

Ordinance No 44*
of the BNB
of 28 July 2022
on the Terms and Procedure for Selection of
Independent Valuers under Article 55a of the Law on
the Recovery and Resolution of Credit Institutions and
Investment Firms

(Published in the Darjaven Vestnik, issue 65 of 12 August 2022)

Chapter One
GENERAL PROVISIONS

Subject

Article 1. (1) This Ordinance shall establish the terms and procedure for selection of independent valuers by the Bulgarian National Bank (BNB) in ensuring independent valuations for the purposes of resolution pursuant to the Law on the Recovery and Resolution of Credit Institutions and Investment Firms (LRRCIIF).

(2) The Bulgarian National Bank shall select independent valuers to conduct:

1. valuations under Article 55 of the LRRCIIF of assets and liabilities of entities referred to in Article 1 of the LRRCIIF, for which the BNB is a resolution authority, prior to taking resolution actions;

2. valuations of the difference in treatment under Article 106 of the LRRCIIF following resolution actions of entities referred to in Article 1, paragraph 1 of the LRRCIIF, for which the BNB is a resolution authority.

(3) The decision on the selection of an independent valuer under Article 55 or Article 106 of the LRRCIIF in relation to a specific credit institution or entity referred to in Article 1, paragraph 1, items 3–7 of the LRRCIIF shall be taken by the BNB Governing Council.

Principles

Article 2. (1) The procedures and actions provided for in this Ordinance shall be implemented in accordance with the following principles:

1. legality;
2. consistency and predictability;

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3. equality and non-discrimination;
4. rapidity;
5. proportionality;
6. confidentiality;
7. publicity and transparency in line with confidentiality requirements.

(2) In providing independent valuations for resolution purposes, the BNB shall act within the powers conferred on it by the LRRCIIF, this Ordinance and the applicable Bulgarian and European legislation.

(3) The inclusion in the list of independent valuers under Article 8 and the selection of a valuer shall be based on objective criteria.

(4) The selection of an independent valuer of a specific credit institution or entity referred to in Article 1, paragraph 1, items 3–7 of the LRRCIIF shall be carried out within the shortest time required to achieve the resolution objectives taking into account the circumstances.

(5) The procedures for inclusion in the list of the independent valuers under Article 8 and selection of a valuer for a specific credit institution or entity referred to in Article 1, paragraph 1, items 3–7 of the LRRCIIF shall comply with the objective to ensure a fair, prudent and realistic independent valuation and shall not impose a disproportionate administrative burden on applicants.

(6) The disclosure and use of information related to the selection of independent valuers shall be subject to the confidentiality requirements laid down in the LRRCIIF and the other applicable legal acts.

(7) The Bulgarian National Bank shall publish on its website information on the requirements for independent valuers and on the procedures for inclusion in the list of independent valuers under Article 8.

Requirements to Valuers

Article 3. An independent valuer may be a natural person or a legal entity established in the Republic of Bulgaria or in another Member State of the European Union or a State party to the Agreement on the European Economic Area that:

1. possesses the necessary qualifications, knowledge, ability, experience and resources in accordance with Article 39 of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8. 7. 2016, p. 1) to carry out a valuation under Article 1, paragraph 2;

2. is structurally separate from the relevant public authorities and the entity being assessed in accordance with Article 40 of Commission Delegated Regulation (EU) 2016/1075;

3. does not have and is not likely to have an actual or potential material interest in common or in conflict with the relevant public authorities and the entity being assessed within the meaning of Article 41 of Commission Delegated Regulation (EU) 2016/1075.

Qualifications and Experience

Article 4. (1) The independent valuer shall meet the ability and experience requirements set out in Article 3, item 1, if over the last three financial years the independent valuer has total revenue of at least six hundred thousand levs excluding VAT or its equivalent in foreign currency, derived from:

1. provision of services by the independent valuer or within a joint project, related to bank accounting, regulatory reporting, valuation of banks' assets and valuation in banking, valuation of commercial undertakings and claims, financial assets and financial institutions, as well as other assets, where applicable, and/or

2. provision of audit services to banks by the independent valuer or within a joint project, regulatory review services or other services related to the content of the valuation activity for the purposes of resolution.

