practices and sets haircuts, which are regularly tested and take into consideration stressed market conditions.
3. In order to reduce the needs for pro-cyclical adjustments, the operator shall establish stable and conservative haircuts that are calibrated to include stressed market conditions, to a practicable and prudent extent.
4. The Operator shall avoid concentrated holdings of certain assets that impair the ability to liquidate such assets quickly and without significant adverse price effects.
5. When accepting cross-border collateral, the operator shall mitigate the risk associated with its use and ensure that the collateral will be used in a timely manner.
6. The operator shall use a collateral management system that is well-designed and operationally flexible.

## **Article 27 Liquidity risk**

1. The operator establishes a framework for managing liquidity risk arising from the participants of the system, settlement banks, *nostro* agents<sup>2</sup>, custodian banks, liquidity providers or other entities.
2. The Operator shall have effective operational and analytical tools to identify, measure and monitor the settlement and funding flows on an ongoing and timely basis, including the use of intraday liquidity.
3. The operator shall maintain sufficient liquidity resources in all relevant currencies to enable the timely settlement of payment obligations with a high degree of confidence and under a wide range of potential stress scenarios that shall include but are not limited to, the default of the participant and its affiliates that would generate the largest aggregate payments obligation in extreme, but plausible market conditions.
4. The operator shall increase the liquidity resources with other assets to meet the requirements for sufficient liquidity resources. These sources shall be saleable and acceptable as collateral in any moment or *ad hoc* following a default, even if this cannot be reliably prearranged or guaranteed in extreme but plausible market conditions.
5. When the participant increases these resources, the operator shall guarantee that these assets meet the above conditions. These assets shall be presumed to be saleable and acceptable if the Central Bank rules and practice on accepting the collateral have

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<sup>2</sup> *Nostro Agent* is the financial institution or the bank, which enables the opening of a current account for the execution of transactions.

- been taken into account. The operator, shall not assume the availability of emergency central bank credit as a part of its liquidity plan.
6. The operator shall obtain a high degree of confidence, through rigorous due diligence, that each provider of its liquidity resources has sufficient information to understand and to manage its liquidity risks, and that it has the capacity to perform as required under its commitment. In assessing the confidence/reliability performance of the liquidity's provider toward a particular currency if it's deemed reasonable, it can be taken under consideration its ability to be credited from the central bank of issue of the currency in circulation. The operator shall regularly test the procedures for accessing its liquid resources at a liquidity provider.
  7. An operator with access to central bank services and accounts shall use these services, where practical, in order to manage the liquidity risk.
  8. The operator determines the amount/quantity and regularly tests the sufficiency of its liquid resources through a rigorous stress testing. The Operator shall have clear procedures to report the results of its stress tests to appropriate decision making bodies and to use these results to evaluate the adequacy of and adjust its liquidity risk management framework. In conducting stress testing, a wide range of relevant scenarios shall be taken into consideration. These scenarios include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset and funds markets, and a spectrum of forward-looking stress test scenarios in a variety of extreme but plausible market conditions. Scenarios shall also take into account system designs and operations, including all entities that pose material liquidity risk to the operator (such as settlement banks, *nostro* agents, custodian banks, liquidity providers and linked infrastructures), and, where appropriate, cover a multiday period.
  9. An operator shall establish explicit rules and procedures to allow operators to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures shall address the unforeseen and potentially uncovered liquidity shortfalls; aim to avoid the *unwinding*, revoking, or delaying the same-day settlement of payment obligations, as well as at indicating how the operator can replenish any liquidity sources, during a stress event, so that it can continue to operate in a safe and sound manner.

## **Article 28**

### **Settlement finality**

1. The operator's rules and procedures shall clearly define the point at which an order is considered to be entered into the system, irrevocable and the settlement is final.
2. The operator shall publishes the rules on the finality of securities and cash transfers into the system.
3. The final settlement shall take place no later than the end date of the value date and preferably, intraday or in real time. The operator shall consider adopting RTGS or multiple-batch processing during the settlement day.
4. The operator shall clearly define the point after which the unsettled transfer-orders can be revoked by the system.
5. All transactions between the direct participants of a securities settlement system are settled based on the delivery versus payment principle (DvP).

6. For purposes of risk management related to settlement, the Registry which provides clearing and settlement services shall create a guarantee fund under the applicable legislation on securities.

