APPROVED BY
Resolution No 03-51 of
the Board of the Bank of Lithuania of
9 April 2015

RULES FOR THE FORMATION OF CAPITAL BUFFERS

CHAPTER I
GENERAL PROVISIONS

1. The purpose of establishing the Rules for the Formation of Capital Buffers (hereinafter ‘the Rules’) is to define the capital buffers indicated in Article 48 of the Republic of Lithuania Law on Banks and Article 12(2) of the Republic of Lithuania Law on Markets in Financial Instruments, to set forth their formation, application, recognition and notification principles and the restrictions of activities of the institutions listed in paragraph 2 of the Rules with regards to failure to comply with the capital buffer requirements.

2. The Rules shall be applicable to the banks holding a licence issued by the Bank of Lithuania, to the Central Credit Union and the financial brokerage firms entitled to provide the investment services specified in Article 3(13) and/or Article 3(6) of the Republic of Lithuania Law on Markets in Financial Instruments and engage in the investment activities (hereinafter ‘the institutions’).

3. The terms used in the Rules:

3.1. **Member State of the European Union** means a Member State of the European Union and a member country of the European Economic Area;

3.2. **combined buffer requirement** means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:

3.2.1. an institution-specific countercyclical capital buffer set in accordance with Section 4 of Chapter III of the Rules;

3.2.2. a global systemically important institution buffer, abbreviated as a G-SII buffer (hereinafter ‘the G-SII buffer’), set in accordance with Section One of Chapter IV of the Rules;

3.2.3. other systemically important institution buffer, abbreviated as a O-SII buffer (hereinafter ‘the O-SII buffer’), set in accordance with Section Two of Chapter IV of the Rules;

3.2.4. a systemic risk buffer set in accordance with Chapter V of the Rules;

3.3. **global systemic importance** means expected impact of the global systemically important institutions on the global financial system;

3.4. **designated authority** means the Bank of Lithuania in the Republic of Lithuania; in other Members States of the European Union or in the third countries – an institution responsible for setting capital buffers;

3.5. **systemic risk** means the risk of breakdown of the financial system, which may bring significant negative outcomes for the financial system and the economy;

3.6. **third country** means a country that is not a member of the European Union;

3.7. other concepts used in the Rules shall be interpreted as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1) (hereinafter 'Regulation (EU) No 575/2013’) and other legal acts of the Republic of Lithuania.

CHAPTER II
CAPITAL CONSERVATION BUFFER

4. In order to satisfy the own funds requirements laid down in Article 92 of Regulation (EU) No 575/2013, in addition to Common Equity Tier 1 capital, the institutions must form the Common Equity Tier 1 capital conservation buffer, which shall be equal to 2.5 per cent of the total of the risk-weighted exposure amounts.

5. If the institution fails to comply with the requirements set forth in paragraph 4 of the Rules, the restrictions on distributions provided in Chapter VII shall be applied.

CHAPTER III
COUNTERCYCLICAL CAPITAL BUFFER

SECTION ONE
SETTING COUNTERCYCLICAL CAPITAL BUFFER RATES

6. The Bank of Lithuania shall set the countercyclical capital buffer rate, which must be applied by the institutions for calculating their institution-specific countercyclical capital buffer in the procedure provided in Section Four of Chapter III of the Rules.

7. When setting the countercyclical capital buffer rate, the Bank of Lithuania shall calculate a buffer guide for every quarter, taking into account the Lithuanian credit cycle tendencies, excessive credit growth risk in Lithuania and national economic characteristics. The buffer guide shall be based on the deviation of the ratio of credit-to-gross domestic product (hereinafter the 'GDP') from its long-term trend, inter alia, taking into account:

7.1. the credit level growth within Lithuania and, in particular, changes in the ratio of credit granted in Lithuania to GDP;

7.2. the European Systemic Risk Board recommendations on evaluation and calculation of deviations of the credit-to-GDP ratio from its long-term trend and calculation of the buffer guide.