(2) The independent valuer who is a natural person shall meet the qualifications, knowledge and resources requirements set out in Article 3, item 1, if:

1. she/he has higher education with master's degree or bachelor's degree and an internationally recognised professional qualification in the field of valuation of banks' assets, accounting, auditing or regulatory reviews in banking;

2. she/he has qualification or legal capacity to carry out valuation of financial assets and financial institutions and/or commercial undertakings and claims;

3. she/he has at least ten years of professional experience, of which at least five years' experience in the valuation of bank assets, accounting or regulatory reviews in banking;

4. she/he applies procedures and generally accepted methodologies established by her/him to produce valuations and reports and to check their quality;

5. she/he has a team of at least three collaborators, material and technical conditions, enabling her/him to carry out, in a short time a valuation under Article 1, paragraph 2 in an efficient and quality manner.

(3) The independent valuer that is a legal entity shall meet the qualifications, knowledge and resources requirements set out in Article 3, item 1, if:

1. for conducting the valuation under Article 1, paragraph 2, it has at its disposal at least one person having the status of a partner, director, manager or equivalent and at least one person holding a senior management position, each of whom has performed or managed the performance of services under paragraph 1 over the last three years;

2. it has at least five experts, meeting the requirements set out in paragraph 2, items 1 and 3, and at least one of them has qualification and legal capacity to carry out a valuation of financial assets and financial institutions and/or commercial undertakings and claims;

3. it applies established internal procedures and methodologies to produce valuations and reports and to check their quality;

4. it has material and technical conditions, enabling it to carry out, in a short time, a valuation under Article 1, paragraph 2 in an efficient and quality manner.

Avoidance of Conflicting Interests

Article 5. (1) The independent valuer who is a natural person shall meet the requirements of qualifications, knowledge and resources under Article 3, item 3, if:

1. she/he is not a connected person with the entity in respect of which the valuation under Article 1, paragraph 2 is conducted;

2. she/he does not have interest in conflict with the entity in respect of which the valuation under Article 1, paragraph 2 is conducted or members of the management body of the relevant entity or with connected persons with the entity in respect of which the valuation is conducted;

3. over the last two years, before being selected as an independent valuer under Article 1, paragraph 1 of the LRRCIIF, she/he has not worked under an employment contract or management contract with the same entity;

4. in the last year, before being selected as an independent valuer under Article 1, paragraph 1 of the LRRCIIF, she/he has not carried out a statutory audit of the same entity or has not provided other services under a contract with the same entity.

(2) The independent valuer that is a legal entity shall meet the qualifications, knowledge and resources requirements set out in Article 3, item 3, if:

1. it is not a connected person with the entity in respect of which the valuation under Article 1, paragraph 2 is conducted;

2. the members of the management bodies of the independent valuer, as well as the persons under Article 4, paragraph 3, items 1 and 2 meet the requirements set out in paragraph 1;

3. over the past year, before being selected as an independent valuer of an entity under Article 1, paragraph 1 of the LRRCIIF, it has not provided services under a contract with the same entity;

4. in the last year, before being selected as an independent valuer under Article 1, paragraph 1 of the LRRCIIF, it has not carried out a statutory audit of the same entity;

5. it applies internal procedures for identifying and preventing conflicts of interest.

Additional Requirements for Reliability

Article 6. (1) A natural person shall not be selected as an independent valuer for resolution purposes, where:

1. she/he has been convicted of a premeditated crime of general character, unless rehabilitated;

2. she/he is not deprived of the right to pursue a profession or activity related to the valuation, accounting, auditing or regulatory reviews in banking;

3. she/he has been a member of the bank's management or supervisory bodies in the last two years prior to the decision on the declaration of bank bankruptcy.