## **Article 29**

### **Money settlement**

1. The operator shall ensure that money settlement takes place in central bank's accounts, where practical and available, to avoid credit and liquidity risks.
2. If the settlement in central bank money is practically impossible, the operator shall minimise and strictly control the credit and liquidity risk arising from the commercial settlement banks accounts.
3. If settlement takes place in commercial bank money, the operator shall set and monitor strict criteria for its settlement agent that take into account among other things, their regulation and oversight, creditworthiness, capitalisation, access to liquidity, and operational reliability. The operator shall also monitor and manage the concentration of credit and liquidity exposures of the settlement agent.
4. If the operator conducts money settlements on its own books, it shall monitor and strictly control its credit and liquidity risks.
5. In the case when the settlement occurs in the commercial bank money, the agreement between the parties shall clearly define the moment when the transfer order is considered settled in the settlement agent's books, when the transfer order is to be final and irrevocable, as well as the availability of funds to be used as soon as possible, at minimum by the end of the day.
6. Regarding the settlement date, it is important that:
  - a) any participant in a system for settlement of securities that settles in this system, on its accounts or on behalf of third parties, transferable securities transactions, money market instruments, units of collective investment undertakings, shall settle these transactions on the date determined for settlement;
  - b) regarding transferable securities transactions in letter "a" of this paragraph, traded on regulated markets / stock exchanges, the settlement date is preferred to be not later than two business days after the trading date but in no case later than three working days. These requirements shall not apply to privately negotiated transactions but which are executed in regulated markets/ stock exchange markets, as well as transactions that are executed bilaterally, but are reported in regulated markets/ stock exchanges.

## **Article 30**

### **Physical deliveries**

1. The operator's rules shall clearly define its obligations with respect to delivery of physical instruments<sup>3</sup> or securities.
2. The operator shall identify, monitor and manage the risks and costs associated with the storage and delivery of physical instruments or securities.

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<sup>3</sup> Immobilised / non-dematerialized in electronic form.

**Article 31**  
**Exchange-of-values settlement systems**

The operator of the system shall eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs. This rule should be followed regardless of whether the settlement occurs on a gross or net basis and when finality occurs.

**Article 32**  
**Participant-default rules and procedures**

1. The operator shall have in place effective and clearly defined rules and procedures to manage the participant's failure to meet its financial obligations when they fall due and in the case a system participant fails, and that address the replenishment of resources following a default.
2. The operator shall be well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.
3. The operator shall publish key aspects of these rules and procedures.
4. The operator shall test and review the rules and procedures at least annually, or following material changes to the system affecting these rules and procedures. The operator shall involve in this testing and review the participants of the system and other stakeholders.

**Article 33**  
**General business risk**

1. The operator shall have robust management and control systems to identify, monitor and manage general business risks, including potential losses that may arise from a poor execution of business strategies, negative cash flows or unexpected and excessively large operating expenses.
2. The operator shall hold liquid net assets financed by equity (such as, common stock, disclosed reserves or other retained earnings), so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets shall be determined by the operator's business risk profile and by the length of time required for the recovery of critical operations and services of the system in the most appropriate manner.
3. The Operator shall have a viable recovery plan as well as maintain sufficient liquid net assets to implement this plan. Their amount shall be equal to at least the total value of the operating expenses of the last 6 months. These assets are in addition to resources held to cover participant defaults or other risks. However, equity held under international risk-based capital standards may be included where relevant and appropriate to avoid duplicate capital requirements.
4. Assets held to cover the general business risk shall be of high quality and sufficiently liquid to enable the operator to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions.
5. The operator shall have a viable plan for raising additional equity should its equity fall close to or below the amount needed. The plan should be approved by the board of directors and updated regularly.

**Article 34**  
**Custody and investment risks**

1. The operator shall hold its own and participants' assets at supervised and regulated entities (hereinafter the 'custodians'), that have robust accounting practices, safekeeping procedures and internal controls that fully protect these assets.
2. The operator shall have access to his/her assets and those of his / her participants whenever necessary.
3. The operator shall evaluate and understand its exposures to its custodian banks, taking into account the full scope of its relationships with each of them.
4. The operator shall establish its investment strategy, which shall be consistent with its overall risk-management strategy and fully disclosed to the participants. Investments shall be of high quality and allow for quick liquidation, with no negative effects on prices.