8. The Bank of Lithuania shall set the countercyclical capital buffer rate on a quarterly basis, and in so doing shall take into account:

8.1. the buffer guide;

8.2. the European Systemic Risk Board guidance and recommendations on setting the countercyclical capital buffer rate;

8.3. other variables the Bank of Lithuania considers relevant in solving issues related to cyclical system risk.

9. The countercyclical capital buffer rate, expressed as a percentage of the total risk exposure amount of institutions that have credit exposures in Lithuania, must be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points. Where justified in view of the considerations set out in paragraph 8 of the Rules, the Bank of Lithuania may set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount.

10. When the Bank of Lithuania sets the countercyclical buffer rate above zero for the first time, or when it increases the prevailing countercyclical buffer rate setting, the institutions shall apply the countercyclical buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer in 12 months after the date when the buffer setting is announced in accordance with paragraph 12 of the Rules. In exceptional circumstances, the Bank of Lithuania may take justified decision justifying a shorter deadline for application.

11. If the Bank of Lithuania reduces the existing countercyclical buffer rate, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the Bank of Lithuania not to increase the countercyclical buffer rate if circumstances change.

12. The Bank of Lithuania shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

12.1. the applicable countercyclical buffer rate;

12.2. the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

12.3. the calculated buffer guide;

12.4. a justification for the countercyclical buffer rate;

12.5. when the countercyclical buffer rate is set for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer, in accordance with paragraph 10 of the Rules;

12.6. a reference to the exceptional circumstances that justify a shorter deadline for application than that indicated in paragraph 10 of the Rules;

12.7. when the countercyclical buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

13. The Bank of Lithuania shall notify the information specified in paragraph 12 of the Rules to the European Systemic Risk Board on a quarterly basis.

SECTION TWO
RECOGNITION OF COUNTERCYCLICAL BUFFER RATES IN EXCESS OF 2.5%

14. The Bank of Lithuania may recognise the countercyclical capital buffer rate set by other Member States of the European Union and the third countries in excess of 2.5% of the total risk exposure amount, requesting the institutions to apply this buffer rate to the credit exposures in other EU Member States and/or the third countries for the purposes of calculating their institution-specific countercyclical capital buffers.

15. When the Bank of Lithuania recognises a countercyclical capital buffer rate in excess of 2.5% of the total risk exposure amount set by other EU Member States and/or the third countries, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

15.1. the applicable countercyclical buffer rate;

15.2. the Member State, the countercyclical capital buffer rate of which is recognised by the Bank of Lithuania;

15.3. when the countercyclical capital buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. The increased countercyclical capital buffer rate shall be applicable after 12 months following the announcement date;

15.4. a reference to the exceptional circumstances that justify a shorter deadline for application than that indicated in paragraph 15.3 of the Rules.

SECTION THREE
DECISION BY THE BANK OF LITHUANIA ON THIRD COUNTRY COUNTERCYCLICAL BUFFER RATES

16. The Bank of Lithuania may set the countercyclical capital buffer rate for credit exposures of institutions in the third countries for the purposes of the calculation of their institution-specific countercyclical capital buffer, if:

16.1. the designated authority of the relevant third country has not set and announced the countercyclical capital buffer rate for that third country;

16.2. the Bank of Lithuania justifiably considers that the buffer rate set and announced by the relevant third country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

17. When the Bank of Lithuania sets the countercyclical buffer rate for the credit exposures in the third country above zero for the first time, or when it increases the prevailing countercyclical buffer rate setting, the institutions shall apply the countercyclical buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer in 12 months after the date when the buffer setting is announced in accordance with paragraph 18 of the Rules. In exceptional circumstances, the Bank of Lithuania may take justified decision justifying a shorter deadline for application.

18. The Bank of Lithuania shall publish the setting of a countercyclical buffer rate for credit exposures in the third country on its website, and shall include at least the following information:

18.1. the countercyclical capital buffer rate and the third country to which it applies;

18.2. a justification for the countercyclical buffer rate;

18.3. when the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply the buffer rate setting for the purposes of calculating their institution-specific countercyclical capital buffer in accordance with paragraph 17 of the Rules;

18.4. a reference to the exceptional circumstances that justify a shorter deadline for application than that indicated in paragraph 17 of the Rules.

