No. 1653

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Note - Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations, 2021

1. Introduction

The title of these regulations is the *Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations*, 2021 (the 'Regulations'). These Regulations amend the Administrative Penalties, Measures and Investigatory Powers Regulations (S.L. 371.05) in order to align the latter Regulations with amendments introduced by Directive (EU) 2019/878 (the 'CRDV') to Directive (EU) 2013/36/EU (the 'CRD'), which relates to access to the activity of credit institutions and the prudential supervision of credit institutions.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority, which is the competent authority for the purposes of the Banking Act.

2. Summary and background

The objective of these Regulations is to transpose the changes introduced by Directive (EU) 2019/878 (the 'CRD V') and by Directive (EU) 2019/2034 (the 'IFD') to the CRD, by amending the already existing Administrative Penalties, Measures and Investigatory Powers Regulations, S.L. 371.05 (the 'principal regulations'). It shall be noted that Member States are obliged to transpose any amendments made to the CRD into national law in order for these to have a legal effect.

The provisions of the CRD V and the IFD being transposed through these Regulations relate specifically to the extension of the Authority's power to impose an administrative penalty or measures against specific companies forming part of banking groups, which have been given direct responsibilities at law through the CRD V, where these are in breach of certain requirements. The Authority's power is further extended to the taking of administrative action against a new category of credit institutions as introduced by the IFD, which were previously regulated under the Investment Services Act (Cap. 370 of the Laws of Malta).

These Regulations should be read together with the principal regulations and interpreted as one.

3. Overview of the structure of the instrument

The Regulations are made up of 9 regulations consisting mainly of the following:

Regulation 1 establishes the title of the Regulations and the manner in which they will come into force. Regulation 2 amends certain terms found in regulation 2(1) of the principal regulations, to reflect the amendments introduced by the IFD in the titles of the CRD and Regulation (EU) No 575/2013 (the 'CRR'). Furthermore, regulation 2 introduces amendments transposing the provisions of the CRD V in relation to the inclusion of other entities within the scope of the CRD requirements.

Regulation 6(a) of the Regulations transposes the IFD's amendments to Article 66(1) of the CRD. Such changes relate to the new licensing requirement imposed on a new category of credit institutions which were previously considered to be investment firms and which meet certain criteria as stipulated. The principal regulations empower the Authority to impose administrative penalties and measures on credit institutions. In view of the IFD's amendments to extend the definition of 'credit institutions' to entities previously considered as investment firms, paragraph (aa) has been added to regulation 6 of the principal regulations, to specify that such power of the Authority also applies in relation to this new category of credit institutions which fail to comply with the licensing requirements of article 6A of the Banking Act.

Regulation 6(b) of the Regulations transposes the amendments made to Article 66(1) of the CRD. This amendment is made pursuant to the introduction of the new approval regime with respect to mixed financial holding companies and

financial holding companies through Article 21a of the CRD, introduced by the CRD V and transposed in article 11B of the Banking Act. The principal regulations empower the Authority to take administrative action by imposing penalties or measures on mixed financial holding companies and financial holding companies, however paragraph (e) has been added to regulation 6 of the principal regulations to further specify the Authority's power to take administrative action against such companies in case of a breach of the relevant requirements.

4. Commentary on parts and articles

Regulation 2 introduces two new provisos to regulation 2(2) of the principal regulations. These two provisos are introduced as a result of the new article 2(1A) and article 2(1B) being introduced to the Banking Act as a result of the transposition of Article 3(3) of the CRD. The said provisos extend the definition of the terms "parent institution", "parent undertaking" and "credit institution" to include:

(i) financial holding companies and mixed financial holding companies approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD;

(ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and

(iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or article 21a(6)(d) of the CRD.

Regulation 6 is amended to include a new paragraph (aa) as a result of the introduction of article 6A in the Banking Act, which transposes the relevant provision of Article 62 of the IFD. As mentioned above, this introduces a licensing requirement on a new category of credit institutions which includes entities previously licensed as investment firms. With the new requirements, investment firms which meet the criteria set out in article 6A of the Banking Act are now required to apply for a licence as credit institutions and therefore will have obligations applicable to credit institutions.

In this regard, the new paragraph (aa) added to regulation 6 of the principal regulations extends the Authority's power to issue administrative penalties and other administrative measures to those undertakings which, despite meeting the criteria set out in article 6A of the Banking Act, fail to apply for a licence as indicated in the same article.

Regulation 6 also introduces a new paragraph (e) as a result of the inclusion of article 11B in the Banking Act which transposes Article 21a of the CRD, as mentioned above. The new paragraph (e) of regulation 6 of the principal regulations extends the Authority's power to issue administrative penalties and other administrative measures to financial holding companies and missed financial holding companies which breach the requirements of article 11B of the Banking Act. Additional requirements have now been imposed on such companies as these are now responsible for ensuring compliance of the banking group with the applicable regulatory and legislative requirements. The CRD V provisions transposed in these Regulations therefore extend the Authority's existing power over mixed financial holding companies and financial holding companies to also cover breaches of the requirements of the new article 11B of the Banking Act by such companies.

Regulation 7 introduces a new paragraph (q) in regulation 7(1) of the principal regulations, as a result of the transposition of Article 67(1)(q) of the CRD. The new paragraph (q) extends the Authority's power to issue an administrative penalty or an administrative measure to a parent institution, a parent financial holding company or a parent mixed financial holding company which fails to ensure compliance with the prudential requirements set out in the specific provisions of the CRR and the CRD.

5. Concluding Section

These Regulations will enter into force on such date as may be announced by the Minister for Finance and Employment by virtue of a notice published in the Gazette and different dates may be stipulated for different provisions of the Regulations.

Should more information be required on these Regulations, the Malta Financial Services Authority is to be contacted on +356 21441155.

