1. **Second reviewer have commented on assessment template part 2?:** YES [ ]  NO [ ]
2. **Does the instrument contain multiple dividends?**: YES [ ]  NO [x]

If NO, compliance with Articles 7a-7d of the RTS of OFs as noted in part B of the assessment template to be deleted or marked as N/A

1. **Is the instrument eligible under Article 29 CRR?**: YES [ ]  NO [x]

If NO, compliance with Article 29 CRR (in part A) and Article 10 of the RTS of OFs (in part B) of the assessment template to be deleted or marked as N/A

**CET1 detailed compliance assessment**

**A: Compliance with CRR requirements**

| CRR provision[[1]](#footnote-1) | Terms & conditions | Articles of association[please provide text extract from the AoA + references to the concerned articles / paragraphs] | National Regulation[please provide text extract from the national regulation + references to the concerned articles / paragraphs] | Compliant/Comments |
| --- | --- | --- | --- | --- |
| Article 26 |  |  |  |  |
| 3. Competent authorities shall evaluate whether issuances of capital instruments meet the criteria set out in Article 28 or, where applicable, Article 29. Institutions shall classify issuances of capital instruments as Common Equity Tier 1 instruments only after permission is granted by the competent authorities.[…]Competent authorities shall consult EBA before granting permission for new forms of capital instruments to be classified as Common Equity Tier 1 instruments. Competent authorities shall have due regard to EBA's opinion and, where they decide to deviate from it, shall write to EBA within three months from the date of receipt of EBA's opinion setting out the rationale for deviating from the relevant opinion. This subparagraph does not apply to the capital instruments referred to in Article 31.On the basis of information collected from competent authorities, EBA shall establish, maintain and publish a list of all forms of capital instruments in each Member State that qualify as Common Equity Tier 1 instruments. In accordance with Article 35 of Regulation (EU) No 1093/2010, EBA may collect any information in connection with Common Equity Tier 1 instruments that it considers necessary to establish compliance with the criteria set out in Article 28 or, where applicable, Article 29 of this Regulation and for the purpose of maintaining and updating the list referred to in this subparagraph.Following the review process set out in Article 80 and where there is sufficient evidence that the relevant capital instruments do not meet or have ceased to meet the criteria set out in Article 28 or, where applicable, Article 29, EBA may decide not to add those instruments to the list referred to in the fourth subparagraph or remove them from that list, as the case may be. EBA shall make an announcement to that effect that shall also refer to the relevant competent authority's position on the matter. This subparagraph does not apply to the capital instruments referred to in Article 31. |  |  |  | The CNMV (Spanish competent authority for the investment firms´ supervision) has evaluated the issuance, which meets the criteria set out in Article 28. |
| Article 27 |  |  |  | N/AOval Marketplace is an investment firm. |
| 1. CET1 items shall include any capital instrument issued by an institution under its statutory terms provided that the following conditions are met: |  |  |  |  |
| (a) the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as any of the following[[2]](#footnote-2):(i) a mutual;(ii) a cooperative society;(iii) a savings institution;(iv) a similar institution;(v) a credit institution which is wholly owned by one of the institutions referred to in points (i) to (iv) and has approval from the relevant competent authority to make use of the provisions in this Article, provided that, and for as long as, 100 % of the ordinary sharesin issue in the credit institution are held directly or indirectly by an institution referred to in those points; |  |  |  |  |
| (b) the conditions laid down in Articles 28 or, where applicable, Article 29, are met. |  |  |  |  |
| Those mutuals, cooperative societies or savings institutions recognised as such under applicable national law prior to 31 December 2012 shall continue to be classified as such for the purposes of this Part, provided that they continue to meet the criteria that determined such recognition. |  |  |  |  |
| Article 28 |  |  | Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de CapitalRoyal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Corporate Enterprises Act |  |
| 1. Capital instruments shall qualify as Common Equity Tier 1 instruments only if all the following conditions are met: |  |  |  |  |
| (a) the instruments are issued directly by the institution with the prior approval of the owners of the institution or, where permitted under applicable national law, the management body of the institution; |  |  | Article 160. Powers reserved to the general meetingThe general meeting is vested with the power to discuss and decide on the following matters:[…]d) Capital increase and reduction.[…]In limited liability partnership companies, the general meeting is not able to vest the directors with the power to decide a capital increase or reduction. |  |
| (b) the instruments are fully paid up and the acquisition of ownership of those instruments is not funded directly or indirectly by the institution; |  | ARTICLE 5.- Share capital1. The share capital of the Company, fully subscribed and paid up, is of FIFTY THOUSAND EUROS (€ 50,000), divided into fifty thousand (50,000) equal, cumulative and indivisible shares, numbered consecutively from 1 to 50,001, both inclusive, each with a nominal value of ONE euro (€1). Each share will grant its holder the right to one vote. | Article 78. Payment of par value of company shares.The stakes into which the capital of limited liability companies is divided shall be fullysubscribed and the par value fully paid by the partners by the date of formalisation ofthe company’s deed of incorporation or instrument on capital increase. | Not funded directly or indirectly:The institution may provide funding to the purchase of its own stakes.All stakes funded directly or indirectly by the institution are deducted from own funds. |
| *For the purposes of point (b) of the first subparagraph, only the part of a capital instrument that is fully paid up shall be eligible to qualify as a Common Equity Tier 1 instrument.* |  |  |  | N/AFully paid-up |
| (c) the instruments meet all the following conditions as regards their classification: |  |  |  | Compliant |
