

**L.N. 491 of 2021****BANKING ACT  
(CAP. 371)****Administrative Penalties, Measures and Investigatory Powers  
(Amendment) Regulations, 2021**

IN EXERCISE of the powers conferred by article 3 of the Banking Act, the Minister for Finance and Employment, after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. (1) The title of these regulations is the Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations, 2021, and these regulations shall be read and construed as one with the Administrative Penalties, Measures and Investigatory Powers Regulations, hereinafter referred to as "the principal regulations".

Citation.

S.L. 371.05.

(2) These regulations shall come into force on such date as the Minister for Finance and Employment may, by notice in the Gazette establish and a different date or dates may be so established for different provisions of these regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) sub-regulation (1) thereof shall be amended as follows:

(i) in the definition "the CRD", for the words "and the prudential supervision of credit institutions and investment firms" there shall be substituted the words "and the prudential supervision of credit institutions"; and for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(ii) in the definition "the CRR", for the words "on prudential requirements for credit institutions and investment firms" there shall be substituted the words "on prudential requirements for credit institutions"; and for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures"; and

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(b) in sub-regulation (2) thereof, for the words "shall have the same meaning as in the Act." there shall be substituted the words "shall have the same meaning as in the Act:", and immediately thereafter there shall be added the following new provisos:

"Provided that, in accordance with article 2(1A) of the Act, for the purposes of applying the requirements and supervisory powers laid down in these regulations on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the terms "parent institution" and "parent undertaking" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1A) of the Act:

Provided further that, for the purposes of applying the requirements and supervisory powers laid down in regulations 4(3), 5(1)(a)(i), 6(i), 7(1), (2)(a), (2)(c) and (2)(d), 10(2)(b), (2)(d) and (3) on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the term "credit institution" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1B) of the Act."

Amends  
regulation 3 of  
the principal  
regulations.

**3.** In regulation 3 of the principal regulations, for the words "Banking Rules issued thereunder, and the CRR," there shall be substituted the words "Banking Rules issued thereunder, out of binding legal instruments issued under the CRD and out of the CRR,".

Amends  
regulation 4 of  
the principal  
regulations.

**4.** Regulation 4 of the principal regulations shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof, immediately after the words "Banking Rules issued thereunder," there shall be added the words "and, or any binding legal instruments issued under the CRD,"; and

(b) in sub-regulation (3) thereof, for the words "Banking Rules issued thereunder and the CRR," wherever they occur, there shall be added the words "Banking Rules issued thereunder, under any binding legal instruments issued under the CRD, and under the CRR,".

5. In sub-regulation (1) of regulation 5 of the principal regulations, for the words "in the CRD, and the CRR,", there shall be substituted the words "in the CRD, in any binding legal instruments issued under the CRD and in the CRR,".

Amends regulation 5 of the principal regulations.

6. Regulation 6 of the principal regulations shall be amended as follows:

Amends regulation 6 of the principal regulations.

(a) immediately after paragraph (a) thereof, there shall be added the following new paragraph:

"(aa) carrying out at least one of the activities referred to in point (1)(b) of Article 4(1) of the CRR and meeting the threshold indicated in that Article without obtaining a licence as a credit institution, in breach of article 6A of the Act;"

(b) immediately after paragraph (d) thereof, there shall be added the following new paragraph:

"(e) failing to apply for approval in breach of article 11B of the Act or any other breach of the requirements set out in that article,"; and

(c) for the words "the administrative penalties and other administrative measures which the administrative penalties" there shall be substituted the words "the administrative penalties".

7. Sub-regulation (1) of regulation 7 of the principal regulations shall be amended as follows:

Amends regulation 7 of the principal regulations.

(a) in paragraph (p) thereof, for the words "not complying with article 14(2) of the Act to become or remain a director." there shall be substituted the words "not complying with article 14(2) and (2A) of the Act to become or remain a director;" and

(b) immediately after paragraph (p) thereof, as amended, there shall be added the following new paragraph:

"(q) a parent institution, a parent financial holding company or a parent mixed financial holding company fails to take any action that may be required to ensure compliance with the prudential requirements set out in Part Three, Four, Six or Seven of the CRR or imposed under point (a) of Article 104(1) or Article 105 of the CRD on a consolidated or sub-consolidated basis."

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Amends  
regulation 8 of  
the principal  
regulations.

**8.** In sub-regulation (2) of regulation 8 of the principal regulations, for the words "of articles 7(1)(b), 7B(3), 14(2) and 14(3) of the Act" there shall be substituted the words "of articles 7(1)(b), 7B(3), and 14(2), (2A) and (3) of the Act".

Amends  
regulation 10 of  
the principal  
regulations.

**9.** In sub-regulation (1) of regulation 10 of the principal regulations, immediately after the words "and Banking Rules issued thereunder," there shall be added the words "of any binding legal instrument issued thereunder".

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