SECTION FOUR
CALCULATION OF INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER

19. The institution shall be obliged to form the institution-specific countercyclical capital buffer that consists of weighted average of the total risk exposure amount multiplied by the countercyclical buffer rates calculated according to the provisions of paragraphs 21–28 of the Rules.

20. If the institution fails to comply with the requirements set forth in paragraph 19 of the Rules, the restrictions on distributions provided in Chapter VII shall be applied.

21. The institution-specific countercyclical capital buffer shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located, including credit exposure in the third countries.

22. The institutions, in order to calculate the weighted average of the countercyclical capital buffer rate shall apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with the provisions set out in Title II and IV of Part Three of Regulation (EU) No 575/2013 that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures. The countercyclical capital buffer rate shall apply to the institutions' credit exposure in Lithuania.

23. If the institutions have exposures in another EU Member State, where the designated authority of that Member State sets a countercyclical capital buffer rate below 2.5% or equal to 2.5% of total risk exposure amount, for the purposes of calculation of the weighted average of the countercyclical capital buffer rate they shall apply to each respective credit exposure in another EU Member State the countercyclical capital buffer rate set in that Member State. If the institutions have exposures in the third countries, where the designated authority of that third country sets a countercyclical capital buffer rate below 2.5% or equal to 2.5% of total risk exposure amount, for the purposes of calculation of the weighted average of the countercyclical capital buffer rate, the institutions shall apply to each respective credit exposure in the third country the countercyclical capital buffer rate set in that third country,

unless the Bank of Lithuania sets a different countercyclical capital buffer rate in accordance with paragraph 16 of the Rules.

24. If the institutions have exposures in another EU Member State, where the designated authority of that Member State sets a countercyclical capital buffer rate in excess of 2.5% of total risk exposure amount, for the purposes of calculating the weighted average of the countercyclical capital buffer rate, to each respective credit exposure in another EU Member State they shall apply:

24.1. the countercyclical buffer rate of 2.5% of total risk exposure amount, if the Bank of Lithuania has not recognised the countercyclical capital buffer rate set in excess of 2.5% of total risk exposure amount;

24.2. the countercyclical buffer rate set by another Member State, if the Bank of Lithuania has recognised the countercyclical capital buffer rate set in excess of 2.5% of total risk exposure amount.

25. If the countercyclical buffer rate set by the relevant third country authority for a third country exceeds 2.5% of total risk exposure amount, the following buffer rates shall apply to relevant credit exposures located in that third country for the purposes of calculating the weighted average of the countercyclical capital buffer rate:

25.1. the countercyclical buffer rate of 2.5% of total risk exposure amount, if the Bank of Lithuania has not recognised the countercyclical capital buffer rate set in excess of 2.5% of total risk exposure amount;

25.2. the countercyclical buffer rate set by the relevant third country authority, if the Bank of Lithuania has recognised the countercyclical capital buffer rate set in excess of 2.5% of total risk exposure amount.

26. Relevant credit exposures referred to in paragraphs 21-25 of the Rules shall include all those exposure classes, other than those mentioned in Article 112(a-f) of Regulation(EU) No 575/2013, that are subject to:

26.1. the own funds requirements for credit risk under Title II of Part Three of Regulation(EU) No 575/2013;

26.2. where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of Regulation(EU) No 575/2013 or incremental default and migration risk under Part Three, Title IV, Chapter 5 of Regulation(EU) No 575/2013;

26.3. where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of Regulation(EU) No 575/2013.

27. Institutions shall identify the geographical location of a relevant credit exposure for the purposes of setting the weighted average of the countercyclical capital buffer rate in accordance with Commission Delegated Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates (OJ 2014 L 309, p. 5).