| (i) they qualify as capital within the meaning of Article 22 of Directive 86/635/EEC; |  |  |  |  |
| (ii) they are classified as equity within the meaning of the applicable accounting framework; |  |  |  |  |
| (iii) they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law; |  |  | Article 363. Causes for dissolution1. A corporate enterprise shall be dissolved:[…]e) Due to losses that reduce its equity to an amount lower than one half of the share capital, except where the capital is increased or decreased as required and application for insolvency protection is not warranted;f) Due to a capital reduction to a sum below the legal minimum, except as in compliance with a legal provision.g) Because the par value of non-voting stakes or shares exceeds one half of the paid-up capital and the due proportion is not recovered within two years.[…] |  |
| (d) the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution; |  |  |  | Compliant. CNMV Circular 7/2008 prescribes a clear and separate presentation of capital instruments in the balance sheet. This Circular applies to all Spanish Investment Firms. |
| (e) the instruments are perpetual; |  | ARTICLE 4.- Duration and commencement of operationsThe Company is incorporated for an indefinite period of time.The commencement of operations as an investment firm will take place on the same day that the Company is duly registered in the Register of Investment Firms of the Spanish National Securities Market Commission (“CNMV”), without prejudice to the provisions of TRLSC. | Royal Decree 2017/2008. Article 14Article 14. General requirements for authorisation.1. In the development of Article 152 of the consolidated text of the Securities Market Act, entities shall met the following requirements in order to obtain and retain the authorisation as an investment firm:[…]b) Cover the form of a joint stock company or limited liability company, established for an indefinite period of time, with a name adjusted to the provisions of article 144.2 of the revised text of the Securities Market Act and article 7 of this royal decree and that the shares or LLP shares that make up its capital are nominative. […] | Compliant:stakes are perpetual and have indefinite duration. |
| (f) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases: |  |  |  |  |
| (i) the liquidation of the institution; |  |  |  |  |
| (ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77; |  |  | Capital reductionArticle 318. Decision to reduce share capital.1. Decisions to reduce share capital must be adopted by the general meeting and shall be subject to approval by the majority laid down for amending the by-laws.2. The general meeting’s decision shall specify at least the amount of the reduction, its purpose, how it shall be implemented and the term for its implementation. It shall also indicate the amount to be paid, if any, to partners or shareholders.Discretionary repurchases and other capital reductions as a consequence of agreement of shareholdersArticle 140. Derivative acquisitions allowed.1. Limited liability companies may only purchase their own stakes or parent company stakes or shares under the following circumstances:a) When they form part of an estate acquired as a whole or are acquired at no cost, or as a result of a court award in payment of a debt held by the company against the owner thereof.b) When the company’s own stakes are acquired through a capital reduction decision adopted by the general meeting.c) When the company’s own stakes are acquired under the circumstances established in Article 109.3 (mandatory transfer).d) When the acquisition is authorised by the general meeting, charged to profits or reserves freely available for distribution and involves the stakes of a partner who has exited or been excluded from the company; stakes acquired as a result of the application of transfer restrictions; or stakes transferred mortis causa.2. Acquisitions made outside the preceding circumstances shall be null and void.Securities Market Act.Article 156. Amendments to the articles of association.1. Amendments to the articles of association of investment firms shall be subject to the procedure for authorization for new undertakings, […].Article 159. Structural changes.The change of corporate form, merger, demerger or spin-off of a line of business, and any other corporate changes by an investment firm or with lead to the creation of an investment firm shall require prior authorisation in accordance with the procedure provided for under Article 149 *[Authorisation]*, as may be adapted by regulation, and in no event may the change in the company entail any impairment of the requirements established by law or regulation for the creation of an investment firm. | Compliant.Articles 77 and 78 apply as per paragraph CET1 Report indication:“In any case, even when the national laws envisage a right of shareholders to redemption,Articles 77 and 78 of the CRR apply. The possibility of the institution redeeming/repurchasing itsown shares under such circumstances is then subject to prior supervisory approval.” |
| *The condition laid down in point (f) of paragraph 1 shall be deemed to be met notwithstanding the reduction of the principal amount of the capital instrument within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution* |  |  |  |  |
| (g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 27 where the refusal by the institution to redeem such instruments is prohibited under applicable national law; |  | ARTICLE 4.- Duration and commencement of operationsThe Company is incorporated for an indefinite period of time.[…]In the AoA article 6 (II) it is stated that:*3. In the event of a mandatory transfer of shares deriving from an enforcement procedure, the provisions of article 109 of TRLSC will be applicable, establishing in favour of the Company the preferential acquisition rights referred to in subparagraph 3 of the aforementioned article 109 of TRLSC, if not previously exercised by the shareholders.*1. *In the case of acquisition of shares on death, the regime provided for in article 110 of TRLSC will be applicable, establishing the preferential acquisition rights in favour of the surviving shareholders and, failing that, in favour of the Company, for the fair value thereof on the date of the shareholder’s death , insofar as said rights are exercised within a maximum period of three months from the date on which the acquisition by inheritance is communicated to the Company, and the cash price thereof is payed to the heirs or legatees. To determine the fair value of the shares, the rule applicable to cases of segregation will be applied, in accordance with article 353 et seq of TRLSC.*

