

L.N. 493 of 2021

**BANKING ACT
(CAP. 371)**

**Banking Act (Supervisory Review)
(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 Banking Act (Supervisory Review) (Amendment) Regulations, 2021, and these regulations shall be read and construed as one with the Banking Act (Supervisory Review) Regulations, hereinafter referred to as "the principal regulations".

Citation.

S.L. 371.16.

(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. In sub-regulation (2) of regulation 1 of the principal regulations, for the words "104, 105, 107 and 110 of the CRD" there shall be substituted the words "104, 104a, 104b, 104c, 105, 107, 110, 143 and 144 of the CRD".

Amends regulation 1 of the principal regulations.

3. 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 that may be made thereunder" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures that may be issued thereunder";

(ii) in the definition "the CRR", for the words "on

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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";

(iii) the definition "EU parent institution" shall be deleted;

(iv) the definition "parent institution in Malta" shall be deleted;

(v) immediately after the definition "internal approach" there shall be added the following new definitions:

" "Regulation (EU) 2017/2402" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;

"Resolution Committee" means the committee responsible for resolution, as established by the Malta Financial Services Authority Act;"; and

(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 two 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 "institution", "parent institution" and "EU parent institution" 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 3(1), (3), (4) and (5), 4, 5, 6, 7(1), (2), (4) and (5), 8, 9, 10, 13(2), 14, and 15(1), (2) 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."

4. Regulation 3 of the principal regulations shall be amended as follows:

Amends
regulation 3 of
the principal
regulations.

(a) in sub-regulation (1) thereof, for the words "Banking Rules issued thereunder, and the CRR" there shall be substituted the words "Banking Rules issued thereunder, with any binding legal instruments issued under the CRD and with the CRR,";

(b) in paragraph (a) of sub-regulation (1) thereof, for the words "or might be exposed;" there shall be substituted the words "or might be exposed; and";

(c) paragraph (b) of sub-regulation (1) thereof shall be deleted;

(d) in sub-regulation (2) thereof, for the words "Banking Rules issued thereunder, and the CRR." there shall be substituted the words "Banking Rules issued thereunder, of any binding legal instruments issued under the CRD and of the CRR.";

(e) in sub-regulation (4) thereof, for the words "referred to in regulation 5(2)." there shall be substituted the words "referred to in regulation 5(2)."; and immediately thereafter there shall be added the following new proviso:

"Provided that when conducting the review and evaluation referred to in sub-regulation (1), the competent authority shall apply the principle of proportionality in accordance with the criteria disclosed pursuant to regulation 17(1)(c).";

(f) immediately after the proviso to sub-regulation (4)

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thereof, as added, there shall be added the following new sub-regulation:

"(4A) The competent authority may tailor the methodologies for the application of the review and evaluation referred to in sub-regulation (1) to take into account credit institutions with a similar risk profile, such as similar business models or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, shall allow for due consideration of the specific risks that each credit institution may be exposed to, and shall not affect the institution-specific nature of measures imposed in accordance with regulation 9:

Provided that where the competent authority uses tailored methodologies pursuant to this sub-regulation, it shall notify the EBA.";

(g) in sub-regulation (5) thereof, for the words "the competent authority shall inform EBA" there shall be substituted the words "the competent authority shall inform the EBA"; and

(h) immediately after sub-regulation (5) thereof, there

shall be added the following new sub-regulation:

Cap. 373. "(6) Where a review, in particular the evaluation of governance arrangements, the business model, or the activities of a credit institution, gives the competent authority reasonable grounds to suspect that, in connection with that credit institution, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify the EBA and the Financial Intelligence Analysis Unit established in terms of the Prevention of Money Laundering Act. In the event of potential increased risk of money laundering or terrorist financing, the competent authority together with the Financial Intelligence Analysis Unit shall conduct a joint assessment. Such assessment shall be immediately notified to the EBA. The competent authority shall take, as appropriate and without prejudice to the power of other authorities to take any action or regulatory measures available to them under any other applicable law, measures in accordance with the Act and any regulations made and Banking Rules issued thereunder transposing the CRD and with any binding legal instruments issued under the CRD:

Provided that this sub-regulation shall be without prejudice to the obligations of the competent authority arising out of any other applicable legislation relating to the prevention of money laundering and the funding of terrorism."