(2) A legal entity shall not be selected as an independent valuer for resolution purposes, where a member of the management body of this entity or entities under Article 4, paragraph 3, items 1 and 2 do not meet the requirements under paragraph 1.

Valuer's Tasks

Article 7. (1) In accordance with the objectives of resolution, in particular with the task assigned, the valuer shall carry out:

1. a provisional valuation 1: a valuation under Article 55, paragraph 5, item 1 in relation to paragraph 12 of the LRRCIIF, which is conducted before taking a resolution action and contains information whether the conditions for the resolution under Article 51, paragraph 1 of the LRRCIIF or the conditions for the write down or conversion of capital instruments and eligible liabilities under Article 89 of the LRRCIIF are met;

2. a definitive valuation 1: a valuation under Article 55, paragraph 5, item 1 in relation to paragraph 2 of the LRRCIIF, which is conducted before taking a resolution action and contains information whether the conditions for the resolution under Article 51, paragraph 1 of the LRRCIIF or the conditions for the write down or conversion of capital instruments and eligible liabilities under Article 89 of the LRRCIIF are met;

3. an *ex-post* definitive valuation 1: a valuation under Article 55, paragraph 5, item 1 in relation to paragraph 14 of the LRRCIIF, which aims to ensure that all losses on the assets of the institution or entity referred to in Article 1, paragraph 1, items 3–7 of the LRRCIIF are fully recognised in the balance sheet and income statement of the institution or entity and to provide data for decision-making to increase creditors' claims or the value of the consideration paid, while applying Article 55, paragraph 16 of the LRRCIIF;

4. a provisional valuation 2: a valuation under Article 55, paragraph 5, items 2–7 in relation to paragraph 12 of the LRRCIIF, which is conducted before taking a resolution action and contains information for taking a decision on an appropriate resolution action and related additional decisions and consequences;

5. a definitive valuation 2: a valuation under Article 55, paragraph 5, items 2–7 in relation to paragraph 2 of the LRRCIIF, which is conducted before taking a resolution action and contains information for taking a decision on an appropriate resolution action and related additional decisions and consequences;

6. an *ex-post* definitive valuation 2: a valuation under Article 55, paragraph 5, items 2–7 in relation to paragraph 14 of the LRRCIIF, which aims to ensure that all losses on the assets of the institution or entity referred to in Article 1, paragraph 1, items 3–7 of the LRRCIIF are fully recognised in the balance sheet and income statement of the institution or entity and to provide data for decision-making to increase creditors'

claims or the value of the consideration paid, while applying Article 55, paragraph 16 of the LRRCIIF;

7. a valuation 3: a valuation under Article 106 of the LRRCIIF which is conducted after an action or a resolution action has been carried out and contains information whether shareholders and creditors would have received better treatment if the credit institution under resolution or the entity under Article 1, paragraph 1, items 3–7 of the LRRCIIF had entered into insolvency proceedings, where applicable.

(2) For the purposes of the valuations under paragraph 1, the independent valuer shall apply accordingly the existing national and European legislation, including valuation methodologies referred to in Commission Delegated Regulation (EU) 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution (OJ, L 67, 9.3.2018), Commission Delegated Regulation (EU) 2018/345 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities (OJ, L 67, 9.3.2018) and Commission Delegated Regulation (EU) 2016/1401 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives (OJ, L 228, 23.8. 2016).

(3) The independent valuer shall apply appropriate generally accepted valuation methodologies, standards and practices of the profession and shall use any available reliable information to perform a fair, prudent and realistic valuation.

(4) Upon completion of the task assigned, the independent valuer shall submit a report describing the results of the valuation. The report shall specify the sources of information, the valuation methodology and underlying assumptions, value measurements and the conclusion about the value, detailed results, conclusions and findings in relation to each work task according to the methodology or methodologies used.

List of Independent Valuers

Article 8. (1) To ensure independent valuations for resolution purposes, the BNB shall establish and maintain a list of independent valuers. When drawing up and supplementing the list, verification for compliance of the persons with the requirements of Article 3, items 1 and 2, Articles 4 and 6 shall be carried out.