N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of:

Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; and

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

Transposing Regulations Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations, 2021	**Directive Article number (where applicable)**
Regulation 2(a)	Article 62(1) of Directive (EU) 2019/2034
Regulation 2(b)	Article 1(2)(b) of Directive (EU) 2019/878
Regulation 3	Ancillary amendment introduced in the Regulations to enhance the legal certainty and clarity of such provision
Regulation 4	*idem*
Regulation 4	*idem*
Regulation 6(a)	Article 62(13) of Directive (EU) 2019/2034
Regulation 6(b)	Article 1(17) of Directive (EU) 2019/878
Regulation 6(c)	Ancillary amendment correcting linguistic error
Regulation 7(a)	Amendment incidental to renumbering of the provisions in the Banking Act (Cap. 371)
Regulation 7(b)	Article 1(18) of Directive (EU) 2019/878
Regulation 8	Amendment incidental to renumbering of provisions in the Banking Act (Cap. 371)
Regulation 9	Ancillary amendment introduced to enhance the legal certainty and clarity of such provision

The amendments introduced to these Regulations constitute the partial transposition of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU. Other provisions of such Directives that are not transposed in these Regulations are or will be transposed in other legislative instruments.

User Guidelines - Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations, 2021

The *Administrative Penalties, Measures and Investigatory Powers (Amendment) Regulations*, 2021 (the 'Regulations') are being introduced to effect changes to the already existing Administrative Penalties, Measures and Investigatory Powers Regulations in order to transpose the amendments made to the provisions of Directive (EU) 2013/36/EU (the 'CRD') by virtue of Directive (EU) 2019/878 (the 'CRD V') and Directive (EU) 2019/2034 (the 'IFD') respectively. These User Guidelines are addressed to credit institutions licensed under the Banking Act (Cap. 371 of the Laws of Malta) and other entities forming part of a banking group.

The objective of these Regulations is to transpose the above-mentioned amendments to the CRD which regulate the Malta Financial Services Authority's (the 'MFSA' or the 'Authority') powers with respect to the imposition of an administrative penalty or measure and the taking of administrative actions. In view of the fact that these Regulations regulate the Authority's powers as indicated above, the said Regulations impose obligations on the MFSA in regard to the exercise of such powers. Additionally, the Regulations extend the exercise of such powers in line with the changes introduced by CRD V and IFD.

The Regulations in Regulation 2(2) introduce two new provisos pursuant to the new article 2(1A) and article 2(1B) being introduced to the Banking Act which transpose Article 3(3) of the CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institutions within the direct scope of supervision by the MFSA for such companies to ensure compliance of the banking group with the requirements on a consolidated basis.

As a result, the said provisos specify that the terms "parent institution", "parent undertaking" and "credit institution" shall include:

(i) financial holding companies and mixed financial holding companies approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD;

(ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and

(iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or article 21a(6)(d) of the CRD.

The Regulations introduce paragraph (aa) to Regulation 6 which extends the MFSA's powers to impose administrative penalties and other administrative measures on those large investment firms which satisfy the criteria set out under Article 6A and which fail to apply for a licence under the said article. Paragraph (e) of Regulation 6 further extends such power of the Authority to financial holding companies and mixed financial holding companies which fail to seek approval and fail to comply with the requirements of article 11B of the Banking Act. Also, paragraph (p) of Regulation 7 extends the Authority's power to issue an administrative penalty or an administrative measure to a parent institution, a parent financial holding company or a parent mixed financial holding company which fails to ensure compliance with the prudential requirements in terms of the relevant legal framework.

Credit institutions and entities forming part of a banking group shall therefore take into consideration the amendments being introduced to the Regulations as outlined above since these will impact the Authority's powers to impose an administrative penalty or measure and to take administrative actions which have been extended to financial holding companies and mixed financial holding companies.

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries with respect to these Regulations, the MFSA may be contacted on (communications@mfsa.mt) or +356 21441155.

24th December, 2021

No. 1654

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Note – European Passport Rights for Credit Institutions (Amendment) Regulations, 2021

1. Introduction

The title of these regulations is the *European Passport Rights for Credit Institutions (Amendment) Regulations*, 2021 (hereinafter referred to as the 'Regulations'). These regulations amend the European Passport Rights for Credit Institutions Regulations (S.L. 371.11) in order to align the latter Regulations with amendments introduced by Directive (EU) 2019/878 (the 'CRDV') to Directive (EU) 2013/36/EU (the 'CRD'), which relates to access to the activity of credit institutions and the prudential supervision of credit institutions.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority, which is the competent authority for the purposes of the Banking Act.

2. Summary and background

The objective of these Regulations is to transpose the relevant changes introduced by Directive (EU) 2019/878 (the 'CRD V') to Directive (EU) 2013/36/EU (the 'CRD'), therefore amending the relevant provisions of the already existing European Passport Rights for Credit Institutions Regulations (the 'principal regulations') which relate to the exercise of European passport rights by European credit institutions. It shall be noted that Member States are obliged to transpose any amendments made to the CRD into national law in order for these to have a legal effect.

The exercise of a European passport right entails the entitlement of a person to establish a branch or provide a service in another Member State other than where it has its head office. Such exercise is subject to the relevant legal requirements.

These Regulations should be read together with the principal regulations and interpreted as one.

3. Overview of the structure of the instrument

The Regulations are made up of 7 regulations consisting mainly of the following:

Regulation 1 establishes the title of the Regulations and the manner in which they will come into force.

Regulation 2 amends various terms defined under regulation 2(1) and introduces two provisos to regulation 2(2) of the principal regulations, to be in line with amendments introduced by CRD V in relation to the inclusion of other entities within the scope of the CRD requirements.

Regulation 5 of the principal regulations has been amended to update the reference laid down therein with respect to MiFID. Various provisions of regulation 14 and regulation 15 respectively are amended to specify the requirement to comply with any binding instruments issued under the CRD.

Regulation 17 of the principal regulations has been amended to update, *inter alia*, the definition of the term 'company', by the introduction of the newly introduced sub-regulation (9). Furthermore, sub-regulation (7) of regulation 17 of the principal Regulations is being amended to transpose Article 62(3)(c) of Directive 2019/2034 (the 'IFD'), reflecting the amendments to the list of entities to be treated as financial institutions. Such list has been amended in order to remove reference to the activities of investment firms.