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

Amends regulation 4 of the principal regulations.

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

(i) paragraph (h) thereof shall be substituted by the following:

"(h) the geographical location of credit

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institutions' exposures; and"

(ii) paragraph (i) thereof shall be substituted by the following:

"(i) the business model of the credit institution."; and

(iii) paragraph (j) thereof shall be deleted;

(b) sub-regulation (5) thereof shall be substituted by the following:

"(5) The review and evaluation performed by the competent authority shall include the exposure of credit institutions to the interest rate risk arising from non-trading book activities:

Provided that the supervisory powers shall be exercised at least in the following cases:

(a) where a credit institution's economic value of equity as referred to in Article 84(1) of the CRD declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates;

(b) where a credit institution's net interest income as referred to in Article 84(1) of the CRD experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates:

Provided further that, notwithstanding the first proviso to this sub-regulation, the competent authority shall not be obliged to exercise supervisory powers where it considers, based on the review and evaluation referred to in this sub-regulation, that the credit institution's management of interest rate risk arising from non-trading book activities is adequate and that the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities."; and

(c) immediately after sub-regulation (5) thereof, as substituted, there shall be added the following new sub-

regulation:

"(5A) For the purposes of sub-regulation (5), the term "supervisory powers" means the powers referred to in regulation 9(1) or the power to specify modelling and parametric assumptions, other than those identified by the EBA pursuant to point (b) of paragraph 5a of Article 98 of the CRD, to be reflected by credit institutions in their calculation of the economic value of equity under Article 84(1) of the CRD."

6. Sub-regulation (2) of regulation 5 of the principal regulations shall be amended as follows: Amends regulation 5 of the principal regulations.

(a) in paragraph (a) thereof, for the words "transposing the requirements of the CRD, and of the CRR;" there shall be substituted the words "transposing the requirements of the CRD, of any binding legal instruments issued under the CRD and of the CRR; and"; and

(b) paragraph (b) thereof shall be deleted.

7. Regulation 8 of the principal regulations shall be deleted. Deletion of regulation 8 of the principal regulations.

8. Regulation 9 of the principal regulations shall be amended as follows: Amends regulation 9 of the principal regulations.

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

(i) for the words "For the purposes of regulations 3, 4(4), 7(4), 8 and article 17E of the Act" there shall be substituted the words "For the purposes of regulations 3, 4(4) and (5), and 7(4), and article 17E of the Act";

(ii) paragraph (a) thereof shall be substituted by the following:

"(a) to require credit institutions to have additional own funds in excess of the requirements set out in the CRR, under the conditions set out in regulation 9A;";

(iii) in paragraph (c) thereof, for the words "to present a plan" there shall be substituted the words "to submit a plan"; and for the words "Banking Rules issued thereunder, and to the CRR", there shall be substituted the

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words "Banking Rules issued thereunder, with any binding legal instruments issued under the CRD and with the CRR";

(iv) in paragraph (e) thereof, for the words "of a credit institution" there shall be substituted the words "of the credit institution";

(v) in paragraph (f) thereof, immediately after the words "of credit institutions" there shall be added the words ", including outsourced activities";

(vi) paragraph (j) thereof shall be substituted by the following:

"(j) to impose additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage;"

(b) sub-regulation (2) thereof shall be substituted by the following:

"(2) For the purposes of sub-regulation (1)(j), the competent authority shall only impose additional or more frequent reporting requirements on credit institutions where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative:

Provided that, for the purposes of article 17E of the Act, and regulations 3 to 7, any additional information that may be required from credit institutions shall be deemed as duplicative where the same or substantially the same information has already been otherwise reported to the competent authority or may be produced by the competent authority:

Provided further that credit institutions shall not be required to report additional information where the competent authority has previously received it in a different format or level of granularity and that different format or granularity does not prevent the competent authority from producing information of the same quality and reliability as that produced on the basis of the additional information that would be otherwise reported.";

and

(c) sub-regulation (3) thereof shall be deleted.