28. The institutions that are calculating the weighted average of the countercyclical capital buffer shall comply with the following principles:

28.1. a countercyclical buffer rate shall apply from the date specified in the information published in accordance with subparagraph 12.5 or subparagraph 15.3 of the Rules, if the effect of that decision is to increase the buffer rate;

28.2. a countercyclical buffer rate for a third country credit exposure shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the countercyclical capital buffer rate;

28.3. where the Bank of Lithuania sets the countercyclical capital buffer rate for a third country credit exposure pursuant to paragraph 16 of the Rules, or recognises the countercyclical buffer rate for a third country pursuant to Section Two, Chapter III of the Rules, that buffer rate shall apply from the date specified in the information published in accordance with subparagraph 15.3 or subparagraph 18.3 of the Rules, if the effect of that decision is to increase the buffer rate;

28.4. a countercyclical capital buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate;

28.5. a countercyclical capital buffer rate reduced by a third country shall apply from the date of announcement, unless, in accordance with paragraph 16 of the Rules, the Bank of Lithuania sets an increased buffer rate. In this case, the countercyclical capital buffer rate set by the Bank of Lithuania shall apply pursuant to the requirements set forth in Section Three, Chapter III of the Rules.

CHAPTER IV
GLOBAL AND OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS BUFFER

SECTION ONE
IDENTIFICATION OF GLOBAL SYSTEMICALLY IMPORTANT INSTITUTIONS

29. The Bank of Lithuania shall identify, on a consolidated basis, the relevant entities as global systemically important institutions (hereinafter the 'G-SIIs'), which are institutions or EU parent institutions or EU parent financial holding companies or EU parent mixed financial holding companies. G-SIIs cannot be the subsidiaries of EU parent institutions or EU parent financial holding companies or EU parent mixed financial holding companies.

30. The Bank of Lithuania shall take the following categories into account for the purposes on identification a G-SII:

30.1. the size of the financial group;

30.2. the interconnectedness of the financial group with the financial system;

30.3. the substitutability of the services or of the financial infrastructure provided by the financial group;

30.4. the complexity of the financial group;

30.5. the cross-border activity of the financial group, including cross border activity between Member States and between a Member State and a third country.

31. Each category set out in paragraph 30 of the Rules shall receive an equal weighting and shall consist of quantifiable indicators.

32. This methodology shall be used by the Bank of Lithuania to calculate an overall score of the entity concerned, according to which it can be attributed to the G-SIIs.

33. Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. The G-SII buffer shall comprise the Common Equity Tier 1 capital. The G-SII buffer shall be supplementary to the Common Equity Tier 1 capital.

34. There shall be at least five sub-categories of G-SIIs. The lowest boundary and the boundaries between each sub-category shall be determined by the scores under the G-SII identification methodology. The cut-off scores between adjacent sub-categories shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category. The lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount, and the buffer assigned to each sub-category shall increase in gradients of 0.5% of the total risk exposure amount. The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5% of the total risk exposure amount.

35. The Bank of Lithuania shall take a justified decision to:

35.1. re-allocate a G-SII from a lower sub-category to a higher sub-category;

35.2. allocate an entity that in accordance with paragraph 32 of the Rules has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

36. The Bank of Lithuania, when identifying a G-SII, and when setting the G-SII categories and attributing G-SII to sub-categories according to the systemic importance, shall follow the Rules and Commission Delegated Regulation (EU) No 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions (OJ 2014 L 330, p. 27).

SECTION TWO
IDENTIFICATION OF OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS

37. The Bank of Lithuania shall identify, on an individual, consolidated or sub-consolidated basis, the relevant entities as other systemically important institutions (hereinafter the 'O-SIIs'), which are institutions or EU parent institutions or EU parent financial holding companies or EU parent mixed financial holding companies.

38. For the purposes of identification of O-SIIs, the Bank of Lithuania shall take into consideration at least one of the following criteria:

38.1. the size of institution or financial group;

38.2. importance for the economy of the European Union or the Republic of Lithuania;

38.3. significance of cross-border activities;

38.4. interconnectedness of the institution or financial group with the financial system.

39. The Bank of Lithuania, when identifying the O-SIIs, shall follow the legal acts of the Bank of Lithuania implementing the Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) of the European Banking Authority of 16 December 2014.