(2) The selection of an independent valuer to carry out one or more valuations in relation to the resolution of a specific credit institution or entity under Article 1, paragraph 1, items 3–7 of the LRRCIIF shall be made among the valuers included in the list under paragraph 1. During the selection, a check shall be carried out for compliance of the persons with the requirements under Articles 3–6.

Chapter Two

INCLUSION IN THE LIST OF INDEPENDENT VALUERS

Procedure for Inclusion in the List of Independent Valuers

Article 9. (1) The procedure for inclusion in the list referred to in Article 8 shall be carried out by a decision of the Governing Council of the BNB.

(2) By the decision under paragraph 1, the Governing Council of the BNB shall appoint a Committee and approve documentation for the procedure, which shall include:

1. a text of a public invitation for participation in the selection;
2. a text of an individual invitation for participation in the selection, where applicable;
3. requirements to the applicants for independent valuers;
4. a list of the documents certifying the implementation of the requirements under item 3;
5. templates of an application and declarations;
6. deadlines and procedures for submission of applications to participate in the selection;
7. other documents required for presentation of the content of independent valuations or for participation in the selection procedure.

(3) The conduct of the procedure for inclusion in the list of independent valuers shall be managed, organised and supervised by the Deputy Governor in Charge of the Issue Department.

Invitation for Participation in a Procedure

Article 10. (1) The public invitation for participation in a procedure for inclusion in the list under Article 8 shall be made public on the BNB's website.

(2) Individual invitations for participation in the procedure, if approved by the Governing Council of the BNB, shall be sent to natural persons and legal entities of recognised reputation and name in the field of asset valuation or in the field of auditing banks or entities under Article 1, paragraph 1 of the LRRCIIF.

Application for Inclusion in the List of Independent Valuers

Article 11. (1) The persons wishing to be included in the list of independent valuers shall submit an application form, attaching evidence proving compliance with the requirements under Article 3, items 1 and 2, Articles 4 and 6 and other documents referred to in the documentation under Article 9, paragraph 2.

(2) The documents attached to the application shall be submitted in Bulgarian in the original or in a copy certified by the applicant. The applicant shall, upon request, submit the original of the verification document.

(3) Documents in a foreign language shall be accompanied by a translation into Bulgarian. Official documents in a foreign language shall be accompanied by a translation into Bulgarian and legalised, where applicable.

(4) A document may be replaced by a notarised declaration in the cases where the legal system of the foreign state does not provide for the issuance of such a document. This shall be certified by an official document issued by the relevant competent authorities of this state.

(5) The applicant shall immediately inform the BNB in writing in case of changes in the information contained in the application and in the documents attached, occurring after the submission of the application.

Documents Certifying Compliance with the Requirements for Independent Valuers

Article 12. (1) The following documents shall be presented for certifying compliance with the requirements to independent valuers:

1. an identity document for applicants natural persons;
2. a unique identification code (URN) or BULSTAT code for applicants legal entities incorporated under the law of the Republic of Bulgaria;
3. a document certifying existence and representation of applicants legal entities incorporated under the law of another Member State of the European Union or a State party to the Agreement on the European Economic Area;
4. a list of contracts, agreements or equivalent for the services provided under Article 4, paragraph 1, specifying details on the parties to the transaction, the value and description of the service and the period during which the revenue was received;
5. a diploma of completed higher education with master's qualification degree or bachelor's qualification degree and an internationally recognised professional qualification certificate in the field of valuation of banks' assets, accounting, auditing or regulatory reviews in banking for applicants natural persons and for the persons under Article 4, paragraph 3, item 2;
6. a professional CV for applicants natural persons and for the persons under Article 4, paragraph 2, item 5 and paragraph 3, items 1 and 2;
7. a document on qualification or legal capacity as a valuer of financial assets and financial institutions, commercial undertakings and claims for applicants natural persons and for the persons under Article 4, paragraph 3, item 2;
8. a record of service or an employment record book and job descriptions or a self-insured certificate together with a list of concluded civil contracts, as well as other documents certifying professional experience for applicants natural persons and for the persons under Article 4, paragraph 3, items 1 and 2;
9. a list of collaborators of applicants natural persons;
10. a list of the persons under Article 4, paragraph 3, items 1 and 2 for applicants legal entities;

