

SUBSIDIARY LEGISLATION 371.09**DEPOSITOR COMPENSATION SCHEME
REGULATIONS**

4th December, 2015;

31st May, 2016*

LEGAL NOTICE 383 of 2015, as amended by Legal Notice 132 of 2017 and 43 of 2019.

PART I**Preliminary**

1. (1) The title of these regulations is the Depositor Compensation Scheme Regulations. Citation and scope.

(2) The objective of these regulations is to implement the relevant provisions of Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes, and these regulations shall be interpreted and applied accordingly.

2. For the purposes of these regulations the following definitions shall apply: Interpretation

"available financial means" means cash, deposits and low-risk assets which can be used for the purposes laid down in regulation 33 and which can be liquidated within a period not exceeding that referred to in regulation 13(2) and payment commitments up to the limit set out in regulation 23(3);

"branch" means a place of business in a Member State which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

"compensation date" means the date on which:

- (a) the competent authority has determined that in its view the member concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and the member has no current prospect of being able to do so; or
- (b) a judicial authority has made a ruling for reasons which are directly related to the member's financial circumstances and which has the effect of suspending the rights of depositors to make claims against it;

"competent authority" means the competent authority under the Banking Act;

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"covered deposits" means the part of eligible deposits that does not exceed the coverage level laid down in regulation 10;

"credit institution" means a credit institution as defined in article

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*see regulation 1(3) of these Regulations as originally promulgated.

2 of the Banking Act;

"deposit" means a credit balance, including, as the case may be, any interest accrued thereon, which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:

- (a) its existence can only be proven by a financial instrument as defined in Article 4(17) of Directive 2004/39/EC, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which existed in Malta on 2 July 2014; or
- (b) its principal is not repayable at par; or
- (c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

"deposit guarantee schemes" or "DGSs" means schemes referred to in Article 1(2) of the Directive, namely:

- (a) statutory schemes, including the Depositor Compensation Scheme established under regulation 4;
- (b) contractual schemes that are officially recognized as deposit guarantee schemes in accordance with Article 4(2) of the Directive;
- (c) institutional protection schemes that are officially recognised as deposit guarantee schemes in accordance with Article 4(2) of the Directive;

"depositor" means the holder or, in the case of a joint account, each of the holders, of a deposit; and, in the case of a deceased depositor, the successor in title of such depositor such as an heir or a legatee of a deposit;

"Directive" means Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes;

"deferred file" means a single, consistent view of a depositor's eligible deposits with a member which contains the information set out in regulation 20(5) limited to accounts which:

- (a) hold any funds to which the depositor is not absolutely entitled; or
- (b) are not active;

"dormant account" means a deposit account in relation to which there has been no transaction within the previous twenty-four months;

"EBA" means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992, as amended by the protocol signed at Brussels on 17th March 1993, and as amended by any subsequent acts;

"eligible deposits" means deposits that are not excluded from protection pursuant to regulation 9, and includes deposits held in an account entitled to compensation pursuant to regulation 12(5);

"European Union" means the European Union as defined in article 2 of the European Union Act;

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"Financial Services Tribunal" means the tribunal established in terms of the Malta Financial Services Authority Act;

Cap. 330.

"financial year" means the financial year of the Scheme which shall be an accounting period of twelve months ending on the thirty-first day of December of each year;

"home Member State" means the Member State in which a credit institution has been granted authorisation;

"host Member State" means the Member State in which a credit institution has a branch or in which it provides services, other than its home Member State;

"in default" describes the status of a member whose deposits are unavailable deposits;

"institutional protection schemes" or "IPS" means institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

"joint account" means an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;

"low-risk assets" means items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 or any assets which are considered to be similarly safe and liquid by the competent authority;

"Management Committee" means the Scheme's Management Committee established under regulation 5;

"management expenses" means expenses incurred, or expected to be incurred, by the Scheme in connection with its objective and functions under these regulations other than those incurred in paying compensation, financing the resolution of members pursuant to regulation 33(2), using its available financial means for alternative measures to prevent the failure of a member pursuant to regulation 33(3), or using its available financial means for alternative measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of insolvency proceedings, pursuant to regulation 33(6);

"member" means a credit institution participating in the Scheme;

"Member State" means a Member State of the European Union and includes an EEA State;

"not active account" means:

- (a) it is uncertain whether a person is entitled to receive compensation, such as when:
 - (i) the account holder is deceased;
 - (ii) the deposit is a pledged account;
 - (iii) the deposit is held by a minor; or
 - (iv) the deposit is subject to usufruct or similar rights,
- (b) the deposit is subject to legal dispute;
- (c) the deposit is subject to restrictive measures imposed by national governments or international bodies;
- (d) the depositor has been charged with an offence arising out of or in relation to money laundering as defined in Article 1(2) of Directive 2005/60/EC;
- (e) the deposit is a dormant account;