The Regulations also amend paragraph 4 of the Schedule to the principal regulations in so far as the definition of "payment services" is concerned, to update the reference laid down therein to Directive (EU) 2015/2366 (the PSD 2).

4. Commentary on parts and articles

Two provisos are introduced to regulation 2(2) of the principal regulations. These provisos are being introduced as a result of the new article 2(1A) of the Banking Act, transposing Article 3(3) of the CRD. The aim of this provision is to

bring financial holding companies and mixed financial holding companies which are parents of credit institutions under the direct scope of supervision by the Authority in order for such companies to ensure compliance of the banking group with requirements on a consolidated basis.

Further to the above, the first proviso to regulation 2(2) stipulates that in line with Article 2(1A) of the Banking Act, the term "parent undertaking" also includes: (i) financial holding companies and mixed financial holding companies approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD; (ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and (iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or article 21a(6)(d) of the CRD.

The second proviso to regulation 2(2) further provides that the definition of "credit institution" for the purposes of the specific regulations outlined in the same proviso shall also include the entities listed in article 2(1B) of the Banking Act, which are the same as the ones described above with respect to the term "parent undertaking".

5. Concluding section

These Regulations shall come into force on such date as may be published by the Minister for Finance and Employment in the Gazette and different dates may be stipulated for different provisions of the Regulations.

Should more information be required on these Regulations, the Malta Financial Services Authority is to be contacted on +356 21441155.

N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of:

Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

Transposing Regulations European Passport Rights for Credit Institutions (Amendment) Regulations, 2021	**Directive Article number (where applicable)**
Regulation 2(a)(i), (ii)	Article 62(1) of Directive (EU) 2019/2034
Regulation 2(a)(iii)	Ancillary amendment deleting terminology that is not utilised in the provisions of the Regulations
Regulation 2(b)	Article 1(2)(b) of Directive (EU) 2019/878
Regulation 3	Ancillary amendment introduced to update the legal references made within such provision
Regulation 4	Ancillary amendment introduced to enhance the legal certainty and clarity of such provision
Regulation 5	*idem*

Regulation 6(a)	Ancillary amendment which is incidental to the introduction of a new sub-regulation in Regulation 6(c) of these Regulations
Regulation 6(b)	Article 62(3)(c)(1) of Directive (EU) 2019/2034
Regulation 6(c)	Amendment incidental to the amendment introduced in Article 1(2)(a)(ii) of Regulation (EU) 2019/876
Regulation 7	Ancillary amendment introduced to update the legal references made within such provision

The amendments introduced by these Regulations constitute the partial transposition of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU. Other provisions of such Directives that are not transposed in these Regulations are or will be transposed in other legislative instruments.

User Guidelines - European Passport Rights for Credit Institutions (Amendment) Regulations, 2021

The *European Passport Rights for Credit Institutions (Amendment) Regulations*, 2021 (the 'Regulations') are introduced to amend the already existing European Passport Rights for Credit Institutions Regulations (S.L. 371.11) in order to transpose changes that have been introduced by Directive (EU) 2019/878 (the 'CRD V') to Directive (EU) 2013/36/EU (the 'CRD') with respect to the exercise of European passport rights by European credit institutions. These User Guidelines are intended for credit institutions licensed in terms of the Banking Act (Cap.371 of the Laws of Malta) and provide a brief overview of the European Passport Rights for Credit Institutions (Amendment) Regulations.

These Regulations are addressed to credit institutions licensed in terms of the Banking Act seeking to establish a branch or provide services in another Member State in exercise of their European passport rights. These are also addressed to credit institutions authorised in another Member State which seek to establish a branch or provide services in Malta.

In transposing the relevant provisions of the CRD V, the Regulations amend certain definitions provided under regulation 2(1) and introduces two new provisos under regulation 2(2). These two provisos widen the definition of "parent undertaking" and "credit institutions" for the purposes of the Regulations in line with article 2(1A) and article 2(1B) of the Banking Act respectively, which are introduced to the Banking Act pursuant to article 3(3) of CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institutions within the direct scope of supervision by the Malta Financial Services Authority (the 'MFSA' or 'Authority') for such companies to ensure compliance of the banking group with the requirements on a consolidated basis.

In order to bring such financial holding companies and mixed financial holding companies under the purview of the Authority, the definitions of "parent undertaking" and "credit institutions" were extended respectively in the two provisos to regulation 2(1) to include:

(i) financial holding companies and mixed financial holding companies approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD;

(ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and

(iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or article 21a(6)(d) of the CRD

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries in relation to the Regulations, the MFSA may be contacted on (communications@mfsa.mt) or +356 21441155.

24th December, 2021

No. 1655

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Note – Banking Act (Supervisory Review) (Amendment) Regulations, 2021

1. Introduction

The title of these Regulations is the *Banking Act (Supervisory Review) (Amendment) Regulations, 2021* (hereinafter referred to as 'the Regulations'). These Regulations amend the Banking Act (Supervisory Review) Regulations (S.L. 371.16) in order to align the latter Regulations with amendments introduced by Directive (EU) 2019/878 (the 'CRDV') to Directive (EU) 2013/36/EU (the 'CRD'), which relates to access to the activity of credit institutions and the prudential supervision of credit institutions.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority, which is the competent authority for the purposes of the Banking Act.

2. Summary and background

These principal Regulations transpose provisions of the CRD on the supervisory review and evaluation of credit institutions, which is a process conducted by competent authorities. In view of amendments brought into effect to such provisions of the CRD by the CRDV, the relevant provisions of the principal Regulations are also being amended to reflect such changes and transpose the CRDV. It shall be noted that Member States are obliged to transpose any amendments made to the CRD into national law in order for these to have a legal effect.