**Article 35**  
**Operational risk**

1. The Operator shall establish a robust operational risk management framework consisting of systems, policies, procedures and controls that enable the identification, monitoring and management of operational risks.
2. The decision-making bodies of the operator shall clearly define the roles and responsibilities for addressing operational risk and shall endorse the framework for managing this risk. Systems, operational policies, procedures and controls are reviewed, audited and tested periodically as well as after any significant change.
3. The Operator shall have clearly defined operational reliability objectives and shall have policies in place that are designed to achieve those objectives.
4. The operator shall ensure that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.
5. The operator shall have comprehensive physical and information security policies that address all potential vulnerabilities and threats.
6. The Operator shall determine a business continuity plan that addresses events that pose a significant risk of disruption to system operations, including events that could cause a wide-scale or major disruption. The operator shall test the plan and review it at least annually.
7. An operator shall identify, monitor and manage the risks that key participants, other markets infrastructures, service and utility providers, might pose to system operations. In addition, the operator shall identify, monitor and manage the risks that its operations might pose to other financial infrastructures.

**Article 36**  
**Access and participation requirements**

1. The operator shall permit fair and open access to the services provided, based on the risk management approach for participation therein, and where appropriate also for sub-participants.

2. Establishing conditions for participation is based on ensuring the operator's safety and efficiency as well as the markets it serves. These rules shall be adapted and comply with the operator's specific risks and be publicly disclosed. Subject to maintaining acceptable risk control standards, Subject to maintaining acceptable risk control standards, an operator shall set the conditions which have the lowest impact, as appropriate, on access.
3. The operator shall monitor the implementation of the rules of participation in a continuous manner and shall have well-defined and public procedures for the suspension and orderly exit of participants that breach, or no longer meet, the participation requirements.

### **Article 37**

#### **Tiered participation arrangements**

1. The operator shall identify, assess and manage the risks arising from tiered participation arrangements (for example: between the participant and its sub-participant).
2. For the purposes of risk management, an operator shall ensure that rules, procedures and contractual agreements allow the collection of information for sub-participants, in order to identify, monitor and manage any material risk that may arise from the participation in this system. This information covers all the following aspects:
  - a) The proportionality of the activity that direct participants develop on behalf of the sub-participants.
  - b) The number of sub-participants who settle through the direct participants.
  - c) The volumes or values of transfer orders in the system that originate from any sub-participant.
  - d) Volumes or values of transfer orders under point “c” in proportion to those of the direct participants, through whom the sub-participants access the system.
3. The operator shall identify material dependencies between direct participants and sub-participants that may affect the system.
4. The operator shall identify sub-participants posing material threat to the system and direct participants through whom they access the system in order to manage such risks.
5. The operator shall regularly review the risks arising from the tiered participation arrangements. The operator shall take measures to mitigate the risk when it is necessary to ensure that the risks are properly managed.

### **Article 38**

#### **Links**

1. The operator shall ensure that the functioning of system links is in accordance with the operating rules and does not affect its proper functioning.
2. Before concluding a link agreement with another operator, and as soon as this link is established, the system operator shall identify, monitor and manage all potential sources of risk stemming from this agreement. Linked agreements are

designed such that each system operator shall be able to respect other supervisory principles in this regulation.

3. A link between the two operators should have a well-founded legal basis, in all relevant jurisdiction that supports its design and provides adequate protection for the operators of the systems involved in link.
4. Linked Registrars shall measure, monitor and manage their credit and liquidity risks arising from such links. Any credit extensions between the registrars shall be covered fully with high-quality collateral and shall be subject to limits.
5. Provisional transfer of securities between linked registrars shall be prohibited, or at a minimum, the retransfer must be prohibited prior to the transfer becoming final.
6. The registrar who is in the role of the investor establishes a link with an issuer registrar only if the agreement provides a high level of protection for the rights of investor registrar's participants.
7. An investor registrar using an intermediary to operate a link with the issuer registrar, monitors and manages additional risks (including custody, credit, legal and operational risks) arising from the use of intermediary.
8. Linked registrars shall have sound reconciliation procedures to ensure that their respective records are accurate and current.
9. Linked registrars guarantee compliance with the Delivery versus Payment principle (DvP) between participants in linked registers whenever possible. In case the observance of this principle is not guaranteed by the registrars, the Bank and the Authority shall be informed.