40. The requirement to maintain an O-SII buffer shall apply to each O-SII. Upon the decision of the Bank of Lithuania, the O-SII buffer shall comprise up to 2% (inclusive) of total risk exposure amount. The O-SII buffer shall comprise the Common Equity Tier 1 capital. The O-SII buffer shall be supplementary to the Common Equity Tier 1 capital.

41. The Bank of Lithuania, when determining an O-SII buffer to be maintained, shall comply with the following principles:

41.1. the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;

41.2. the O-SII buffer must be reviewed by the Bank of Lithuania at least annually.

SECTION THREE
NOTIFICATIONS BY THE BANK OF LITHUANIA ON G-SII AND O-SII

42. The Bank of Lithuania shall notify the information and its decisions related to G-SII and O-SII to the European Union authorities and other parties concerned in the following procedure:

42.1. the decision made in accordance with subparagraph 35.2 of the Rules shall be notified to the European Banking Authority, providing the reasons;

42.2. the names of G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, shall be notified to the European Commission, the European Systemic Risk Board and the European Banking Authority, and shall be disclosed to the public;

42.3. the Bank of Lithuania shall review annually the identification of G-SIIs and O-SIIs and the G-SIIs allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the European Commission, the European Systemic Risk Board and the European Banking Authority, and disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated to the public;

42.4. the Bank of Lithuania shall notify the European Commission, the European Systemic Risk Board, the European Banking Authority and the designated authorities of the Member States concerned regarding the size of the O-SII buffer at least one month before the publication date of the decision referred to in paragraph 40 of the Rules. That notification shall describe in detail:

42.4.1. the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

42.4.2. an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information available to the Bank of Lithuania;

42.4.3. the O-SII buffer rate that the Bank of Lithuania wishes to set.

CHAPTER V
SYSTEMIC RISK BUFFER

SECTION ONE
PROCEDURE OF SETTING THE SYSTEMIC RISK BUFFER RATE

43. The Bank of Lithuania shall introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector of the Republic of Lithuania or one or more subsets of that sector, in order to prevent and mitigate systemic risks.

44. The Bank of Lithuania shall determine the institutions to which the systemic risk buffer applies, and require to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013, a systemic risk buffer of Common Equity Tier 1 capital of at least 1%.

45. The systemic risk buffer set by the Bank of Lithuania shall apply to the exposures located in Lithuania and the third countries. The systemic risk buffer shall also apply to the exposures located in other EU Member States, subject to paragraphs 54 and 59 of the Rules.

46. The systemic risk buffer requirements shall be set in gradual or accelerated steps of adjustment of 0.5 percentage point. Different requirements may be introduced for different subsets of the financial sector.

47. When determining a systemic risk buffer to be maintained, the Bank of Lithuania shall comply with the following principles:

47.1. the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;

47.2. the systemic risk buffer must be reviewed at least every second year.

48. Before setting or resetting a systemic risk buffer rate of up to 3% or equal to 3%, the Bank of Lithuania shall notify the European Commission, the European Systemic Risk Board, the European Banking Authority and the Member States concerned at least one month before the publication of the decision referred to in paragraph 55 of the

Rules, and if applicable, the competent and/or designated authorities of those third-countries. That notification shall describe in detail:

48.1. the systemic risk in Lithuania;

48.2. the reasons why the dimension of the systemic risk threatens the stability of the financial system at national level justifying the systemic risk buffer rate;

48.3. the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;

48.4. an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information available to the Bank of Lithuania;

48.5. the justification for why none of the supervisory authorisations attributed to the Bank of Lithuania in accordance with the Republic of Lithuania Law on Banks and Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, will be sufficient to address the identified systemic risk taking into account the relative effectiveness of those measures;

48.6. the systemic risk buffer rate that the Bank of Lithuania wishes to set.

49. Before setting or resetting a systemic risk buffer rate of above 3%, the Bank of Lithuania shall notify the European Commission, the European Systemic Risk Board, the European Banking Authority and the competent and designated authorities of the Member States concerned. If the buffer applies to exposures located in third-countries, the Bank of Lithuania shall also notify the supervisory authorities of those third-countries. The notification shall describe in detail the information specified in paragraph 48.