11. in the event that the persons under Article 4, paragraph 3, item 2 are not employed under an employment contract by the applicant legal entity, a declaration – consent of the person to participate as an expert of the legal entity in carrying out valuations under Article 1, paragraph 2 shall be submitted;

12. a statement of the procedures and methodologies applied by the applicant in producing valuations and reports and in checking their quality;

13. a declaration in a form that the applicant has material and technical conditions enabling her/him to carry out valuations under Article 1, paragraph 2;

14. a declaration in a form of structural separation from the relevant public authorities;

15. a declaration in a form that the person is not deprived of the right to pursue a profession or activity related to the valuation of accounting, auditing or regulatory reviews in banking, for applicants natural persons and for the persons under Article 4, paragraph 3, items 1 and 2.

(2) The applicant shall be ready to provide upon request copies of contracts, agreements or other documents under paragraph 1, item 4. In this case, the copies shall be provided with deleted personal data and commercial information which are not relevant to the establishment of the circumstances under Article 4, paragraph 1.

Committee

Article 13. (1) A Committee under Article 9, paragraph 2 shall be appointed for each specific procedure for completing the list under Article 8 in a composition of a chairperson, four permanent members and two reserve members. Members of the Committee shall have knowledge and experience in the field of resolution, banking, banking supervision or the conduct of procedures for selecting contractors. At least one member of the Committee shall be a qualified lawyer.

(2) With regard to the members of the Committee, there shall be no conflict of interest with applicants for inclusion in the list of independent valuers. Members of the Committee shall sign a declaration according to the model on the absence of circumstances indicating the existence or suspicion of a conflict of interest.

(3) Decisions of the Committee shall be taken in person by a majority of more than half of the members.

(4) The meetings of the Committee and the decisions taken shall be documented with minutes, which shall be signed by the participating members.

Correction of Irregularities

Article 14. The Committee under Article 9, paragraph 2 shall verify compliance of the applications and documents thereto with the requirements under Articles 11 and 12. If irregularities are established, the Chairperson of the Committee shall notify the applicant and give instructions for their correction within seven days of the communication.

Assessment and Inclusion in the List of Independent Valuers

Article 15. (1) Upon expiry of the period for correcting the irregularities, the Committee under Article 9, paragraph 2 shall assess the applications and the documents thereto and draw up a report to the Deputy Governor in Charge of the Issue Department proposing that the eligible applicants be included in the list referred to in Article 8. In drawing up the report, the information contained in public registers and *ex officio* available information relevant to the assessment of compliance with the requirements under Article 3, items 1 and 2, Articles 4 and 6 shall be taken into account.

(2) On the basis of the report under paragraph 1, the Deputy Governor in Charge of the Issue Department shall issue an order for inclusion in the list of independent valuers or refuse inclusion in the list, where applicable.

(3) The order under paragraph 2 shall be communicated to the applicants in accordance with the procedure laid down in the Administrative Procedure Code.

Contesting an Order Concerning the List of Independent Valuers

Article 16. The order under Article 15, paragraph 2 may be challenged by the person concerned within 14 days of receipt of the communication under the Administrative Procedure Code.

Framework Commitment

Article 17. The persons included in the list of independent valuers shall sign a framework commitment to carry out valuations for resolution purposes and to comply with confidentiality requirements.

Changes in the List of Independent Valuers

Article 18. (1) The persons included in the list of independent valuers shall be obliged to notify the BNB in writing in case they have ceased to meet the requirements under Article 3, item 2 or Article 6, or there have been changes in the identification data, legal status, legal representation or authorisation for representation before the BNB for the purposes of this Ordinance.