### **Article 39**

#### **Outsourcing/Contracting to third parties**

1. The Operator shall request preliminary approval pursuant to Article 17 and Article 18, paragraph 1, "c" by the Bank for the outsourcing of activities with third parties provided for in paragraph 4 of this Article. The Bank shall inform the operator if the authorization has been granted / approved or refused within three months of the full submission of the application.
2. The Bank applies direct supervision to contracted service providers whenever it deems it as necessary and of systemic importance to the system.
3. System operators shall be responsible for reporting to the Bank on the activities of contracted service providers to third-parties in cases where the Bank does not perform direct supervision on these providers.
4. The system operator shall ensure that, when relying on a third party for the performance of operational functions that are critical for providing continuous and satisfactory service to the customers and carrying out its activities on an ongoing and satisfactory level, it undertakes reasonable steps to avoid additional operational risk. The transfer to third parties of important operational functions shall not be undertaken in such a way as to materially impair the quality of internal control and the supervisor's ability to monitor the compliance of the company with all obligations.
5. Contracted service providers shall have sound administrative and accounting procedures, internal control mechanisms, and effective procedures for risk assessment, effective control and safeguarding measures for information processing systems.

**Article 40**  
**Efficiency and effectiveness**

1. The services offered by the operator shall be efficient and effective, in meeting the requirements of its participants and of the market it serves.
2. An operator shall have a process to identify and meet the needs of the market it serves, in particular in relation to:
  - a) the choice of clearing and settlement arrangements
  - b) operational structure;
  - c) the scope of products cleared or settled.
3. An operator shall have clearly defined measurable and achievable objectives and goals such as in the areas of minimum level of service, risk management expectancy and business priorities.
4. The operator shall establish mechanisms for regular review of the requirements stipulated in paragraphs 2 and 3, at least once a year.

**Article 41**  
**Communication procedures and standards**

The operator shall use or minimally adopt, relevant internationally accepted communication procedures and standards in order to facilitate efficient clearing, settlement and recording.

**Article 42**  
**Disclosure of rules and key procedures**

For the purpose of the disclosure of rules and key procedures, the operator shall:

- a) Implement / adopt clear and comprehensive rules and procedures that are fully disclosed to participants and interested parties.
- b) disclose clear descriptions of the system's design and operations, as well as the operator's and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the system;
- c) provide all necessary and appropriate documentation and training to facilitate participants' understanding of the operator's rules and procedures and the risks they face from participating in the system;
- d) publicly disclose its fees at the level of individual services it offers as well as its discount policies on fees and commissions. The operator shall also provide clear descriptions of commissions and fees for comparability purposes.
- e) completes and publicly disclose the implementation of the standards set out in this Regulation. It shall update their implementation, taking into account material changes in the system or the environment, at least every two years. The operator shall also, at a minimum, disclose basic data on transaction volumes and values carried out in the system.

**Article 43**

## **User Committee**

1. The Securities Registry establishes user committees for each Securities Settlement System, which is composed of representatives of issuers and participants in such systems. The advice of the user committee shall be independent from any direct influence by the management of the Registry.
2. The Registry shall define in a non-discriminatory way the mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for the user committee members. The governance arrangements shall be publicly available and ensure that the user committee reports directly to the management body and holds regular meetings.
3. User committees shall advise the steering bodies on the key rules affecting their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and at the service level.
4. User committees may submit a non-binding opinion to the management body containing detailed reasons regarding the Registry's pricing structure.
5. Without prejudice to the right of the competent authorities to be duly informed, the members of the user committees shall be bound by confidentiality. Where the chairman of the user committee determines that a member has an actual or a potential conflict of interest in relation to a particular matter, that member shall not be allowed to vote on that matter.
6. The Registrar shall promptly notify the competent Authority and the user committee of any decision in which the management body decides not to follow the advice of the user committee. The user committee may inform the competent authority of any areas in which it considers that its advice has not been followed.