The principal Regulations stipulate the process which is undertaken by the Authority as the supervisor of credit institutions in reviewing and evaluating the compliance by such credit institutions with the applicable regulatory requirements. The MFSA therefore evaluates, in accordance with the principal Regulations transposing the CRD, risks to which credit institutions are or might be exposed, including credit risk, market risk and liquidity risk, the policies and procedures implemented by credit institutions and the internal governance arrangements and mechanisms, amongst others.

These Regulations should be read together with the principal regulations and interpreted as one.

3. Overview of the structure of the instrument

The Regulations are made up of 11 regulations, consisting mainly of the following:

Regulation 1 establishes the title of the Regulations and the manner in which they will come into force.

Regulation 3 amends various terms defined under regulation 2(1) and introduces two provisos to regulation 2(2) of the principal regulations, to be in line with changes introduced by CRDV in relation to the inclusion of other entities within the scope of the CRD requirements. Furthermore, certain provisions throughout the principal Regulations are amended to specify the requirement to comply with any binding instruments issued under the CRD.

Regulation 3 of the principal regulations is being amended by regulation 4 of the regulations, in order to transpose Article 97(4a) of the CRD, as introduced by the CRD V, allowing the MFSA to tailor methodologies applied in the supervisory review process to take into account credit institutions with similar risk profiles. Consequently, regulation 8 is being deleted, since this currently provides for the application of the supervisory review to credit institutions with similar risk profiles and transposes Article 103 of the CRD, which is also being deleted pursuant to the CRD V amendments.

A further amendment is made to regulation 3 of the principal regulations in order to require the MFSA to notify the Financial Intelligence Analysis Unit (FIAU) and the European Banking Authority (EBA) where a supervisory review leads the MFSA to suspect that money laundering or terrorist financing is being attempted or has been committed with respect to a credit institution which is subject to the supervisory review process. This provision transposes Article 97(6) of the CRD.

In view of amendments to Article 104 of the CRD, amendments are being proposed to regulation 9 of the principal regulations. This is proposed to be amended to clarify the manner in which the MFSA may impose additional or more frequent reporting requirements pursuant to the supervisory review and evaluation process. Regulation 9 of the principal regulations is being amended by regulation 8 of the Regulations.

Moreover, a new provision, regulation 9A, is being introduced with the aim of transposing Article 104a of the CRD which relates to the additional own funds requirement imposed by the MFSA on credit institutions.

Article 104b of the CRD is being transposed by means of the introduction of Regulation 9B to the principal Regulations, to set out the Authority's requirement to review the level of internal capital set by credit institutions and communicate its guidance on additional own funds to such institutions.

Finally, regulation 9C is being introduced to transpose Article 104c of the CRD and to provide for the Authority's obligation to notify the Resolution Committee of the additional own funds requirement and the guidance on additional own funds.

Regulations 9A, 9B and 9C are added by regulation 9 of the Regulations.

4. Commentary on parts and articles

The changes include the introduction of two provisos to regulation 2(2) of the principal Regulations. These provisos are introduced as a result of the new article 2(1A) being introduced to the Banking Act, which transposes Article 3(3) of the CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institution under the direct scope of supervision by the Authority in order for such companies to ensure compliance of the banking group with requirements on a consolidated basis.

Further to the above, regulation 3(b) of the proposed Regulations specify that the terms "institution, "parent institution" and "EU parent institution" also include: (i) financial holding companies and mixed financial holding companies which are approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD; (ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and (iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or Article 21a(6)(d) of the CRD.

Regulation 3 is being amended in order to transpose Article 97(4a) of the CRD, as introduced by the CRD V, allowing the Authority to tailor methodologies applied in the supervisory review process by taking into account credit institutions with similar risk profiles.

An amendment is introduced in regulation 4(5) of the principal Regulations to specify the situations within which the MFSA shall exercise supervisory powers. These situations include where a credit institution's value of equity and net interest income decline to a specified amount as a result of a sudden and unexpected changes in interest rates. In such cases, credit institutions may therefore be subject to the exercise of supervisory powers by the MFSA.

In transposing the amendments introduced by the CRDV to Article 104 of the CRD, regulation 9 of the principal Regulations stipulating the MFSA's supervisory powers pursuant to the supervisory review and evaluation process is also being amended. Paragraph (j) thereof is amended to empower the MFSA to impose additional reporting requirements including reporting which is specifically related to own funds. Sub-regulation 2 of regulation 9 specifies that such power is to be imposed by the MFSA in a proportionate manner.

Regulation 9A is also introduced with the aim of transposing Article 104a of the CRD which relates to the additional own funds requirement. This provision specifies the situations in which the Authority is obliged to impose upon credit institutions a requirement to hold additional own funds and specifies the composition of the additional own funds requirement. Therefore, this stipulates the scenarios where credit institutions will be subjected to this requirement to hold additional own funds, and the manner in which credit institutions are to meet such requirement. In this respect, this regulation provides for the capital which shall be used by credit institutions for this requirement to be met in line with the CRD V amendments.

Article 104b of the CRD, introduced by the CRDV amendments, is being transposed in Regulation 9B of these Regulations to set out the requirement of credit institutions to set their internal capital to cover risks that they are exposed to. This regulation also stipulates the Authority's requirement to review the level of internal capital set by credit institutions and communicate its guidance on additional own funds to such institutions. The guidance on additional own funds shall be the own funds in excess of the applicable own funds requirement, which is needed for the credit institution in question to reach the overall level of own funds considered appropriate by the MFSA.

Credit institutions are also being required to submit to the MFSA information on the gender pay gap in order for the Authority to assess the remuneration trends and practices across credit institutions. This is introduced in regulation 13(1) of the principal Regulations and is in line with the CRDV amendments.

5. Concluding Section

These Regulations shall come into force on such date as may be published by the Minister for Finance and Employment in the Gazette and different dates may be stipulated for different provisions of the Regulations.

Should more information be required on these Regulations, the Malta Financial Services Authority is to be contacted on +356 21441155.