To follow best practice it should be stated in the AoA that prior to company acquiring any of its own shares then a prior permission from the CA has to be obtained. If not it might create an implicit expectation and pressure on the company in order to buy back own shares for example in the case of death of shareholders. | Article 346. Legal causes for exit1. Partners or shareholders not voting in favour of the respective decision, including non-voting partners or shareholders, shall be entitled to exit the company in any of the following circumstances:a) Supersession or amendment of the corporate purpose.b) Extension of company term.c) Company reactivation.d) Creation, amendment or early cancellation of ancillary commitments, unless otherwise provided in the by-laws.2. In limited liability companies, partners not voting in favour of amendment of the arrangements for the transfer of stakes shall also be entitled to exit the company. 3. In company conversions and relocations of the registered office abroad, partners or shareholders shall be entitled to exit rights in the terms laid down in Act 3/2009 of 3 April on structural changes in trading companies.Article 84 Company claim for payment1. When shareholders are in arrears, depending on the circumstances and nature of the contribution outstanding, the company may demand payment, including any legal interest accruing and damages incurred by reason of the arrears, or convey share ownership for and at the risk of the shareholders in arrears.2. When shares must be sold, the sale shall be substantiated either by a member of the official secondary market on which the shares are traded or by a notary public, and, as appropriate, shall entail the replacement of the original share certificate by a duplicate thereof. If no sale materialises, the shares shall be redeemed and the share capital reduced accordingly, and any sums laid out shall be retained by the company.Securities Market Act. (Royal legislative Decree 4/2015)Article 156. Amendments to the articles of association.1. Amendments to the articles of association of investment firms shall be subject to the procedure for authorization for new undertakings, […].Article 159. Structural changes.The change of corporate form, merger, demerger or spin-off of a line of business, and any other corporate changes by an investment firm or with lead to the creation of an investment firm shall require prior authorisation in accordance with the procedure provided for under Article 149 *[Authorisation]*, as may be adapted by regulation, and in no event may the change in the company entail any impairment of the requirements established by law or regulation for the creation of an investment firm.Royal Decree 217/2008 of 15 February 2008 on the legal regime of investment firmsArticle 14. General authorisation requirements.1. Pursuant to the provisions of article 152 of the consolidated text of the Securities Market Act, entities must comply with the following requirements to obtain and maintain authorisation as an investment services firm:[…]b) Take the form of a public limited company or limited liability company, incorporated for an indefinite period, with a name that complies with the provisions of Article 144.2 of the consolidated text of the Securities Market Law and Article 7 of this Royal Decree, and that the shares or holdings making up its share capital are of a registered nature. | CompliantAny capital reduction or repurchases are either • N/A to the institution• subject to CA’s indirect approvalfurthermore, Articles 77 and 78 apply as per paragraph of CET1 Report indications:“In any case, even when the national laws envisage a right of shareholders to redemption,Articles 77 and 78 of the CRR apply. The possibility of the institution redeeming/repurchasing itsown shares under such circumstances is then subject to prior supervisory approval.”please note that article 348 bis does not apply to investment firms as per eleventh additional provision:Eleventh additional provision. Right of separation in financial institutions.The provisions of Article 348 bis of this Act shall not apply to the following institutions:a) Credit institutions;b) Financial credit establishments;**c) Investment firms;**d) Payment institutions(e) Electronic money institutions(f) Financial holding companies and mixed financial holding companies as defined in accordance with Articles 4(1)(20) and 4(1)(21) of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;g) Financial holding companies as defined in Article 34 of Royal Decree 309/2020 of 11 February on the legal regime of financial credit establishments and amending the Regulations of the Commercial Registry, approved by Royal Decree 1784/1996 of 19 July, and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the regulation, supervision and solvency of credit institutions;h) mixed holding companies as provided for in Article 4.1.22 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013. |
| *The condition laid down in point (g) of paragraph 1 shall be deemed to be met notwithstanding the provisions governing the capital instrument indicating expressly or implicitly that the principal amount of the instrument would or might be reduced within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.* |  |  |  |  |
| (h) the instruments meet the following conditions as regards distributions: |  |  |  |  |
| (i) there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other CET1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions; |  |  | Article 94. Diversity of rights1. The rights attributed to partners or shareholders by stakes and shares shall be the same, subject to the exceptions provided for in the act.Stakes and shares may afford different rights to their holders. Shares associated with the same rights form part of the same class. When a class is divided into several series, all shares in any given series shall have the same par value.2. The creation of stakes and issue of shares attributing privileges over ordinary stakes and shares shall be subject to the procedures laid down to amend the by-laws. | CompliantNo differentiated distributions.Any preferential distribution for any class of shares would convert them, as per article 94(2), in a title different from ordinary shares. |