## **CHAPTER V OVERSIGHT**

### **Article 44 Oversight means**

1. The Bank and the Authority shall oversee licensed entities based on international principles for these operators by the division of the scope of application set out in the Agreement "On cooperation, licensing, regulation and oversight of securities settlement systems and securities clearing houses".
2. The bank shall oversight the operator by focusing on the principle of risk management. The oversight is carried out through:
  - a) On-site inspection
  - b) Off-site examination
3. The Bank, when it deems reasonable, may impose additional standards and requirements on the operator, participants and sub-participants in the system.
4. For purposes of overseeing the system's activity, the Bank shall also oversee the activities for which the system has entered into agreements with third parties /outsourcing in compliance with Article 17, paragraph 1 (c) and Article 39.

**Article 45**  
**On-site inspection**

1. In order to ensure and control the implementation of the Law on the System and bylaws issued for its implementation, Bank's employees, and other qualified persons authorised by the Bank, may inspect the work premises of the system, the operator, the participants and sub-participants, to check the accounts, registers, documents and other paperwork, to get information and data from them, and to take other actions that the Bank deems as necessary.
2. The operator, the participants and sub-participants shall make available to the Bank the accounts, the registers, documents and other paperwork as stipulated by the Law on the System and the bylaws issued for the implementation of the Law. The operator, participants and sub-participants shall make available to the Bank any kind of information and additional data, which the Bank deems as necessary.
3. As a rule the bank shall inform the operator by an official letter at least 10 (ten) business days prior to the on-site inspection, on the inspection program, and the persons involved in the inspection process. Exceptions are made of the cases when the Bank deems it necessary to carry out an unannounced inspection on the operator.

**Article 46**  
**Off-site examination**

1. The Bank shall carry out off-site examination through mandatory notices provided by the operator pursuant to Article 19 of the Regulation, and the periodic reports from the operator as laid down in paragraphs 5 and 6 of this Article.
2. Once a year within the first quarter, the operator, shall submit the report of the external auditor to the Bank along with the financial statements and a special appendix, as laid down in Article 46 of the Regulation.
3. The above-stated report shall be submitted to the Bank within 15 (fifteen) days from the delivery to the operator and after having been acquainted with the decision-taking bodies of the operator.
4. The operator shall submit to the Bank every one (1) month, the information on the system's activity in relation to:
  - a) the number and value of the processed transactions;
  - b) other information laid down in the by-laws of the Bank.The operator shall guarantee at any moment the ability to identify any transfer order and the relevant information it carries.
5. Once a year, within the second quarter, the operator, shall submit to the Bank the information on:
  - a) methods used to ensure the compliance with the appropriate rules and functioning of services and systems, in particular related to the technological support;
  - b) the defence measures to ensure the credibility and integrity of the operational and accounting data;
  - c) the measures undertaken to manage risks, and in particular the measures in response to the shortfalls/problems encountered during the system' activity;
  - d) organisational measures undertaken in the framework of preventing money laundering;

- e) main results of the audit activity carried out within the company at different levels of organisational structure;
  - f) tests reports and audits performed on information security, in IT infrastructure that supports the system (performed by third parties or internal units that are different and independent of the system operating units).
6. The Bank may request *ad hoc* reports by the operator on special issues and the operator shall make available the information whenever requested.

**Article 47**  
**Appendix to the external auditor's report**

The specific appendix shall encompass:

1. The assessment of compliance with the risk management rules:
  - a) the external auditor shall control and assess/evaluate the compliance of system risk management rules in accordance with the provisions of the Regulation;
  - b) the external auditor shall assess the adequacy of the system risk management systems based on the assessment of:
    - i. compliance with the requirements for the organisational structures related to the management of each particular risk;
    - ii. the policies and procedures for the management of each specific risk, as well as their implementation;
    - iii. the adequacy of identification, measuring and monitoring of each specific risk; and
    - iv. the adequacy and effectiveness of the internal audit system related to the management of each specific risk.
2. The assessment of the internal audit system: The external auditor shall perform a special assessment of the system's internal audit system assessing whether the operator:
  - a) has in place a secure and effective internal control system, in accordance with the provisions of the Regulation;
  - b) has established an internal audit unit, as a functionally and organizationally independent unit from the other organization units of the system which controls it, and whether it operates in accordance with the provisions of the Regulation;
  - c) has established an internal audit system adequate to avoid the conflict of interest;
  - d) has provided a sufficient number of staff, having the required professional qualifications and experience, on the functioning of the internal audit system, proportionally to the size, type, volume and complexity of the activities.
3. Assessment of information system:
  - a) The external auditor shall conduct a special assessment of the state of affairs and adequacy of the system information management system. For this purpose, it:
    - i. prescribes in advance the purpose and extent of the risk-based assessment;