N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of:

Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

Transposing Regulations Banking Act (Supervisory Review) (Amendment) Regulations, 2021	**Directive and Article number (where applicable)**
Regulation 2	Article 2(1) of Directive (EU) 2019/2034, Article 67(1) of Directive (EU) 2019/2034
Regulation 3(a)(i), (ii)	Article 62(1) of Directive (EU) 2019/2034
Regulation 3(a)(iii)(iv)	Ancillary amendment deleting terminology that is no longer utilised in the revised provisions of the Regulations
Regulation 3(a)(v)	Article (1)(2)(a) of Directive (EU) 2019/878 and amendment incidental to the transposition of Article 1(33) of Directive (EU) 2019/878
Regulation 3(b)	Article 1(2)(b) of Directive (EU) 2019/878
Regulation 4(a)	Ancillary amendment introduced to enhance the legal certainty and clarity of such provision
Regulation 4(b)	Amendment incidental to the transposition of Article 1(28)(a) of Directive (EU) 2019/878

Regulation 4(c)	Article 1(28)(a) of Directive (EU) 2019/878
Regulation 4(d)	Ancillary amendment introduced to enhance the legal certainty and clarity of such provision
Regulation 4(e)	Article 1(28)(b) of Directive (EU) 2019/878
Regulation 4(f)	Article 1(28)(c) of Directive (EU) 2019/878
Regulation 4(g)	Ancillary amendment introduced by way of linguistic clarification
Regulation 4(h)	Article 1(28)(d) of Directive (EU) 2019/878
Regulation 5(a)(i)	Amendment incidental to the transposition of Article 1(29)(a) of Directive (EU) 2019/878
Regulation 5(a)(ii)	Amendment incidental to the transposition of Article 1(29)(a) of Directive (EU) 2019/878
Regulation 5(a)(iii)	Article 1(29)(a) of Directive (EU) 2019/878
Regulation 5(b)	First, second and third sub-paragraphs of Article 1(28)(b) of Directive (EU) 2019/878
Regulation 5(c)	Fourth sub-paragraph of Article 1(28)(b) of Directive (EU) 2019/878
Regulation 6(a)	Ancillary amendment introduced to enhance the legal certainty and clarity of such provisiontice
Regulation 6(b)	Article 1(30) of Directive (EU) 2019/878
Regulation 7	Article 1(31) of Directive (EU) 2019/878
Regulation 8(a)	Article 1(32)(a) of Directive 2019/878
Regulation 8(b)	Article 1(32)(a) of Directive 2019/878
Regulation 8(c)	Article 1(32)(b) of Directive 2019/878
Regulation 9	Article 1(33) of Directive 2019/878
Regulation 10(a)	Amendment ancillary to the transposition of Article 1(34) of Directive 2019/878
Regulation 10(b)	Article 1(34) of Directive 2019/878
Regulation 11	Article 1(20) of Directive 2019/878
Regulation 12	Article 1(54) of Directive 2019/878

The amendments introduced to these Regulations constitute the partial transposition of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU. Other provisions of such Directives that are not transposed in these Regulations are or will be transposed in other legislative instruments.

User Guidelines – Banking Act (Supervisory Review) (Amendment) Regulations, 2021

The *Banking Act (Supervisory Review) (Amendment) Regulations, 2021* (hereinafter referred to as the 'Regulations') are being introduced to effect changes to the already existing Banking Act (Supervisory Review) Regulations (S.L. 371.16). The Regulations transpose the amendments made to the provisions of Directive (EU) 2013/36/EU (the 'CRD') by virtue of Directive (EU) 2019/878 (the 'CRD V'). These User Guidelines are addressed to credit institutions licensed under the Banking Act (Cap. 371 of the Laws of Malta) and other entities forming part of a banking group.

The objective of the principal Regulations is to regulate the Malta Financial Services Authority's (the 'MFSA' or the 'Authority') supervisory review and evaluation of credit institutions within its remit of supervision. This is a process which is undertaken by the MFSA in reviewing and evaluating the compliance by credit institutions with the applicable regulatory requirements and the risks which such credit institutions are exposed to. In view of the fact that the principal Regulations

transpose CRD provisions on the supervisory review and evaluation process, amendments are being introduced through the Regulations to transpose amendments brought about to the CRD by the CRDV.

Two provisos to regulation 2(2) of the principal Regulations are being introduced as a result of the new article 2(1A) of the Banking Act, which transposes Article 3(3) of the CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institution under the direct scope of supervision by the Authority in order for such companies to ensure compliance of the banking group with requirements on a consolidated basis.

Further to the above, the proposed Regulations specify that the terms "institution, "parent institution" and "EU parent institution" also include:

(i) financial holding companies and mixed financial holding companies which are approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD;

(ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and

(iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or Article 21a(6)(d) of the CRD.

Furthermore, regulation 4(5) of the principal Regulations is being amended to specify further situations within which the MFSA shall exercise supervisory powers with respect to credit institutions. These situations include where a credit institution's value of equity and net interest income decline to a specified amount as a result of a sudden and unexpected change in interest rates.

In transposing the amendments introduced by the CRDV to Article 104 of the CRD, the MFSA's supervisory powers pursuant to the supervisory review and evaluation process are also being amended. Regulation 9(j) of the principal Regulations is amended to specify that the Authority's power to impose additional reporting requirements includes reporting which is specifically related to own funds. The amendments also specify that this power should be exercised by the Authority in a proportionate manner.

Regulation 9A is also introduced with the aim of transposing Article 104a of the CRD which relates to the additional own funds requirement. This provision specifies the situations within which the MFSA is obliged to impose upon credit institutions a requirement to hold additional own funds and specifies the composition of the additional own funds requirement. Therefore, this stipulates the scenarios where credit institutions will be subjected to this requirement to hold additional own funds, and the manner in which credit institutions are to meet such requirement.

Article 104b of the CRD, introduced by the CRDV amendments, is being transposed in Regulation 9B of these Regulations to set out the requirement of credit institutions to set their internal capital to cover risks that they are exposed to. This regulation also stipulates the MFSA's requirement to review the level of internal capital set by credit institutions and communicate its guidance on additional own funds to such institutions. The guidance on additional own funds shall be the own funds in excess of the applicable own funds requirement, which is needed for the credit institution in question to reach the overall level of own funds considered appropriate by the MFSA.