| *For the purposes of point (h)(i) of paragraph 1, differentiated distributions shall only reflect differentiated voting rights. In this respect, higher distributions shall only apply to Common Equity Tier 1 instruments with fewer or no voting rights.* |  |  |  |  |
| (ii) distributions to holders of the instruments may be paid only out of distributable items; |  |  | Article 273 Distribution of earnings.[…]2. Dividends may only be drawn on the year’s profits or freely available reserves after meeting the requirements laid down by law and in the by-laws, and if the value of the corporate equity is not, or as a result of such distribution would not be, less than the company’s capital. For these purposes, any profit directly allocated to total equity may not be distributed either directly or indirectly.In the event of losses in preceding years that reduce corporate equity to less than the company’s capital, profits shall be used to offset such losses.[…] | Compliant |
| (iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 27; |  |  | Article 275 Distribution of dividends.1. In limited liability companies, unless specified otherwise in the by-laws, the dividends shall be distributed to the partners in proportion to their stakes in the company capital. | CompliantDividends are paid in proportion to the capital.Oval Marketplace has not specific provisions in the by-laws regarding with the dividend payments. |
| *The condition laid down in point (h)(iii) of paragraph 1 shall be deemed to be met notwithstanding the instrument paying a dividend multiple, provided that such a dividend multiple does not result in a distribution that causes a disproportionate drag on own funds* |  |  |  |  |
| (iv) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27; |  |  | Article 96. Prohibitions in matters of privilege1. The creation of stakes or the issue of shares entitled to collect interest shall not be valid, irrespective of the manner in which it is determined. | CompliantEven for stakes with privileges over ordinary stakes (which by definition are not ordinary stakes) interest payment is not allowed. |
| (v) the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation; |  |  | Article 273. Distribution of earnings.1. The general meeting shall decide on the distribution of the earnings for the financial year as shown on the approved balance sheet. | Compliant |
| *The condition set out in point (h)(v) of the first subparagraph of paragraph 1 shall be considered to be met notwithstanding a subsidiary being subject to a profit and loss transfer agreement with its parent undertaking, according to which the subsidiary is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking, where all the following conditions are met:**(a) the parent undertaking owns 90 % or more of the voting rights and capital of the subsidiary;**(b) the parent undertaking and the subsidiary are located in the same Member State;**(c) the agreement was concluded for legitimate taxation purposes;**(d) in preparing the annual financial statement, the subsidiary has discretion to decrease the amount of distributions by allocating a part or all of its profits to its own reserves or funds for general banking risk before making any payment to its parent undertaking;**(e) the parent undertaking is obliged under the agreement to fully compensate the subsidiary for all losses of the subsidiary;**(f) the agreement is subject to a notice period according to which the agreement can be terminated only by the end of an accounting year, with such termination taking effect no earlier than the beginning of the following accounting year, leaving the parent undertaking's obligation to fully compensate the subsidiary for all losses during the current accounting year unchanged;**Where an institution has entered into a profit and loss transfer agreement, it shall notify the competent authority without delay and provide the competent authority with a copy of the agreement. The institution shall also notify the competent authority without delay of any changes to the profit and loss transfer agreement and the termination thereof. An institution shall not enter into more than one profit and loss transfer agreement.* |  |  |  |  |
| (vi) non-payment of distributions does not constitute an event of default of the institution; |  |  |  | Compliant |
| (vii) the cancellation of distributions imposes no restrictions on the institution; |  |  | Eleventh additional provision. Right of separation in financial institutions.The provisions of Article 348 bis of this Act shall not apply to the following institutions:[,,,]c) Investment Firms | CompliantArticle 348 bis do not apply to investment firms.Eleventh additional provision. Right of separation in financial institutions.The provisions of Article 348 bis of this Act shall not apply to the following institutions:a) Credit institutions;b) Financial credit establishments;**c) Investment firms;**d) Payment institutions(e) Electronic money institutions(f) Financial holding companies and mixed financial holding companies as defined in accordance with Articles 4(1)(20) and 4(1)(21) of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;g) Financial holding companies as defined in Article 34 of Royal Decree 309/2020 of 11 February on the legal regime of financial credit establishments and amending the Regulations of the Commercial Registry, approved by Royal Decree 1784/1996 of 19 July, and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the regulation, supervision and solvency of credit institutions;h) mixed holding companies as provided for in Article 4.1.22 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013. |
