

Legal Alert

The new Recovery and Resolution of Credit Institutions and Investment Firms Act

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9-11 Maria Louisa Blvd.,
Sofia, Bulgaria

Tel: + 359 2 93 55 100

www.tbk.bg
law.office@tbk.bg

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Recovery Plan

The new Recovery and Resolution of Credit Institutions and Investment Firms Act (RRCIIFA) was promulgated in State Gazette № 62/14.08.2015. This law transposes into Bulgarian law the requirements of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (hereinafter, the “**BRRD**”).

The new RRCIIFA enters into force as of the date of its promulgation in the State Gazette. The requirement for the making of annual contributions to the newly established Fund for Resolution of Investment Firms by investment firms shall enter into force on January 1, 2017.

The adoption of the RRCIIFA aims to build an institutional framework for early intervention in case of deterioration of the financial condition of credit institutions and investment firms, as well as for undertaking of preventive measures for the resolution of the activities of credit institutions and investment firms prior to the initiation of insolvency proceedings.

The competent resolution authorities shall be the Bulgarian National Bank (the “**BNB**”) as regards credit institutions, and the Financial Supervision Commission (the “**FSC**”) as regards investment firms.

Preparation of a recovery plan

One of the most important requirements of RRCIIFA is for those credit institutions and investment firms, subject to the law, to adopt a recovery plan. A recovery plan shall comprise potential measures to be undertaken by the respective credit institution or investment firm for the recovery of their financial condition in case of significant financial difficulties. The recovery plan shall include the particular actions, which shall be performed for the recovery of the financial condition of the respective company, including the potential steps for the recovery and preservation of the equity as well as the liquidity of the company, restructuring of its liabilities and reorganization of its business activity, indicative schedule for implementation of the plan, etc.

Once adopted, the plan ought to be submitted to the competent regulatory authority supervising the activities of the respective company, i.e. to BNB for credit institutions and to FSC for investment firms. The respective competent authority shall assess, within 6 months, the compliance of the plan with the laws in force. In case the competent regulatory authority decides that the presented

plan contains substantial weaknesses or there are material obstacles for its implementation, it has the power to request the credit institution or investment firm to make changes to the plan, and subsequently to require particular changes in the activities of the relevant credit institution or investment firm to be made, as well as to impose compulsory administrative measures in this regard.

The recovery plan ought to be reviewed and updated at least annually, as well as upon the changing in the legal form of the respective company, its management or organizational structure, its business activities or financial condition, if any of these factors may have significant influence over the adopted plan or otherwise as a result of which amendments to the plan become necessary.

Resolution Plan

Preparation of a resolution plan by the competent authority

Another essential requirement of RRCIIFA is that competent resolution authorities for the credit institutions and investment firms (respectively the BNB and the FSC) ought to adopt a resolution plan for every credit institution, respectively investment firm, which is subject to the law. The resolution plan shall include the potential resolution measures, which the competent resolution authority may undertake with regard to the relevant credit institution, respectively investment firm, when needed, including, but not limited to the different resolution tools in various scenarios, the assessment of the possibility for restructuring of the company's activities, the description of the possibilities for financing of the resolution options, the minimum requirements for level of own funds and deadline for meeting said threshold, the schedule for fulfilment of the essential aspects of the plan, etc.

For the purposes of preparing the resolution plan, the competent authority has the right to request assistance and information from the respective company, which shall include *inter alia* the description of the company, its shareholding structure, its liabilities and collateral provided by the company, its main contractors, the payment and settlement systems, used by the company, etc.

The resolution plan shall be reviewed and updated by the respective competent resolution authority at least annually, as well as upon any significant change of the legal form, management or organizational structure of the relevant company, its business activities or financial condition, whenever such conditions may have a significant effect on the efficiency of the plan. In this regard, credit institutions, respectively investment firms are under the obligation to notify the competent resolution authority for any changes that require a revision of the plan.

New funds for the resolution of banks, and of investment firms

Fund for the Resolution of Banks and Fund for the Resolution of Investment Firms

One of the most significant changes introduced with the RRCIIFA is the establishment of the Fund for the Resolution of Banks (the "FRB") and the Fund for the Resolution of Investment Firms (the "FRIF"). The main purpose of these funds shall be the financing of the implementation of the resolution tools provided in the law. According to RRCIIFA the target level of the FRB to be achieved is 2% of the amount of the insured deposits in the banks, licensed in the Republic of Bulgaria, and the target level of the FRIF is 1% of the amount of the insured monetary funds of clients of investment firms and third party branches, licensed in Republic of Bulgaria. The target levels ought to be

achieved by the end of 2024.

In view of the above, credit institutions and investment firms (for which this requirement shall apply as from January 1, 2017) shall be obliged to make annual contributions to the FRB and the FRIF, respectively, as well as extraordinary contributions, when necessary. Similarly, to the contributions in the Deposit Insurance Fund and the Investor Compensation Fund, the annual contributions to the FRB and FRIF shall be accounted for as expenses for the current year.

The amount of the annual contribution for every company shall depend on the proportionate part of the liabilities (without the amount of the equity and without the amount of the insured deposits – in case of credit institution) of the relevant credit institution, respectively investment firm, compared with the total amount of the liabilities of all companies in the industry sector, as well as on the risk profile of the respective company, which shall be calculated in accordance with the rules set forth in Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (“Regulation 2015/63”).

According to RRCIIFA, the total amount of the annual contributions and the amount of the individual contributions for every credit institution shall be determined by the BNB within three months as of the entry into force of the law (i.e. until 14.11.2015).

Pursuant to Regulation 2015/63 the risk profile of the respective company shall be determined in accordance with the following risk indicators:

- ✓ Risk exposure;
- ✓ Stability and diversification of the sources of financing;
- ✓ Importance of the company for the stability of the financial system or the economy;
- ✓ Additional risk indicators, which shall be determined by the respective competent resolution authority

Furthermore, Regulation 2015/63 provides for a special exceptions for the so-called “small institutions”, pursuant to which for companies which total liabilities (less own funds and insured deposits) of less than EUR 300 million, and with total assets of less than EUR 1 billion shall make reduced annual contributions of an amount in the range between EUR 1,000 and EUR 50,000 (depending on different thresholds, which apply for the amount of the total liabilities).

Author

Damyan Leshev
damyan.leshev@tbk.bg
Associate
Tsvetkova Bebov Komarevski, Attorneys-at-law