Credit institutions are also being required to submit to the MFSA information on the gender pay gap in order for the MFSA to assess the remuneration trends and practices across credit institutions. This is introduced in regulation 13(1) of the principal Regulations and is in line with the CRDV amendments.

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries in relation to the Regulations, the MFSA may be contacted on (communications@mfsa.mt) or +356 21441155.

24th December, 2021

No. 1656

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Note – Supervisory Consolidation (Credit Institutions) Regulations, 2021

1. Introduction

The title of these new Regulations is the *Supervisory Consolidation (Credit Institutions) Regulations, 2021* (hereinafter referred to as 'the Regulations') which are being introduced in order to transpose certain provisions of Directive (EU) 2013/36/EU (the 'CRD'), which regulates the business of banking and the supervision of credit institutions carrying out such activity.

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the Malta Financial Services Authority, which is the competent authority for the purposes of the Banking Act.

2. Summary and background

These proposed Regulations are issued in terms of the Banking Act, and therefore address the supervision of banks which are licensed by the Malta Financial Services Authority. As mentioned above, the Regulations are aimed at transposing provisions of the CRD and amendments made to such Directive through Directive (EU) 2019/878 (the 'CRDV'). It shall be noted that Member States are obliged to transpose any amendments made to the CRD into national law in order for these to have a legal effect.

Consequently, the objective of the Regulations is to provide for the consolidated supervision of banks, in line with the relevant provisions of the CRD. Consolidated supervision, or supervision on a consolidated basis, refers to the supervisor's overall evaluation of the financial and prudential strength of the group to which a bank belongs and to the assessment of the potential impact of other group companies on the bank. The Regulations therefore establish the MFSA's supervision on a consolidated basis of banks, including the Authority's cooperation with other European authorities that may be concerned.

The Regulations are being proposed in order to partially replace the Supervisory Consolidation Regulations (S.L. 371.15) which are being revoked in terms of the proposed Regulations. The Supervisory Consolidation Regulations are currently applicable to both credit institutions and firms providing investment services. However, in view of continuous changes in the different frameworks applicable to banks and investment firms, it is proposed that these institutions are provided for in separate legislative instruments with respect to supervisory consolidation.

Hence, it should be noted that the proposed Regulations consist of provisions which are currently already applicable under the Supervisory Consolidation Regulations, with the exception of certain changes which are being proposed to reflect changes made to the CRD, which detail will be explained hereunder.

3. Overview of the structure of the instrument

Part I of the Regulations refers to the responsibility of the Authority to supervise banks on a consolidated basis. This Part lays out the scenarios within which the MFSA is to assume the role of the consolidating supervisor. In such scenarios, the MFSA is responsible to coordinate the gathering of information, the planning of supervision of the banking group together with other European authorities that may be concerned and the coordination of specific decisions on banks that must be taken jointly with other European authorities, amongst others.

In transposing the CRD, Part II of the Regulations lays down provisions on the establishment of significant branches by banks. Where banks which are licensed in another Member State establish a branch in Malta, the Authority shall follow the procedure laid down in this Part in order for such branch to be considered significant. This Part also lays out the procedure to be followed by the MFSA in cases where banks licensed in Malta establish a branch in another Member State and a request is made for such branch to be considered as significant.

Part III of these Regulations provides for the Authority's supervision on a consolidated basis of parent undertakings of banks which are mixed activity holding companies and the supervision of the subsidiaries within such a banking group.

Finally, Part IV of the Regulations revokes the Supervisory Consolidation Regulations as indicated in point 2 above.

4. Commentary on parts and articles

In view of the fact that the Regulations lay out provisions regulating the supervision of banking groups to be conducted by the MFSA, the content of such Regulations imposes obligations on the MFSA rather than banks or other entities within banking groups. Furthermore, since the proposed Regulations retain the same provisions laid down in the currently applicable Supervisory Consolidation Regulations, with the exception of some amendments, the proposed Regulations include a limited number of new requirements.

The changes include the introduction of two provisos to regulation 2(2) of the proposed Regulations. These provisos are introduced as a result of the new article 2(1A) being introduced to the Banking Act, which transposes Article 3(3) of the CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institution under the direct scope of supervision by the Authority in order for such companies to ensure compliance of the banking group with requirements on a consolidated basis.

Further to the above, the proposed Regulations specify that the terms "institution", "EU parent institution" and "parent undertaking" also include: (i) financial holding companies and mixed financial holding companies which are approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD; (ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and (iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or Article 21a(6)(d) of the CRD.

Further changes are proposed in relation to decisions taken by the Authority together with other European authorities that may be concerned, which are referred to as joint decisions. Regulation 8(1) of these Regulations is being extended to also require joint decisions to be taken on guidance which is provided to credit institutions by the regulatory authorities on additional own funds, in terms of the CRD. This therefore implies that decisions related to guidance on additional own funds of credit institutions will be taken jointly by the MFSA and other European authorities.

5. Concluding Section

These Regulations will enter into force on such date as will be announced by the Minister for Finance and Employment by virtue of a notice published in the Gazette and different dates may be stipulated for different provisions of the Regulations.

Should more information be required on these Regulations, the Malta Financial Services Authority is to be contacted on +356 21441155.