- ii. implements the methods and procedures of this assessment based on risk assessment;
    - iii. verifies the compliance of the information management system in accordance with the provisions/requirements set forth in the Regulation.
  - b) The external auditor, based on the information system assessment in accordance with point “a”, shall set forth the main risks the system is exposed to.
4. The appendix shall encompass explanatory notes to the implementation of the auditor's recommendations for the previous periods for all audited functions, and in particular related to the functioning of the internal audit.
5. The appendix, also shall contain the opinion of the external auditor on the accuracy of reports to the Bank according to the Regulation.

### **Article 48**

#### **Decision-making power of the Bank**

The Bank may issue orders, guidelines and decisions, through which it may require the system, the operator, participants and sub-participants to act or abstain from acting, in any way that the Bank deems as necessary or advisable.

### **Article 49**

#### **Sanctions**

1. In case of failure to comply with the provisions of the Law on the System and the Regulation, the Bank may decide to take the following measures:
  - a) Preventing measures. The Bank shall apply on the operator one or some of the following measures:
    - i. The Bank shall warn the operator on non-compliance with the standards for a safe and sustainable activity and for this purpose, it shall request it to submit a plan or agreement on the interruption/termination of the offence action and the correction/remedying of the violations of the provisions of the Law on the System and the bylaws issued for its implementation, and observance of the standards for a safe and sustainable activity;
    - ii. For the implementation of paragraph 1, letter (b) "i" of this Article, the operator shall submit the above-stated plan or agreement to the Bank within 30 (thirty) days from the receiving of the request, as stipulated in paragraph 1 or according to the term set forth by the Bank;
    - iii. The Bank, within 30 (thirty) days from the date of presenting the plan or of the agreement proposed by the operator, shall inform the operator, in writing, on their approval or not, and shall request additional information, if deemed reasonable. The Bank may extend the term within which the notice of approval of the plan or agreement is given.
  - b) Oversight measures. The Bank shall apply on the operator one or some of the following measures:

- i. requests the increase of capital and financial resources, in order to provide the safe, smooth and continuous functioning of the system activity in the framework of addressing the potential exposures;
  - ii. orders the interruption/termination of offensive actions, and the correction/remedying of legal or by legal provisions.
2. The Bank shall take further actions in case of infringement of the obligations stipulated in the Law on the System and the relevant by-laws.
3. The Bank shall take administrative sanctions in compliance with Article 12 of the Law on the System.
4. The First Deputy Governor decides on the administrative sanctions and other measures, which are different from the revocation or suspension of licence.

## **Article 50**

### **Appeal**

1. The operator affected by an administrative act of the Bank may request the cancellation or change of this act by the Governor within 15 (fifteen) days from either the date when the appellant has been informed on the act, or from its publication date.
2. The Bank, prior to the issue of the administrative act, grants the operator, against whom the measure is proposed, the right to express in writing within 5 (five) days regarding the taking to the proposed measure.
3. The execution of the administrative appeal to the Governor is a prerequisite for the exhaustion of the administrative recourse to allow the affected operator with the possibility to address the court.
4. The administrative appeal, in accordance with paragraph 1, shall not suspend the implementation of the administrative act issued by the Bank, in the event the Bank assesses that the entire stability of the financial system may be threatened or jeopardised due to the suspension of the appeal.
5. The administrative appeal shall be presented in writing and should contain the reasons on which grounds the administrative act is appealed, and should contain an attached copy of the act.
6. When the Bank assesses that the immediate implementation of the administrative act serves to the security and stability interests of the entire financial system, it might decide that an administrative appeal may be initiated on the condition that the affected citizens or legal entities supply the legal guarantees adequate for the prior and immediate execution of the administrative act.