(2) An independent valuer may be removed from the list under Article 8 at her/his own request, deposited in writing with the BNB. Removal from the list shall not prevent the person from participating in subsequent procedures in accordance with this Chapter.

(3) The changes in the list under Article 8 arising from the notification under paragraph 1 and the application referred to in paragraph 2 shall be made by an order of the Deputy Governor in Charge of the Issue Department, and this order shall be subject to notification and contestation under the Administrative Procedure Code.

Exclusion from the List of Independent Valuers

Article 19. A person on the list under Article 8, who has been found to have ceased to meet the requirements of Article 3, item 2 or Article 6, shall be excluded from the list of independent valuers by an order of the Deputy Governor in Charge of the Issue Department, and this order shall be subject to notification and contestation in accordance with the Administrative Procedure Code.

Supplementing the List

Article 20. (1) The list under Article 8 shall be supplemented by conducting new procedures in accordance with this Chapter.

(2) A new procedure shall be mandatory if the number of the persons included in the list of independent valuers decreases below four.

Publicity of the List of Independent Valuers

Article 21. Independent valuers on the list under Article 8 shall be made public on the BNB's website.

Chapter Three

SELECTION OF AN INDEPENDENT VALUER

Powers in Relation to the Selection of an Independent Valuer

Article 22. (1) The selection of an independent valuer for the purposes of the resolution of a specific entity under Article 1, paragraph 1 of the LRRCIIF shall be carried out on the basis of a decision of the Governing Council of the BNB, specifying the type of valuation, an estimated time limit for the performance of the independent valuer's task and an estimated price, which includes remuneration and expenses of the valuer within the meaning of Article 39(4)(b) of Delegated Regulation (EU) 2016/1075.

(2) The procedure for the selection of an independent valuer shall be managed, organised and supervised by the Deputy Governor in Charge of the Issue Department.

(3) In carrying out the selection under paragraph 1, the Governing Council of the BNB and the Deputy Governor in Charge of the Issue Department shall be assisted by the unit under Article 2, paragraph 2 of the LRRCIIF.

Invitation

Article 23. (1) On the basis of the decision under Article 22, paragraph 1 and the *ex officio* available information, the unit under Article 2, paragraph 2 of the LRRCIIF shall carry out an inspection and identify the persons on the list under Article 8 who do not meet the requirements of Article 3, items 2 and 3 in relation to the entity for which the valuation will be made.

(2) The Deputy Governor in Charge of the Issue Department shall send an invitation for submission of a proposal for the conduct of a valuation to at least two persons

on the list under Article 8, for whom the circumstances referred to in paragraph 1 are not present. The invitation shall be sent in the manner and to the contact persons indicated in the framework commitment referred to in Article 17.

(3) The invitation under paragraph 2 shall contain a description of the valuer's task, the source data of the entity for which the valuation will be made, the estimated deadline for the performance of the independent valuer's task, an estimated price, the time limit and procedure for submitting a valuation proposal, a list of necessary documents and templates of documents, if applicable.

Proposal for the Conduct of the Valuation

Article 24. (1) Independent valuers who have received an invitation under Article 23 shall submit, within the time limit set to them, a binding valuation proposal containing a price offer, a time limit for the conduct of the valuation and documents certifying the implementation of the requirements under Articles 3–6, as specified in the invitation.

(2) The circumstances under Article 4, paragraph 1 shall be certified by a list of contracts, agreements or equivalent for the services rendered, indicating details of the parties to the transaction, the value and description of the service and the period during which the revenue was received.

(3) The fulfilment of the requirements under Article 4, paragraph 2 shall be established by a declaration. In the event that after the date of inclusion of a natural person in the list of independent valuers there have been changes concerning the collaborators of the independent valuer, an up-to-date list of persons indicating personal data, education, qualifications, contracts, experience, agreements or equivalent shall be submitted, proving the collaborator's commitment to the valuer's team. The applicant shall also submit an action plan describing:

1. the organisation of the valuation processes;
2. the applied approaches and methodologies that will be used in the conduct of the valuation;
3. the procedures for ensuring the quality of the valuation;
4. the procedures for identifying and preventing conflict of interest.