"passporting right" means the entitlement of a person to establish a branch or provide services in an EEA State other than that in which that person has its relevant office in accordance with the Treaty as applied in the European Economic Area;

"payment commitments" means payment commitments of a member towards the Scheme in accordance with regulation 23(3), which are fully collateralised provided that the collateral:

- (a) consists of low risk assets; and
- (b) is unencumbered by any third-party rights and is at the disposal of the Scheme;

"private residential property" means a dwelling house which was, is, or is intended to become the depositor's only or principal residence;

"Resolution Committee" means the committee established under the Malta Financial Services Authority Act;

"Scheme" means the Depositor Compensation Scheme established under regulation 4;

"SCV report" means the report specified in regulation 21 from a member's board of directors confirming that the member's SCV system satisfies the SCV requirements;

"SCV requirements" means the requirements on members set out in regulation 20;

"SCV system" means a member's system for satisfying the SCV requirements;

"single customer view file" means a single, consistent view of depositors' aggregate eligible deposits with a member which contains the information set out in regulation 20(5), but excludes from view those deposits included in the deferred file;

"target level" means the amount of available financial means which the Scheme is required to reach in accordance with regulation 23(2), expressed as a percentage of covered deposits of

its members;

"temporary high balance" means, in relation to a depositor who is an individual, that part of an eligible deposit in excess of EUR 100,000 which meets the additional criteria set out in regulation 11;

"unavailable deposit" means a deposit that is due and payable but that has not been paid by a member under the legal or contractual conditions applicable thereto, where either:

- (a) the competent authority has determined that in its view the member concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and the member has no current prospect of being able to do so; or
- (b) a judicial authority has made a ruling for reasons which are directly related to the member's financial circumstances and which has the effect of suspending the rights of depositors to make claims against it.

3. (1) The objective of these regulations is to implement the relevant provisions of the Directive, and these regulations shall be interpreted and applied accordingly.

Objectives and functions.

(2) Without prejudice to any other power or function conferred on it by these regulations or by any other law, it shall be the function of the Scheme:

- (a) to maintain a fund or funds out of which payments shall be made to depositors and to meet such other payments or expenses as may be paid out of the fund or funds in accordance with these regulations;
- (b) to establish and maintain, after consultations with the competent authority, arrangements for the making of payments to depositors in accordance with these regulations;
- (c) to process claims for compensation by depositors as expeditiously as possible and to ensure that compensation is paid out without undue delay in terms of these regulations;
- (d) to finance the resolution of members pursuant to regulation 33(2);
- (e) to use its available financial means for alternative measures to prevent the failure of a member pursuant to regulation 33(3);
- (f) to use its available financial means for alternative measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of insolvency proceedings, pursuant to regulation 33(6);
- (g) to advise the competent authority on matters relating to the functions of the Scheme.

PART II

Depositor Compensation Scheme

Establishment of
the Depositor
Compensation
Scheme.
Amended by:
L.N.132 of 2017.
Cap. 371.

4. (1) There shall be established a Depositor Compensation Scheme.

(2) The Scheme shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Banking Act and of these regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purposes of its functions, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing or being sued and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions.

(3) The legal and judicial representation of the Scheme shall vest in the chairperson of the Management Committee:

Provided that, and without prejudice to the foregoing, the Management Committee may vest any one or more of its members or of the officers or agents of the Scheme with legal or judicial representation.

(4) The establishment of the Depositor Compensation Scheme pursuant to regulation 4 (1) shall not preclude the merger with a DGS or DGSs of a different Member State or Member States or the establishment of a cross-border DGS within the meaning of article 4 (1) of the Directive:

Provided that the approval of such cross-border or merged DGSs shall be obtained from the competent authority or the Member States where the DGSs concerned are established.

The Management
Committee.

5. (1) The Scheme shall be managed and administered by and shall be under the general control of the Management Committee.

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(2) The Management Committee shall be composed of the same persons appointed in virtue of regulations 3 and 5 of the Investor Compensation Scheme Regulations.

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(3) Regulations 3 and 5 of the Investor Compensation Scheme Regulations shall apply *mutatis mutandis* to the Scheme and the Management Committee established under these regulations.

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(4) The meetings of the Management Committee shall be convened and held in accordance with regulation 9 of the Investor Compensation Scheme Regulations.

(5) The Management Committee shall exercise all powers which are conferred by these regulations upon the Scheme. It shall for this purpose have the power to enter into such reasonable administrative, management or other arrangements as may be necessary to enable it to fulfil its objective and functions under these regulations. The Management Committee shall have the power to appoint officers or agents of the Scheme and to grant them such powers or authority as it may deem appropriate.

(6) All the members of the Management Committee shall work in the best interest of the Scheme and shall pursue and promote its objective and functions.

(7) The Management Committee shall have in place sound and transparent governance practices.