N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of:

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

Transposing Regulations Supervisory Consolidation (Credit Institutions) Regulations, 2021	**Directive and Article number** **(where applicable)**
Regulation 2(1)	Article 3(1)(17), (22), (32) and (43) of Directive 2013/36/EU. Other definitions being introduced are incidental to the transposition of other provisions of the Directives.
Regulation 2(2)	Article 1(2)(b) of Directive (EU) 2019/878
Regulation 3	Article 62(17) of Directive (EU) 2019/2034
Regulation 4	Article 112 of Directive 2013/36/EU
Regulation 5(1)	Article 62(18) of Directive (EU) 2019/2034
Regulation 5(2)	Third sub-paragraph of Article 114(1) of Directive 2013/36/EU
Regulation 5(3)	Article 114(2) of Directive 2013/36/EU
Regulation 6(1)	First sub-paragraph of Article 115(1) of Directive 2013/36/EU
Regulation 6(2)	Second sub-paragraph of Article 115(1) of Directive 2013/36/EU
Regulation 6(3)	Article 115(2) of Directive 2013/36/EU
Regulation 6(4), (5)	Article 1(39) of Directive (EU) 2019/878
Regulation 7(1), (2)	Article 116(1) of Directive 2013/36/EU
Regulation 7(3)	Article 1(40)(a) of Directive (EU) 2019/878
Regulation 7(4)	Article 62(19)(a) of Directive (EU) 2019/2034
Regulation 7(5)	Article 116(3) of Directive 2013/36/EU
Regulation 7(6)(a)	Article 1(40)(a) of Directive (EU) 2019/878
Regulation 7(6)(b)	Article 62(19)(b) of Directive (EU) 2019/2034
Regulation 7(7)	Article 116(7) and (8) of Directive 2013/36/EU
Regulation 7(8)	Article 116(7) of Directive 2013/36/EU
Regulation 7(9)	Article 62(19)(c) of Directive (EU) 2019/2034
Regulation 7(10)	Second sub-paragraph of Article 116(9) of Directive 2013/36/EU
Regulation 7(11)	Article 1(40)(a) of Directive (EU) 2019/878 and Article 62(19)(b) of Directive (EU) 2019/2034
Regulation 7(12)	Article 1(40)(b) of Directive (EU) 2019/878
Regulation 8	Article 1(38) of Directive (EU) 2019/878
Regulation 9(1)	First sub-paragraph of Article 117(1) of Directive 2013/36/EU
Regulation 9(2)	Second sub-paragraph of Article 117(1) of Directive 2013/36/EU
Regulation 9(3)	Third and fifth sub-paragraphs of Article 117(1) of Directive 2013/36/EU
Regulation 9(4)	Fourth sub-paragraph of Article 117(1) of Directive 2013/36/EU
Regulation 9(5)	Article 117(3) of Directive 2013/36/EU
Regulation 9(6)	Article 117(4) of Directive 2013/36/EU
Regulation 9(7)	Article 117(2) of Directive 2013/36/EU
Regulation 9(8)	Article 1(41) of Directive (EU) 2019/878
Regulation 10(1)	Article 124 of Directive 2013/36/EU

Regulation 10(2)	Article 119(2) of Directive 2013/36/EU
Regulation 10(3)	Article 119(3) of Directive 2013/36/EU
Regulation 10(4)	First sub-paragraph of Article 124(2) of Directive 2013/36/EU
Regulation 10(5) and (6)	Second sub-paragraph of Article 124(2) of Directive 2013/36/EU
Regulation 10(7)	First sub-paragraph of Article 124(3) of Directive 2013/36/EU
Regulation 10(8)	Second sub-paragraph of Article 124(3) of Directive 2013/36/EU
Regulation 11(1)	Article 125(1) of Directive 2013/36/EU
Regulation 11(2)	Article 1(44) of Directive (EU) 2019/878
Regulation 11(3)	Article 1(44) of Directive (EU) 2019/878
Regulation 11(4)	Article 62(20) of Directive (EU) 2019/2034
Regulation 11(5)	Article 125(3) of Directive 2013/36/EU
Regulation 12	Article 118 of Directive 2013/36/EU
Regulation 13(1)	First sub-paragraph of Article 127(1) of Directive 2013/36/EU
Regulation 13(2)	Second sub-paragraph of Article 127(2) of Directive 2013/36/EU
Regulation 13(3)	Second sub-paragraph of Article 127(3) of Directive 2013/36/EU
Regulation 13(4)	First, second and fourth sub-paragraph of Article 127(4) of Directive 2013/36/EU
Regulation 13(5)	Third sub-paragraph of Article 127(4) of Directive 2013/36/EU
Regulation 13(6)	Article 48 of Directive 2013/36/EU
Regulation 14(1)	Article 62(11) of Directive (EU) 2019/2034
Regulation 14(2)	Second sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 14(3)	Third sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 14(4)	Fourth sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 14(5)	Fifth sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 14(6)	Fifth sub-paragraph of Article 51(2) of Directive 2013/36/EU
Regulation 15(1)	Article 62(11) of Directive (EU) 2019/2034 and the second sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 15(2)	Third sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 15(3)	First sub-paragraph of Article 51(2) of Directive 2013/36/EU
Regulation 15(4)	Second sub-paragraph of Article 51(2) of Directive 2013/36/EU
Regulation 15(5)	Third sub-paragraph of Article 51(2) of Directive 2013/36/EU
Regulation 15(6)	Fourth sub-paragraph of Article 51(2) of Directive 2013/36/EU
Regulation 16	Sixth sub-paragraph of Article 51(1) of Directive 2013/36/EU
Regulation 17	Article 51(3) of Directive 2013/36/EU
Regulation 18	Article 49 of Directive 2013/36/EU
Regulation 19(1) and (2)	Article 122 of Directive 2013/36/EU
Regulation 19(3)	Article 123(1) of Directive 2013/36/EU
Regulation 20(1)	Article 120(1) of Directive 2013/36/EU
Regulation 20(2)	Article 1(43) of Directive (EU) 2019/878
Regulation 20(3)	Article 120(3) of Directive 2013/36/EU
Regulation 21	Amendment ancillary to the transposition of EU Directives, resulting from the replacement of the Supervisory Consolidation Regulations with these Regulations, applicable to credit institutions only.

The amendments introduced in these Regulations constitute the partial transposition of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU. Other provisions of such Directives that are not transposed in these Regulations are or will be transposed in other legislative instruments.