| (i) compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other CET1 instruments; |  |  |  | CompliantNo other CET1 instruments apart from stakes are issued from investment firms incorporated as limited liability companies. |
| *The conditions laid down in point (i) of paragraph 1 shall be deemed to be met notwithstanding a write down on a permanent basis of the principal amount of AT1 or T2 instruments.* |  |  |  | AT1 or T2 instrument not issued by Oval Marketplace |
| (j) the instruments rank below all other claims in the event of insolvency or liquidation of the institution; |  |  | Article 391. Distribution of corporate equity1. Any surplus corporate assets resulting from liquidation shall be distributed pursuant to the rules established in the by-laws or, in the absence thereof, established by the general meeting.2. The liquidators shall not pay the partners or shareholders their liquidation dividend until all creditors have been paid or the sum of the company debts is deposited at a financial institution in the place where the registered office is located.Additional Provision 14, para.3, of Law 11/2015 of 18, June, on the Recovery and Resolution of Credit Institutions and Investment Firms (“Ley 11/2015, de 18 de junio, de Recuperación y Resolución de Entidades de Crédito y Empresas de Servicios de Inversión”) | According to Spanish insolvency Law, all instruments and claims rank senior to CET1 instruments. |
| *The condition set out in point (j) of the first subparagraph shall be deemed to be met, notwithstanding the instruments are included in AT1 or T2 by virtue of Article 484 (3), provided that they rank pari passu.* |  |  |  |  |
| (k) the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except in the case of the capital instruments referred to in Article 27; |  |  | Article 392. Right to the liquidation dividend1. Unless otherwise provided in the corporate by-laws, partners’ or shareholders’ liquidation dividends shall be proportional to their participation in company capital.2. In joint stock companies and limited partnerships, if all shares were not paid up in the same proportion, shareholders or partners who paid up the highest amounts shall first be paid the surplus over the contribution on which they paid up the least, after which the remainder shall be distributed among partners or shareholders in proportion to the par value of their shares. | CompliantAll stakes have been entirely paid up. |
| (l) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any of the following: |  |  |  | CompliantNo contract or arrangement found. |
| (i) the institution or its subsidiaries;(ii) the parent undertaking of the institution or its subsidiaries;(iii) the parent financial holding company or its subsidiaries;(iv) the mixed activity holding company or its subsidiaries;(v) the mixed financial holding company and its subsidiaries;(vi) any undertaking that has close links with the entities referred to in points (i) to (v); |  |  |  |  |
| (m) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation. |  |  |  | CompliantNo contract or arrangement found. |
| Article 29 |  |  |  |  |
| 1. Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as CET1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met. |  |  |  | N/A |
| 2. The following conditions shall be met as regards redemption of the capital instruments: |  |  |  | N/A |
| (a) except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments; |  |  |  |  |
| (b) where the refusal by the institution of the redemption of instruments is prohibited under applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption; |  |  |  |  |
| (c) refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution. |  |  |  |  |
| 3. The capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution. |  |  |  | N/A |
| 4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other CET1 instruments issued by that institution. |  |  |  | N/A |
| The condition laid down in the first subparagraph is without prejudice to the possibility for a mutual, cooperative society,savings institution or a similar institution to recognise within CET1 instruments that do not afford voting rights to the holder and that meet all the following conditions: |  |  |  |  |
| (a) the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total CET1 instruments that those non-voting instruments represent; |  |  |  |  |
| (b) the instruments otherwise qualify as CET1 instruments. |  |  |  |  |
| 5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap, such a limitation shall apply to the same degree to all holders of all CET1 instruments issued by the institution. |  |  |  | N/A |
| Article 73[[3]](#footnote-3) |  |  |  |  |
| 1. Capital instruments and liabilities for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments, unless the institution has received the prior permission of the competent authority. |  |  | Article 276. Date and method of dividend payments.1. In its decision on distribution of dividends, the general meeting shall determine the date and method of payment.2. If no stipulation is made in this regard, the dividend shall be payable at the registered office from the day after the day on which the decision is adopted. | CompliantOval Marketplace has not specific provisions in the by-laws regarding with the method of dividend payments. |
| 2. Competent authorities shall grant the prior permission referred to in paragraph 1 only where they consider all the following conditions to be met:(a) the ability of the institution to cancel payments under the instrument would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;(b) the ability of the capital instrument or of the liability to absorb losses would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;(c) the quality of the capital instrument or liability would not otherwise be reduced by the discretion referred to in paragraph 1, or by the form in which distributions could be made.The competent authority shall consult the resolution authority regarding an institution's compliance with those conditions before granting the prior permission referred to in paragraph 1. |  |  |  |  |