**Chair of the Supervisory Council**

**Gent SEJKO**

**Form No. 1**

**APPLICATION  
TO  
BANK OF ALBANIA  
TO BE LICENCED  
AS A SECURITIES' SETTLEMENT SYSTEM OPERATOR**

Entity's name: \_\_\_\_\_

Proposed location: Address \_\_\_\_\_, Albania  
(City) (District)

We hereby submit this application to the Bank of Albania, providing information in line with its requirements for granting a license to carry out the activity as "On Securities' settlement system".

We commit to comply with the Law 133/2013, dated 29.04.2013 "On the Payments System" and related by-laws acts.

Applicants

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: The application with the documents and forms required in accordance with this Regulation shall be submitted to the following address:

**Department of Payment System, Accounting and Finance  
Bank of Albania**

**Tirana, Albania**

**Form No. 2**

**DECISION**

-----  
(DECISION-MAKING BODY)

**ON THE APPOINTMENT OF THE REPRESENTATIVES**

----- (The decision-making body) hereby certifies that, to our knowledge and belief, the information set out herein is full, true and correct. In addition, ----- (the decision-making body) appoints and assigns as representative/s:

\_\_\_\_\_  
(Name) (Father's name) (Last name)

Address: \_\_\_\_\_  
(Street, Number) (City) (State)

\_\_\_\_\_  
(Telephone number) (Fax/telex number)

The aforementioned representative is authorized to represent and be present and sign before the Bank of Albania, except when the Bank of Albania requests personal actions from the members of ----- (the decision-making body).

This person is authorized to perform any action, as needed, as completely as possible and meet all the objectives and goals in the same capacity as the authoriser would have done if he received/submitted and performed personally all the correspondence and documents to the Bank of Albania.

Date \_\_\_\_\_,

(Name Last name) (Signature)  
\_\_\_\_\_

Note: This form shall be certified by a public notary.

**Form No. 3**

**ESTIMATION OF INCOME AND EXPENDITURE  
FOR THE FIRST 3 YEARS OF THE ACTIVITY**

**INCOME**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TOTAL INCOME** \_\_\_\_\_ **ALL**

**EXPENDITURE**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TOTAL EXPENDITURE** \_\_\_\_\_ **ALL**

**TOTAL NET EARNINGS BEFORE TAXES**  
\_\_\_\_\_ **ALL**

**Form No. 4**

**STATEMENT**

I hereby certify that the information provided herein is to the best of my knowledge true and correct. The information reflects all the assets and liabilities and does not hide any facts. I affirm that the information is provided by me, on voluntary basis, to the Bank of Albania.

Erroneous information or omissions of the facts in this report may constitute grounds for the Bank of Albania to refuse my participation in the request and to the extent that this incorrect presentation or omission of facts shows my honesty and personality that may serve as a reason to reject the entire application.

In case additional or more detailed financial information is required, I shall provide it as requested from the Bank of Albania.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signed full name)

If applicable:

\_\_\_\_\_  
(Signature of the compiler)

Signed on this date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of the public notary)

Note: To be completed by each of the shareholders.

**Form No. 5**

**AUTHORISATION TO GIVE CONFIDENTIAL INFORMATION**

(Both authorisation forms to be completed in original)

TO WHOM IT MAY CONCERN:

I, \_\_\_\_\_, hereby authorise and request every person, company, official, legal body, association, organization or institution having control of any documents, records and other information about me, to make available the original or a copy of any such documents, register or any other information to the Bank of Albania, Payment System Department, Accounting and Finance, or any person authorised by it for examination purposes or their copy in compliance with the applicable legislation in the Republic of Albania.

\_\_\_\_\_  
Name      Last name

\_\_\_\_\_  
Full address

\_\_\_\_\_  
Date (date/month/year)

Signature:

Signed in my presence

Date \_\_\_\_\_,

(SIGNATURE OF THE PUBLIC NOTARY)

-----  
TO WHOM IT MAY CONCERN:

I, \_\_\_\_\_, hereby authorise and request every person, company, official, legal body, association, organization or institution having control of any documents, records and other information about me, to make available the original or a copy of such documents, register or any other information to the Bank of Albania, Payment System Department, Accounting and Finance, or any person authorised by it for examination purposes or their copy in compliance with the applicable legislation in the Republic of Albania.

\_\_\_\_\_  
Name Last name

\_\_\_\_\_  
Full address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Signed on \_\_\_\_\_

(SIGNATURE OF THE PUBLIC NOTARY)

Note: To be completed by each of the shareholders.