50. The Bank of Lithuania may set or reset a systemic risk buffer rate that applies to exposures located in the Republic of Lithuania and may also apply to exposures in third countries of up to 5%. For these purposes, the Bank of Lithuania shall follow the procedures set out in paragraph 48 of the Rules. When setting or resetting a systemic risk buffer rate above 5%, the procedures set out in paragraph 49 of the Rules shall be complied with.

51. Where the systemic risk buffer rate is to be set between 3% and 5% in accordance with paragraph 50 of the Rules, the Bank of Lithuania shall notify the European Commission thereof and shall await the opinion of the Commission before adopting the measures in question.

52. Where the opinion of the European Commission indicated in paragraph 51 of the Rules is negative, the Bank of Lithuania shall comply with that opinion or give reasons for not so doing to the Commission.

53. Where the systemic risk buffer rate between 3% and 5% is set for a subsidiary whose parent is established in another Member State, the Bank of Lithuania shall notify the competent and/or designated authorities of that Member State, the European Commission and the European Systemic Risk Board. The Bank of Lithuania shall adopt the respective measures only upon receipt of a recommendation for application of the measures from the European Commission and the European Systemic Risk Board. Where the competent and/or designated authorities of the EU Member State disagree and in the case of a negative recommendation of both the Commission and the European Systemic Risk Board, the Bank of Lithuania may refer the matter to European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12). The decision to set the systemic risk buffer for those exposures shall be suspended until the European Banking Authority has taken a decision.

54. The Bank of Lithuania may approve the systemic risk buffer rates indicted in paragraph 49 of the Rules only once it has been approved by the European Commission, the European Systemic Risk Board, and where necessary, the European Banking Authority, in the procedure set forth by the legal acts of the European Union.

55. The Bank of Lithuania shall announce the setting of the systemic risk buffer by publication on its website. The announcement shall include at least the following information:

55.1. the systemic risk buffer rate;

55.2. the institutions to which the systemic risk buffer applies;

55.3. a justification for the systemic risk buffer;

55.4. the date from which the institutions must apply the setting or resetting of the systemic risk buffer; and

55.5. the names of the countries where exposures located in those countries are recognised in the systemic risk buffer set by the Bank of Lithuania.

56. If, in the opinion of the Bank of Lithuania, the publication referred to in subparagraph 55.3 of the Rules could jeopardise the stability of the financial system of the country, the information under paragraph 55.3 shall not be included in the announcement.

57. Where an institution fails to meet fully the requirement of the systemic risk buffer, it shall be subject to the restrictions on distributions set out in Chapter VII of the Rules.

58. Where the application of the restrictions on distributions specified in Chapter VII of the Rules leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution in the light of the relevant

systemic risk, the Bank of Lithuania may issue mandatory instructions set out in Article 67(2) of the Republic of Lithuania Law on Banks.

59. Following notification as referred to in paragraph 48 of the Rules, the Bank of Lithuania may apply the systemic risk buffer to all exposures. Where the Bank of Lithuania decides to set the systemic risk buffer up to 3% or equal to 3% on the basis of exposures in other Member States, the buffer shall be set equally on all exposures located within the European Union.

SECTION TWO
RECOGNITION OF A SYSTEMIC RISK BUFFER RATE

60. The Bank of Lithuania may recognise the systemic risk buffer rate set by the competent authorities and/or designated authorities of other EU Member States and may apply that buffer rate to the exposures located in the Member State that sets that buffer rate. The Bank of Lithuania shall notify this decision to the European Commission, the European Systemic Risk Board, and where necessary, the European Banking Authority and the competent authority and/or designated authority of the Member State that sets that systemic risk buffer rate.

61. When deciding whether to recognise a systemic risk buffer rate, the Bank of Lithuania shall take into consideration the information presented by the competent authority and/or designated authority of the Member State that sets that buffer rate in accordance with paragraphs 48, 49 or 50 of the Rules.