Furthermore, as indicated above, the Regulations constitute a partial transposition of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. However, it should be noted that the provisions listed above transposing Directive 2013/36/EU have already been transposed in the Supervisory Consolidation Regulations (S.L. 371.15), which are being revoked in terms of these Regulations. The Supervisory Consolidation Regulations were applicable to both credit institutions and firms providing investment services. However, in view of continuous changes in the different frameworks applicable to banks and investment firms, these institutions are now being provided for in separate legislative instruments with respect to supervisory consolidation. The Regulations therefore reproduce certain provisions of the Supervisory Consolidation Regulations transposing Directive 2013/36/EU.

User Guidelines – Supervisory Consolidation (Credit Institutions) Regulations, 2021

The *Supervisory Consolidation (Credit Institutions) Regulations*, 2021 (hereinafter referred to as 'the Regulations') are being introduced in order to transpose certain provisions of Directive (EU) 2013/36/EU (the 'CRD') which regulates the business of banking and the supervision of credit institutions, and the amendments introduced to the CRD by Directive (EU) 2019/878 (the 'CRDV'). These User Guidelines are intended for credit institutions which are licensed in terms of the Banking Act (Cap. 371 of the Laws of Malta) and other entities which may form part of a banking group.

The objective of the Regulations is to regulate the Malta Financial Services Authority's (the 'MFSA' or the 'Authority') supervision of credit institutions on a consolidated basis, in line with the relevant provisions of the CRD. Consolidated supervision, or supervision on a consolidated basis, refers to the MFSA's overall evaluation of the financial and prudential strength of the group to which a bank belongs and to the assessment of the potential impact of other group companies on the bank.

The Regulations partially replace the Supervisory Consolidation Regulations (S.L. 371.15) which are being revoked in terms of the proposed Regulations. S.L. 371.15 are currently applicable to both credit institutions and firms providing investment services. However, in view of continuous changes in the different frameworks applicable to banks and investment firms, it is proposed that such institutions are provided for in separate legislative instruments with respect to supervisory consolidation.

Hence, it should be noted that the proposed Regulations consist of provisions which are currently already applicable under S.L. 371.15, with the exception of certain changes which are being proposed to reflect changes made to the CRD.

In view of the fact that the Regulations lay out provisions regulating the supervision of banking groups to be conducted by the MFSA, the content of such Regulations imposes obligations on the MFSA rather than credit institutions or other entities within banking groups. Furthermore, since the proposed Regulations retain the same provisions laid down in the currently applicable Supervisory Consolidation Regulations, with the exception of some amendments, the proposed Regulations include a limited number of new requirements.

Nevertheless, the changes impacting the industry include the introduction of two provisos to regulation 2(2) of the proposed Regulations. These provisos are introduced as a result of the new article 2(1A) being introduced to the Banking Act, which transposes Article 3(3) of the CRD. The aim of this provision is to bring financial holding companies and mixed financial holding companies which are parents of credit institution under the direct scope of supervision by the Authority in order for such companies to ensure compliance of the banking group with requirements on a consolidated basis.

Further to the above, the proposed Regulations specify that the terms "institution", "EU parent institution" and "parent undertaking" shall also include the following entities:

(i) financial holding companies and mixed financial holding companies which are approved in terms of article 11B of the Banking Act and, or Article 21a of the CRD;

(ii) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted pursuant to article 11B(5) and, or Article 21a(4) of the CRD; and

(iii) financial holding companies, mixed financial holding companies or institutions designated in line with article 29AA(1)(f) of the Banking Act and, or Article 21a(6)(d) of the CRD.

Further changes are proposed in relation to decisions taken by the MFSA together with other European authorities that may be concerned, which are referred to as joint decisions. Regulation 8(1) of these Regulations is being extended to also require joint decisions to be taken on guidance which is provided to credit institutions by the regulatory authorities on additional own funds, in terms of the CRD. This therefore implies that decisions related to guidance on additional own funds of credit institutions will be taken jointly by the MFSA and other European authorities.

Credit institutions and entities forming part of a banking group shall therefore take into consideration the amendments being introduced to the Regulations as delineated above since these shall have an impact on the manner in which such entities are supervised by the MFSA and other European authorities, where applicable.

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries in relation to the Regulations, the MFSA may be contacted on (communications@mfsa.mt) or +356 21441155.

24th December, 2021

Nru. 1657

ORDNI TA' EMERĠENZA GĦALL-KONSERVAZZJONI

Artiklu 58 tal-Att tal-2016 dwar l-Ippjanar tal-Iżvilupp

L-AWTORITÀ tal-Ippjanar tikkonsidra li l-proprjetà:

Nri. 50, 51, 52, 53, Triq Wied is-Simar, Il-Qala

(ara l-pjanta f'paġna 13,478) huma ta' valur storiku, arkitettoniku u ta' valur fil-kuntest li jinstabu fih, hekk li għandhom jiġu nklużi fil-lista ta' Proprjetà Skedata, skont it-termini tal-Artiklu 57 tal-Att tal-2016 dwar l-Ippjanar tal-Iżvilupp.

L-Awtorità tħoss li dawn il-proprjetajiet għandhom jkunu ikkunsidrati bħala "heritage at risk". Dan it-terminu jirreferi għal dawk is-siti li huma l-aktar f'riskju li jintilfu minħabba negliġenza, deterjorazzjoni jew żvilupp li mhux kompatibbli jew adegwat. It-telf, jew it-telf parżjali tal-proprjetà/jiet isarraf

No. 1657

EMERGENCY CONSERVATION ORDER

Section 58 of the Development Planning Act, 2016

THE Planning Authority considers that the following property:

Nri. 50, 51, 52, 53, Triq Wied is-Simar, Il-Qala

(see site plan on page 13,478) are of historical, architectural and contextual value such that they should be listed as a Scheduled Property in terms of Article 57 of the Development Planning Act 2016.

The Authority feels that these properties are to be considered as "heritage at risk". This term refers to those sites that are more at risk of being lost as a result of neglect, decay or inappropriate development. The loss or partial loss of the properties will result in the irreversible loss of cultural