9. Immediately after regulation 9 of the principal regulations, as amended, there shall be added the following new regulations:

Adds new regulations to the principal regulations.

"Additional own funds requirement.

9A. (1) The additional own funds requirement referred to in regulation 9(1)(a) shall be imposed by the competent authority where, on the basis of the reviews carried out in accordance with regulations 3 and 7, it determines any of the following situations for an individual credit institution:

(a) the credit institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, as specified in sub-regulation (2), by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402;

(b) the credit institution does not meet the requirements set out in articles 17B and 17C of the Act or in Article 393 of the CRR and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate time-frame;

(c) the adjustments referred to in regulation 4(4) are deemed to be insufficient to enable the credit institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

(d) the evaluation carried out in accordance with regulation 7(4) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;

(e) the credit institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with regulation 9B(3);

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(f) other institution-specific situations deemed by the competent authority to raise material supervisory concerns:

Provided that the competent authority shall only impose the additional own funds requirement referred to in regulation 9(1)(a) to cover the risks incurred by individual credit institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual credit institution.

(2) For the purposes of sub-regulation (1)(a), risks or elements of risk shall only be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402 where the amounts, types and distribution of capital considered adequate by the competent authority, taking into account the supervisory review of the assessment carried out by credit institutions in accordance with article 17C of the Act, are higher than the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402.

(3) For the purposes of sub-regulation (2), the competent authority shall assess, taking into account the risk profile of each individual credit institution, the risks to which the credit institution is exposed, including:

(a) institution-specific risks or elements of such risks that are explicitly excluded from or not explicitly addressed by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402;

(b) institution-specific risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that, to the extent that risks or elements of risk are subject to transitional arrangements or grandfathering provisions laid down in the Act and any regulations made and Banking Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD or in the CRR, they shall not be considered risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402.

(4) For the purposes of sub-regulation (2), the capital considered adequate shall cover all risks or elements of risks identified as material pursuant to the assessment laid down in sub-regulation (3) that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that interest rate risk arising from non-trading book positions may be considered material at least in the cases referred to in regulation 4(5), unless the competent authority, in performing the review and evaluation, comes to the conclusion that the credit institution's management of interest rate risk arising from non-trading book activities is adequate and that the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities.

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(5) Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, the competent authority shall determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate pursuant to sub-regulations (2) to (4) and the relevant own funds requirements set out in Parts Three and Four of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that where additional own funds are required to address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, the competent authority shall determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate pursuant to sub-regulations (2) to (4) and the relevant own funds requirements set out in Parts Three and Seven of the CRR.

(6) The credit institution shall meet the additional own funds requirement imposed by the competent authority under regulation 9(1)(a) to address risks other than the risk of excessive leverage with own funds that satisfy the following conditions:

(a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital;

(b) at least three quarters of the Tier 1 capital referred to in paragraph (a) shall be composed of Common Equity Tier 1 capital.

(7) The credit institution shall meet the additional own funds requirement imposed by the competent authority under regulation 9(1)(a) to address the risk of excessive leverage with Tier 1 capital.

(8) By way of derogation from sub-regulations (6) and (7), the competent authority may require the credit institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, where necessary, and having regard to the specific circumstances of the credit institution.

(9) Own funds that are used to meet the additional own funds requirement referred to in regulation 9(1)(a) imposed by the competent authority to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

(a) own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR;

(b) the combined buffer requirement;

(c) the guidance on additional own funds referred to in regulation 9B(3) where that guidance addresses risks other than the risk of excessive leverage.