62. When setting a systemic risk buffer rate, the Bank of Lithuania may ask the European Systemic Risk Board to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ 2010 L 331, p. 1) to other EU Member States which may recognise the systemic risk buffer rate set by the Bank of Lithuania.

CHAPTER VI
PECULIARITIES OF APPLICATION OF THE G-SII, O-SII AND SYSTEMIC RISK BUFFER REQUIREMENTS

63. Where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed the higher of the two:

63.1. 1% of the total risk exposure amount, and

63.2. the G-SII or O-SII buffer rate applicable to the group at consolidated level.

64. Where a financial group, on a consolidated basis is subject to the G-SII buffer and O-SII buffer requirements or G-SII, O-SII and systemic risk buffer requirements in accordance with the Rules, only the higher of them shall apply.

65. Where an institution, on an individual or sub-consolidated basis is subject to the O-SII buffer and systemic risk buffer requirement, the higher of the two shall apply.

66. Where the systemic risk buffer applies to all exposures located in Lithuania, but does not apply to exposures outside the country, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer.

67. Where paragraph 64 of the Rules applies and an institution is part of a financial group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that an institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of:

67.1. the capital conservation buffer;

67.2. the countercyclical capital buffer;

67.3. the higher of the following buffers:

67.3.1. the O-SII buffer or

67.3.2. the systemic risk buffer applicable to it on an individual basis.

68. Where paragraph 66 of the Rules applies and an institution is part of a financial group or a sub-group to which a G-SII or an O-SII belongs, this shall imply that an institution is, on an individual basis, subject to a combined buffer requirement that cannot be lower than the sum of the following buffers:

68.1. the capital conservation buffer;

68.2. the countercyclical capital buffer;

68.3. the O-SII buffer;

68.4. the systemic risk buffer applicable to it on an individual basis.

CHAPTER VII
CAPITAL CONSERVATION MEASURES

SECTION ONE
RESTRICTIONS ON DISTRIBUTIONS

69. The distribution in connection with Common Equity Tier 1 capital shall include the following:

69.1. a payment of dividends;

69.2. a distribution fully or partially paid bonus shares or other capital instruments mentioned in Articles 26(1)(a) of Regulation (EU) 575/2013;

69.3. a redemption or purchase by an institution of its own shares or other capital instruments mentioned in Article 26(1)(a) of Regulation (EU) 575/2013;

69.4. a repayment of amounts paid up in connection with capital instruments mentioned in Article 26(1)(a) of Regulation EU) 575/2013;

69.5. a distribution of capital items referred to in points (b) to (e) of Article 26(1) of Regulation EU) 575/2013;

70. The institution that meets the combined buffer requirement shall be prohibited from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

71. The institution that fails to meet its combined buffer requirement shall calculate the maximum distributable amount (hereinafter 'MDA') in accordance with paragraph 73 of the Rules, and report to the Bank of Lithuania.

72. The institutions specified in paragraph 71 of the Rules shall be prohibited from any of the following actions that exceed the MDA:

72.1. make distributions in connection with Common Equity Tier 1 capital;

72.2. create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;

72.3. make payments on Additional Tier 1 instruments in the procedure laid down in Part Two, Title I, Chapter 3 of Regulation(EU) No 575/2013.

73. The institutions shall calculate the MDA according to the following formula:

MDA = (P_1+P_2–M) x B, where

73.1. P_1 – interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in paragraph 72 of the Rules;

73.2. P_2 – year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in paragraph 72 of the Rules;

73.3. M – amounts which would be payable as tax, if items of P_1 and P_2 were to be retained;

73.4. B factor shall be determined by the institutions as follows:

73.4.1. by calculating the combined buffer requirement according to the capital buffer expressed as a percentage as set forth in the Rules and announced on the website of the Bank of Lithuania;

73.4.2. by calculating the lower and upper bound of each n-th quartile of the combined buffer requirement:

Lower bound of n-th quartile = (combined buffer requirement / 4) x (Q_n – 1),
Upper bound of n-th quartile = (combined buffer requirement / 4) x Q_n , where
Q_n – indicates the ordinal number of the quartile concerned, with a total of 4 quartiles.