**B: Compliance with RTS on Own Funds** (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0241-20150707>)

| RTS provision | Terms & conditions | Articles of association[please provide text extract from the AoA + references to the concerned articles / paragraphs] | National Regulation[please provide text extract from the national regulation + references to the concerned articles / paragraphs] | Compliant/Comments |
| --- | --- | --- | --- | --- |
| Article 7a |  |  |  |  |
| 1. Distributions on Common Equity Tier 1 instruments referred to in Article 28 of Regulation (EU) No 575/2013 shall be deemed not to constitute a disproportionate drag on capital where all of the following conditions are met: |  |  |  | N/A |
| (a) The dividend multiple is a multiple of the distribution paid on the voting instruments and not a predetermined fixed amount; |  |  |  |  |
| (b) The dividend multiple is set contractually or under the statutes of the institution;  |  |  |  |  |
| (c) The dividend multiple is not revisable; |  |  |  |  |
| (d) The same dividend multiple applies to all instruments with a dividend multiple; |  |  |  |  |
| (e) The amount of the distribution on one instrument with a dividend multiple does not represent more than 125% of the amount of the distribution on one voting Common Equity Tier 1 instrument.In formulaic form this shall be expressed as:$$l\leq 1.25×k$$where:where:*k* shall represent the amount of the distribution on one instrument without a dividend multiple; *l* shall represent the amount of the distribution on one instrument with a dividend multiple; |  |  |  |  |
| (f) The total amount of the distributions paid on all Common Equity Tier 1 instruments during a one year period does not exceed 105% of the amount that would have been paid if instruments with fewer or no voting rights received the same distributions as voting instruments.In formulaic form this shall be expressed as:$$kX+lY \leq (1.05)×k×(X+Y)$$where:where:*k* shall represent the amount of the distribution on one instrument without a dividend multiple;*l* shall represent the amount of the distribution on one instrument with a dividend multiple;*X* shall represent the number of voting instruments;*Y* shall represent the number of non-voting instruments;The formula shall be applied on a one- year basis. |  |  |  |  |
| 2. Where the condition of point (f) of paragraph 1 is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold defined therein shall be deemed to cause a disproportionate drag on capital.  |  |  |  | N/A |
| 3. Where any of the conditions of points (a) to (e) of paragraph 1 are not met, all outstanding instruments with a dividend multiple shall be deemed to cause a disproportionate drag on capital. |  |  |  | N/A |
| Article 7b |  |  |  |  |
| 1. For Common Equity Tier 1 instruments referred to in Article 28 of Regulation (EU) No 575/2013, a distribution on a Common Equity Tier 1 instrument shall be deemed to be preferential relative to other Common Equity Tier 1 instruments where there are differentiated levels of distributions, unless the conditions of Article 7a of this Regulation are met (RTS on OFs). |  |  |  | N/A |
| 2. For Common Equity Tier 1 instruments with fewer or no voting rights issued by institutions referred to in Article 27 of Regulation (EU) No 575/2013, where distribution is a multiple of the distribution on the voting instruments and that multiple distribution is set contractually or statutorily, distributions shall be deemed not to be preferential if all of the following conditions are met: |  |  |  | N/A |
| (a) The dividend multiple is a multiple of the distribution paid on the voting instruments and not a predetermined fixed amount; |  |  |  |  |
| (b) The dividend multiple is set contractually or under the statutes of the institution;  |  |  |  |  |
| (c) The dividend multiple is not revisable; |  |  |  |  |
| (d) The same dividend multiple applies to all instruments with a dividend multiple; |  |  |  |  |
| (f) The amount of the distribution on one instrument with a dividend multiple does not represent more than 125% of the amount of the distribution on one voting Common Equity Tier 1 instrument.In formulaic form this shall be expressed as:$$l\leq 1.25×k$$where:where:*k* shall represent the amount of the distribution on one instrument without a dividend multiple; *l* shall represent the amount of the distribution on one instrument with a dividend multiple; |  |  |  |  |
| (f) The total amount of the distributions paid on all Common Equity Tier 1 instruments during a one year period does not exceed 105% of the amount that would have been paid if instruments with fewer or no voting rights received the same distributions as voting instruments.In formulaic form this shall be expressed as:$$kX+lY \leq (1.05)×k×(X+Y)$$where:where:*k* shall represent the amount of the distribution on one instrument without a dividend multiple;*l* shall represent the amount of the distribution on one instrument with a dividend multiple;*X* shall represent the number of voting instruments;*Y* shall represent the number of non-voting instruments;The formula shall be applied on a one- year basis. |  |  |  |  |
| 3. Where the condition of paragraph 2 point (f) is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold defined therein shall be disqualified from Common Equity Tier 1. |  |  |  | N/A |
| 4. Where any of the conditions of points (a) to (e) of paragraph 2 are not met, all outstanding instruments with a dividend multiple shall be disqualified from Common Equity Tier 1 capital. |  |  |  | N/A |
| 5. For the purposes of paragraph 2, where the distributions of Common Equity Tier 1 instruments are expressed, for the voting or the non-voting instruments, with reference to the purchase price at issuance of the instrument, the formulas shall be adapted as follows, for the instrument or instruments that are expressed with reference to the purchase price at issuance:(a) *l* shall represent the amount of the distribution on one instrument without a dividend multiple divided by the purchase price at issuance of that instrument; (b) *k* shall represent the amount of the distribution on one instrument with a dividend multiple divided by the purchase price at issuance of that instrument. |  |  |  | N/A |
| 6. For Common Equity Tier 1 instruments with fewer or no voting rights issued by institutions referred to in Article 27 of Regulation (EU) No 575/2013, where the distribution is not a multiple of the distribution on the voting instruments, distributions shall be deemed not to be preferential where either of the conditions referred to in paragraph 7 of this Article and both conditions referred to in paragraph 8 of this Article are met. |  |  |  | N/A |