(4) The implementation of the requirements under Article 4, paragraph 3 shall be established by a declaration. If, after the date of inclusion of a legal entity in the list of independent valuers, there have been changes concerning the persons in management positions or the experts of the independent valuer, an up-to-date list of the persons shall be submitted, accompanied by the documents referred to in Article 12, paragraph 1, items 5, 6, 7, 8, 11 and 15. The applicant shall also submit an action plan describing:

1. the organisation of the valuation processes;
2. the applied approaches and methodologies that will be used in the conduct of the valuation;
3. the procedures for ensuring the quality of the valuation;

4. the procedures for identifying and preventing conflict of interest.

(5) The circumstances under Article 3, item 2 and Article 5 shall be established by declarations by the persons concerned.

(6) The fulfilment of the requirements under Article 6 shall be established by declarations by the persons concerned, unless otherwise specified in the invitation for submission of a proposal for the conduct of a valuation.

(7) The declarations on behalf of an independent valuer, which is a legal entity, shall be signed by the representative of the entity by law or by an explicitly authorised representative for the purposes of participation in the procedure for the selection of an independent valuer.

Notification of the Existence of Obstacles

Article 25. Independent valuers having received an invitation under Article 23, for which there are circumstances in relation to the entity for which the valuation will be made, which lead to non-compliance with the requirements under Article 3, item 2 or Article 5, or there are circumstances under Article 6 shall notify the BNB in writing within the deadline for submitting a proposal.

Additional Information

Article 26. (1) The Deputy Governor in Charge of the Issue Department may request additional information from an independent valuer in order to clarify the valuation proposal submitted by the independent valuer, the individual elements of the proposal or the documents submitted. If additional information is requested, a level playing field shall be ensured between the participants in the procedure for the selection of an independent valuer, and no information shall be provided which may favour some participants at the expense of others.

(2) Additional information provided by an independent valuer in the cases referred to in paragraph 1 which leads to a change in the main characteristics of the submitted proposal shall not be taken into account in the selection of an independent valuer.

Selection Criteria

Article 27. (1) The selection of an independent valuer for the purposes of the resolution of a specific entity under Article 1, paragraph 1 of the LRRCIIF shall be made among the persons who meet the requirements of Articles 3–6 and have submitted in due time regular proposals for the conduct of a valuation according to a point system based on the following criteria:

1. qualifications and experience under Article 4: with a maximum of 45 points;
2. the proposed deadline for the conduct of the valuation: with a maximum of 25 points;
3. the price offer: with a maximum of 30 points.

(2) The valuation of the price offers shall be calculated according to the following formula: $PO(\text{points}) = PO(\text{min}) / PO(\text{s}) \times 30$, where $PO(\text{s})$ is the value of the price offer to be evaluated and $PO(\text{min})$ is the value of the lowest price offer received.

Ranking and Selection of a Valuer

Article 28. (1) The unit under Article 2, paragraph 2 of the LRRCIIF shall assess and rank the submitted valuation proposals, the documents attached and the additional information provided, if any, by applying Article 27. A protocol of the results of the ranking shall be drawn up which together with the documentation of the procedure shall be submitted for approval to the Deputy Governor in Charge of the Issue Department.

(2) On the basis of the protocol under paragraph 1 and the documentation of the procedure, the Deputy Governor in Charge of the Issue Department shall, after verification and approval, propose to the Governing Council to adopt a decision on the selection of an independent valuer for the conduct of a valuation in relation to the resolution of the specific entity referred to in Article 1, paragraph 1 of the LRRCIIF.

(3) The decision of the BNB Governing Council under paragraph 2 shall have immediate effect.

(4) The decision of the Governing Council under paragraph 2 shall not be challenged separately from the appeal against the decision on taking a crisis management measure under the LRRCIIF or on applying safeguards for shareholders or creditors for the purposes of which the independent valuation is conducted.