73.4.3. by determining the quartile of the combined buffer requirement within which is their Common Equity Tier 1 capital that is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with the Annex to the Rules, and establishes the B factor accordingly.

74. The MDA shall be reduced by the corresponding amount, where distributions, payments or obligations referred to in paragraph 72 are performed or set.

75. The restrictions imposed by this Section of the Rules shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of the insolvency proceedings.

76. Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in paragraph 72 of the Rules, it shall provide the following information to the Bank of Lithuania:

76.1. the amount of capital maintained by the institution, subdivided as follows:

76.1.1. Common Equity Tier 1 capital;

76.1.2. Additional Tier 1 capital;
76.1.3. Tier 2 capital;
76.2. the amount of its interim and year-end profits;
76.3. MDA;
76.4. the amount of distributable profits it intends to allocate between the following:
76.4.1. dividend payments;
76.4.2. share buybacks;
76.4.3. payments on Additional Tier 1 instruments;
76.4.4. the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.
77. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately. The institutions shall be able to demonstrate that accuracy to the Bank of Lithuania on request.

SECTION TWO
CAPITAL CONSERVATION PLAN

78. Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the Bank of Lithuania no later than five working days after it identified that it was failing to meet that requirement. Taking into account the individual situation of the institution, the scale and complexity of its activities, the Bank of Lithuania may authorise a longer delay of up to 10 days.
79. The capital conservation plan shall include the following:
79.1. estimates of income and expenditure and a forecast balance sheet;
79.2. measures to increase the capital ratios of the institution;
79.3. a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;
79.4. any other information that the Bank of Lithuania and/or the institution considers to be necessary to carry out the assessment of the capital conservation plan.
80. The Bank of Lithuania shall have a right to request provision of additional information from an institution for the purposes of assessment of the capital conservation plan.
81. The Bank of Lithuania shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the Bank of Lithuania considers appropriate.
82. If the Bank of Lithuania does not approve the capital conservation plan, it shall impose one or both of the following measures:
82.1. require the institution to increase own funds to levels specified by the Bank of Lithuania within specified - timeframe;
82.2. issue mandatory instructions set forth in Article 67(2) of the Republic of Lithuania Law on Banks.

CHAPTER VIII
FINAL PROVISIONS

83. The institutions shall calculate the capital buffers in an individual and consolidated basis, and where required, on a sub-consolidated basis.
84. G-SII buffer shall be set only on a consolidated basis.
85. The institutions shall not use the Common Equity Tier 1 capital that is maintained to meet the capital conservation buffer requirement to meet the own funds requirement under Article 92 of Regulation (EU) 575/2013 and the mandatory instructions imposed in accordance with Article 67(2) of the Republic of Lithuania Law on Banks.
86. The institutions shall not use the Common Equity Tier 1 capital that is maintained to meet the institution-specific countercyclical capital buffer requirement to meet the own funds requirement under Article 92 of Regulation (EU) 575/2013, the capital conservation buffer requirement and the mandatory instructions imposed in accordance with Article 67(2) of the Republic of Lithuania Law on Banks.
87. The institutions shall not use the Common Equity Tier 1 capital that is maintained to meet the G-SII and O-SII requirements to meet the own funds requirement under Article 92 of Regulation (EU) 575/2013, the capital conservation buffer requirement, institution-specific countercyclical capital requirement and the mandatory instructions imposed in accordance with Article 67(2) of the Republic of Lithuania Law on Banks.

88. The institutions shall not use the Common Equity Tier 1 capital that is maintained to meet the systemic risk requirement to meet the own funds requirement under Article 92 of Regulation (EU) 575/2013, the capital conservation buffer requirement, institution-specific countercyclical capital requirement and the mandatory instructions imposed in accordance with Article 67(2) of the Republic of Lithuania Law on Banks.

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Annex
to the Rules for the Formation of Capital Buffers

REFERENCE TABLE FOR MDA CALCULATION

Qn of the combined buffer requirement	**B**
Q1	0
Q2	0.2
Q3	0.4
Q4	0.6