| 7. For the purposes of paragraph 6, either of the following conditions (a) or (b) shall apply: |  |  |  | N/A |
| (a) Both of the following points (i) and (ii) are met: |  |  |  |  |
| (i) The instrument with fewer or no voting rights can only be subscribed and held by the holders of voting instruments; |  |  |  |  |
| (ii) the number of the voting rights of any single holder is limited; |  |  |  |  |
| (b) The distributions on the voting instruments issued by the institutions are subject to a cap set out under applicable national law. |  |  |  |  |
| 8. For the purposes of paragraph 6 both of the following conditions shall apply: |  |  |  | N/A |
| (a) The institution demonstrates that the average of the distributions on voting instruments during the preceding five years, is low in relation to other comparable instruments; |  |  |  |  |
| (b) The institution demonstrates that the payout ratio is low, where a payout ratio is calculated in accordance with Article 7c. A payout ratio under 30% shall be deemed to be low. |  |  |  |  |
| 9. For the purposes of point (a) of paragraph 7, the voting rights of any single holder shall be deemed to be limited in the following cases: |  |  |  | N/A |
| (a) where each holder only receives one voting right irrespective of the number of voting instruments for any holder; |  |  |  |  |
| (b) where the number of voting rights is capped irrespective of the number of voting instruments held by any holder; |  |  |  |  |
| (c) where the number of voting instruments any holder may hold is limited under the statutes of the institution or under applicable national law. |  |  |  |  |
| 10. For the purposes of this Article, the one year period shall be deemed to end on the date of the last financial statements of the institution. |  |  |  | N/A |
| 11. Institutions shall assess the compliance with the conditions in paragraphs 7 and 8, and inform the competent authority about the result of their assessment, at least in the following situations: (a) every time a decision on the amount of distributions on Common Equity Tier 1 instruments is taken;(b) every time a new class of Common Equity Tier 1 instruments with fewer or no voting rights is issued. |  |  |  | N/A |
| 12. Where the condition of point (b) of paragraph 8 is not met, only the amount of the non-voting instruments for which distributions exceed the threshold defined therein shall be deemed to entail preferential distributions. |  |  |  | N/A |
| 13. Where the condition of point (a) of paragraph 8 is not met, the distributions on all outstanding non-voting instruments shall be deemed to be preferential unless they meet the conditions of paragraph 2. |  |  |  | N/A |
| 14. Where neither of the conditions of paragraph 7 are met, the distributions on all outstanding non-voting instruments shall be deemed to be preferential unless they meet the conditions of paragraph 2. |  |  |  | N/A |
| 15. The requirement referred to in point (i) of paragraph 7(a), or the requirement referred to in point (b) of paragraph 8, or both requirements may be waived, as appropriate, where both of the following conditions are met: |  |  |  | N/A |
| (a) an institution is in breach of or, due to a rapidly deteriorating financial condition, is likely in the near future to be in breach of any of the requirements of Regulation (EU) No 575/2013; |  |  |  |  |
| (b) the competent authority has required the institution to urgently increase its Common Equity Tier 1 capital within a specified period and has assessed that the institution is not able to rectify or avoid the breach referred to in point (a) within that specified period, without resorting to the waiver referred to in this paragraph. |  |  |  |  |
| Article 7c |  |  |  |  |
| 1. For the purposes of point (b) of Article 7b(8), institutions shall choose either the way described in point (a) or point (b) to calculate the payout ratio. The institution shall follow the way chosen in a consistent manner over time: |  |  |  | N/A |
| (a) as the sum of distributions related to total Common Equity Tier 1 instruments over the previous five year periods, divided by the sum of profits related to the last five year periods; |  |  |  |  |
| (b) for the period from the date of application of this Regulation until 31 December 2017 only[[4]](#footnote-4):(i) in 2014, as the sum of distributions related to total Common Equity Tier 1 instruments over the previous one year period, divided by the sum of profits related to the last one year period;(ii) in 2015, as the sum of distributions related to total Common Equity Tier 1 instruments over the previous two year periods, divided by the sum of profits related to the last two year periods;(iii) in 2016, as the sum of distributions related to total Common Equity Tier 1 instruments over the previous three year periods, divided by the sum of profits related to the last three year periods; (iv) in 2017, as the sum of distributions related to total Common Equity Tier 1 instruments over the previous four year periods, divided by the sum of profits related to the last four year periods. |  |  |  |  |
| 2. For the purposes of paragraph 1 of this Article, profits shall mean the amount reported in row 010 of sheet 3 of Annex III to Commission Delegated Regulation (EU) No 680/2014, or, where applicable, the amount reported in row 010 of sheet 3 of Annex IV to that Delegated Regulation with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013. |  |  |  | N/A |
| Article 7d |  |  |  |  |
| 1. For the purposes of Article 28 of Regulation (EU) No 575/2013, a distribution on a Common Equity Tier 1 instrument shall be deemed to be preferential relative to other Common Equity Tier 1 instruments and regarding the order of distribution payments where at least one of the following conditions is met: |  |  |  | N/A |
| (a) distributions are decided at different times; |  |  |  |  |
| (b) distributions are paid at different times; |  |  |  |  |
| (c) there is an obligation on the issuer to pay the distributions on one type of Common Equity Tier 1 instruments before paying the distributions on another type of Common Equity Tier 1 instruments; |  |  |  |  |
| (d) a distribution is paid on some Common Equity Tier 1 instruments but not on others, unless the condition of point (a) of Article 7b(7) is met. |  |  |  |  |
| Article 10 |  |  |  |  |
| 2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in Article 29(2)(b) and 78(3) of Regulation (EU) No 575/2013, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3. |  |  |  | N/A |
| 3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to: (a) the overall financial, liquidity and solvency situation of the institution; b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive. |  |  |  | N/A |