(10) Own funds that are used to meet the additional own funds requirement referred to in regulation 9(1)(a) imposed by the competent authority to address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR shall not be used to meet any of the following:

(a) the own funds requirement set out in point (d) of Article 92(1) of the CRR;

(b) the leverage ratio buffer requirement referred to in Article 92(1a) of the CRR;

(c) the guidance on additional own funds referred to in regulation 9B(3), where that guidance addresses risks of excessive leverage.

(11) The competent authority shall duly justify in writing to the credit institution the decision to impose an additional own funds requirement under regulation 9(1)(a), at least by giving a clear account of the full assessment of the elements referred to in sub-regulations (1) to (10). That justification shall include, in the case set out in sub-regulation (1)(e), a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

Guidance on
additional
own funds.

9B. (1) Pursuant to the strategies and processes referred to in article 17C of the Act, credit institutions shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks that a credit institution is exposed to and to ensure that the credit institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in regulation 6.

(2) The competent authority shall regularly review the level of the internal capital set by the credit institution in accordance with sub-regulation (1) as part of the reviews and evaluations performed in accordance with regulations 3 and 7, including the results of the stress tests referred to in regulation 6. Pursuant to that review, the competent authority shall determine for the credit institution the overall level of own funds it considers appropriate.

(3) The competent authority shall communicate its guidance on additional own funds to the credit institution. The guidance on additional own funds shall be the own funds exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of the CRR, Chapter 2 of Regulation (EU) 2017/2402, regulation 9(1)(a) and Article 128(6) of the CRD or pursuant to Article 92(1a) of the CRR, as relevant, which are needed to reach the overall level of own funds considered appropriate by the competent authority pursuant to sub-regulation (2).

(4) The competent authority's guidance on additional own funds pursuant to sub-regulation (3) shall be institution-specific. The guidance may cover risks addressed by the additional own funds requirement imposed pursuant to regulation 9(1)(a) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

(5) Own funds that are used to meet the guidance on additional own funds communicated in accordance with sub-regulation (3) to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

(a) the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR;

(b) the requirement laid down in regulation 9A imposed by the competent authority to address risks other than the risk of excessive leverage and the combined buffer requirement:

Provided that own funds that are used to meet the guidance on additional own funds communicated in accordance with sub-regulation (3) to address the risk of excessive leverage shall not be used to meet the own funds requirement set out in point (d) of Article 92(1) of the CRR, the requirement laid down in regulation 9A imposed by the competent authority to address the risk of excessive leverage and the leverage ratio buffer requirement referred to in Article 92(1a) of the CRR.

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(6) The failure to meet the guidance referred to in sub-regulation (3) where a credit institution meets the relevant own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402, the relevant additional own funds requirement referred to in regulation 9(1)(a) and, as relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 92(1a) of the CRR shall not trigger the restrictions referred to in Article 141 or 141b of the CRD.

Cooperation
with
Resolution
Committee.

9C. The competent authority shall notify the Resolution Committee of the additional own funds requirement imposed on credit institutions pursuant to regulation 9(1)(a) and of any guidance on additional own funds communicated to credit institutions in accordance with regulation 9B(3)."

Amends
regulation 10 of
the principal
regulations.

10. Sub-regulation (1) of regulation 10 of the principal regulations shall be amended as follows:

(a) in paragraph (c) thereof, for the words "in accordance with regulation 3;" there shall be substituted the words "in accordance with regulation 3."; and

(b) paragraph (d) thereof shall be deleted.

Amends
regulation 13 of
the principal
regulations.

11. Sub-regulation (1) of regulation 13 of the principal regulations shall be substituted by the following:

"(1) The competent authority shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h), (i) and (k) of Article 450(1) of the CRR as well as the information provided by credit institutions on the gender pay gap and shall use that information to benchmark remuneration trends and practices. The competent authority shall provide the EBA with such information."

Amends
regulation 17 of
the principal
regulations.

12. In paragraph (c) of sub-regulation (1) of regulation 17 of the principal regulations, immediately after the words "referred to in regulation 3" there shall be added the words "including the criteria for applying the principle of proportionality as referred to in regulation 3(4)".