Conclusion of a Contract with the Independent Valuer

Article 29. (1) A contract shall be concluded with the independent valuer, selected by the BNB Governing Council.

(2) If the chosen valuer cannot conclude or execute the contract due to circumstances that do not depend on it, the valuation under Article 1, paragraph 2 shall be assigned by contract to another person, classified according to the procedure of Article 28.

Notification

Article 30. The Deputy Governor in Charge of the Issue Department shall inform the persons submitting a proposal under Article 24 of the results of the procedure for the selection of an independent valuer for resolution purposes of the entity under Article 1, paragraph 1 of the LRRCIIF.

Selection of a Valuer in Special Cases

Article 31. (1) In the event that no person on the list under Article 8 fulfils the requirements for independence in respect of a specific credit institution or entity under Article 1, paragraph 1, items 3–7 of the LRRCIIF or has not expressed a wish to conduct a valuation within the framework of the procedure under this Chapter, the BNB Governing Council on a proposal from the Deputy Governor in Charge of the Issue

Department may choose as an independent valuer a person who is not included in the list referred to in Article 8 but fulfils all the requirements of Articles 3–6.

(2) In case of an urgency within the meaning of Article 55, paragraph 12 of the LRRCIF, the Governing Council of the BNB on a proposal from the Deputy Governor in Charge of the Issue Department may elect as an independent valuer a person from the list referred to in Article 8 who meets the requirements under Articles 3–6, without complying with the procedure laid down in this Chapter.

(3) Paragraph 1 may also apply in the cases where, due to an urgency, it is not possible to fully comply with the procedures under this Ordinance.

(4) A contract shall be concluded with the valuer selected in accordance with paragraphs 1–3.

(5) The decision of the Governing Council of the BNB to select a valuer in accordance with paragraphs 1–3 shall have immediate effect and shall not be subject to challenge separately from the appeal of the decision on taking a crisis management measure under the LRRCIF or on applying safeguards for shareholders or creditors, for the purposes of which the independent valuation is conducted.

ADDITIONAL PROVISION

§ 1. Within the meaning of this Ordinance:

1. ‘statutory audit’ shall be the independent financial audit referred to in Article 37 of the Accountancy Act.

2. ‘safeguards for shareholders or creditors’ shall be the mechanisms under Chapter Seventeen of the LRRCIF.

3. ‘conflict of interest’ shall exist when the independent valuer has a private interest which may influence the impartial and objective performance of his or her duties in connection with the valuation referred to in Article 1, paragraph 2. Private is any interest that results in a tangible or intangible benefit for the valuer or related persons, including any commitment assumed. An advantage is any income in money or property, including the acquisition of units or shares, as well as granting, transfer or renunciation of rights, obtaining goods or services free of charge or at prices lower than market prices, obtaining a privilege or honour, aid, vote, support or influence, an advantage, obtaining or a promise of a job, position, gift, reward or promise to avoid a loss, liability, sanction or another adverse event.

4. ‘crisis management measure’ shall be a measure within the meaning of § 1, item 37 of the Additional Provisions of the LRRCIF.

5. ‘connected persons’ shall be a concept within the meaning of § 1, item 4 of the Additional Provisions of the Law on Credit Institutions.

6. ‘structural separation’ shall be a concept within the meaning of Article 40 of Commission Delegated Regulation (EU) 2016/1075.

7. ‘relevant entity’ shall mean a concept within the meaning of Article 37, item 2 of Commission Delegated Regulation (EU) 2016/1075.

8. ‘relevant public authority’ shall be a concept within the meaning of Article 37, item 3 of Commission Delegated Regulation (EU) 2016/1075.

9. ‘resolution objectives’ shall be the objectives specified in Article 50 of the LRRCIIF.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. This Ordinance is issued on the basis of Article 55a of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms and is adopted by Resolution No 270 of 28 July 2022 of the Governing Council of the Bulgarian National Bank.

§ 3. The first procedure under Article 9 shall be announced no later than 12 months after the entry into force of this Ordinance.