**C: Compliance with the guidance published in the EBA CET1 report** *[to be updated regularly]*

*See in particular part 4 of the CET1 report (“lessons learnt”)*

| EBA CET1 monitoring report (as published in July 2019)[[5]](#footnote-5) | Terms & conditions | Articles of association[please provide text extract from the AoA + references to the concerned articles / paragraphs] | National Regulation[please provide text extract from the national regulation + references to the concerned articles/paragraphs] | Compliant/Comments |
| --- | --- | --- | --- | --- |
| 4.2 Permanence |  |  |  |  |
| * Do the terms and conditions of the instrument, or the statutes of the institution or side agreements/covenants, provide the possibility for the institution to buy back/redeem its own shares or for the shareholders to surrender the shares to the institution in certain specified situations (for joint stock companies)? If yes:
1. Please specify the conditions under which this possibility is recognised. Is there a right of exit due to failure to pay dividends?
2. Is this possibility subject to prior supervisory approval? And are there are any cross references from the provisions of Articles of Associations, covering redemption of shares to Articles 77 and 78 of the CRR?
* Do the provisions governing the instruments indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution?
* Staple mechanism (as described in EBA CET1 report, paragraphs 85-87)
* Is there a maximum duration of the company with an extension possibility?
 | In the AoA article 6 (II) it is stated that:*3. In the event of a mandatory transfer of shares deriving from an enforcement procedure, the provisions of article 109 of TRLSC will be applicable, establishing in favour of the Company the preferential acquisition rights referred to in subparagraph 3 of the aforementioned article 109 of TRLSC, if not previously exercised by the shareholders.*1. *In the case of acquisition of shares on death, the regime provided for in article 110 of TRLSC will be applicable, establishing the preferential acquisition rights in favour of the surviving shareholders and, failing that, in favour of the Company, for the fair value thereof on the date of the shareholder’s death , insofar as said rights are exercised within a maximum period of three months from the date on which the acquisition by inheritance is communicated to the Company, and the cash price thereof is payed to the heirs or legatees. To determine the fair value of the shares, the rule applicable to cases of segregation will be applied, in accordance with article 353 et seq of TRLSC.*

To follow best practice it should be stated in the AoA that prior to company acquiring any of its own shares then a prior permission from the CA has to be obtained. If not it might create an implicit expectation and pressure on the company in order to buy back own shares fx in the case of death of shareholders. |  |  | No provisions found |
| 4.3 Loss absorption |  |  |  |  |
| * Are there different categories of shares with different nominal values?
* Are there equal or different proportions on residual assets in liquidation?
* What are the provisions in the national law regarding the distribution of residual assets where contributions to share capital have not been fully paid up or not in the same proportion for all shares of the same nominal value?
* Are there any provisions covering the instrument, either in the institution’s AoA or/and in the national law, that recognise the possibility to derogate from the proportional absorption of losses?
* Are there any provisions in the institution’s AoA providing for the possibility of issuing different types of instruments other than ordinary shares, such as, redeemable shares and preference shares? If yes, has the institution exercised this possibility and what is the CA’s assessment of these instruments, in particular, with regard to their ranking and interaction with the different layers of capital, CET1 especially?
 |  |  |  | All LLP shares have equal nominal value |
| 4.4 Flexibility of payments |  |  |  |  |
| * What are the provisions in the national law regarding the allocation of profits where contributions to share capital have not been fully paid up or not in the same proportion for all shares of the same nominal value?
 |  |  |  | All LLP shares are fully paid |
| Preference in the order of payments* Are there different shares?
* Is there an order for distribution payments?
 |  |  |  | All LLP shares are ordinary shares with the same rights |
| Distribution policies* Is there any distribution policy in the T&Cs?
* Is there any gross-up clause?
 |  |  |  | N/A |
| Reinstatement of voting rights to non-voting shares in the absence of dividends? |  |  |  | N/A |
| Covenants/side agreements/shareholders’ agreements* Are there any covenants/ side agreements/shareholders’ agreements? If YES, have they been analysed?
 |  |  |  | No |
| Minimum dividendsAre there any provisions, in the national corporate law and/or in the institution’s AoA, creating either an explicit or implicit obligation for the institution to pay minimum dividends to the holders of the instruments under specific circumstances? |  |  |  | No |
| * Are there any loyalty shares with increased dividends?
* Are there any loyalty shares with increased voting rights?
 |  |  |  | No |
| Any other observations made but not yet included in the report published in July 2019?* Rebates?
* Other?
 |  |  |  | No |

|  |  |
| --- | --- |
| **Article 79a CRR** | **Comment[[6]](#footnote-6)** |
| Institutions shall have regard to the substantial features of instruments and not only their legal form when assessing compliance with the requirements laid down in Part Two. The assessment of the substantial features of an instrument shall take into account all arrangements related to the instruments, even where those are not explicitly set out in the terms and conditions of the instruments themselves, for the purpose of determining that the combined economic effects of such arrangements are compliant with the objective of the relevant provisions. | LLP shares meets all the conditions set out in the article 28 of CRR so the instrument should be eligible as CET1 capital. |

1. Applicable (A); not applicable (NA) [↑](#footnote-ref-1)
2. Please specify the type of institution. If institutions within (v), please provide additional information according to that number. [↑](#footnote-ref-2)
3. Members should consider whether a) there are any provisions covering the instrument recognising the possibility of distributions being made in a form other than cash, and if yes whether b) the institution’s AoA include clear references to such distributions being subject to the competent authorities’ prior permission in accordance with Article 73(1) and subject to the conditions of Article 73(2) of the CRR. [↑](#footnote-ref-3)
4. The field is not relevant any more so columns have been marked in grey. [↑](#footnote-ref-4)
5. EBA CET1 monitoring report: <https://eba.europa.eu/sites/default/documents/files/documents/10180/2551996/51a39b9d-a68d-476a-b2c6-e2c21527a05f/EBA%20Report%20on%20the%20monitoring%20of%20CET1%20instruments%20issued%20by%20EU%20Institutions.pdf> [↑](#footnote-ref-5)
6. Having regard to the overall substance of the instrument/transaction please provide your final comment on the eligibility of the instrument as CET1 capital. [↑](#footnote-ref-6)