(8) The Management Committee shall cause proper books of account to be kept so that the financial position of the Scheme can be ascertained with reasonable accuracy at any time. The financial year end of the Scheme shall be an accounting period of twelve months ending on the thirty-first day of December of each year.

(9) The Management Committee shall submit to the competent authority an annual report on the discharge of its functions and on the operation of the Scheme within five months from the financial year end of the Scheme. Such annual report shall include, *inter alia*:

- (a) a statement showing the payments in and payments out of the Scheme during its immediate previous financial year;
- (b) a statement showing the results of regular stress tests of its systems undertaken by the Scheme; and
- (c) annual financial statements prepared in accordance with International Accounting Standards and audited in accordance with International Standards on Auditing by auditors appointed by the Scheme from among persons who are qualified to be appointed as auditors of a company under the law for the time being in force in Malta.

(10) The annual report shall be made available on the websites of the competent authority and the Scheme.

(11) The books of accounts shall be kept at such place as the Management Committee thinks fit.

6. (1) The Scheme shall have the power to lend to other DGSs within the European Union, pursuant to regulation 34.

Powers and duties of the Scheme.

(2) The Scheme may take out insurance policies, borrow or otherwise incur indebtedness for the purposes of the Scheme's objective and functions, in any way and under any terms it may consider appropriate.

(3) The Scheme shall ensure that it has in place adequate financial means or relevant financing arrangements to fulfil its objective and functions in accordance with these regulations.

(4) The Scheme shall perform regular stress tests of its systems. Such tests shall take place at least every three years and more frequently where appropriate. The Scheme shall use the information necessary to perform tests of its system only for the performance of those tests and shall keep such information no longer than is necessary for that purpose.

(5) The Scheme shall comply with the requirements of the European Banking Authority when the Authority conducts periodical peer reviews based on the results of the stress test, pursuant to Article 30 of Regulation (EU) No 1093/2010, in order to examine the resilience of the Scheme. The Scheme shall be subject to the requirements of professional secrecy when

exchanging information with the European Banking Authority in accordance with Article 70 of Regulation (EU) No 1093/2010.

(6) For the purpose of fulfilling its objectives and functions, the Scheme shall be bound to safeguard and take into account the general interests of depositors entitled to claim under these regulations.

Membership.
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7. (1) A credit institution which is licensed in Malta under the Banking Act, other than a branch established in Malta by a credit institution which has its head office outside the European Union, shall participate in the Scheme.

(2) Membership in the Scheme does not exclude the possibility that particular credit institutions may have to participate also in another compensation or similar scheme set up under a different law and governed by another competent authority or other body, in Malta or abroad.

PART III

Compensation

Determination.

8. (1) The competent authority shall make a determination pursuant to paragraph (a) of the definition "unavailable deposit" in regulation 2 as soon as possible and in any event no later than five working days after first becoming satisfied that a member has failed to repay deposits which are due and payable.

(2) Where the competent authority makes a determination as referred to in paragraph (a) of the definition "unavailable deposit" in regulation 2, or a judicial authority makes a ruling as referred to in paragraph (b) of the definition "unavailable deposit" in regulation 2, the competent authority shall, as soon as possible, inform the Scheme of such determination or ruling.

(3) On being informed by the competent authority of such determination or ruling, the Scheme shall publish a notice on its website and in at least two local newspapers, informing depositors of the member concerned, of such determination or ruling, of the manner in which the compensation to the depositors shall be processed, and of the matters stipulated in regulation 11(2).

(4) The Scheme shall, as soon as possible, inform any other DGSs which it believes may be affected by such determination or ruling.

(5) Where the failed member has a branch in another Member State, the Scheme shall provide the necessary information and funding to the DGS of the host Member State in terms of regulation 35.

Eligibility of
deposits.
Amended by:
L.N. 43 of 2019.

9. (1) A deposit is an eligible deposit only if it is held with a member:

- (a) in Malta; or
- (b) in that member's branch which is located in another Member State.

(2) The following are not eligible deposits:

- (a) subject to regulation 12(5), deposits made by other credit institutions on their own behalf and for their own account;
- (b) own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;
- (c) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering as defined in Article 1(2) of Directive 2005/60/EC;
- (d) deposits by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
- (e) deposits by investment firms as defined in point (1) of Article 4(1) of Directive 2004/39/EC;
- (f) deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC, when they have become unavailable;
- (g) deposits by insurance undertakings and by reinsurance undertakings as referred to in Article 13(1) to (6) of Directive 2009/138/EC;
- (h) deposits by collective investment undertakings;
- (i) deposits by pension and retirement funds;
- (j) deposits by public authorities;
- (k) debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes;
- (l) deposits held with a member in a branch of that member which is located in a non-Member State;
- (m) electronic money and funds received in exchange for electronic money in accordance with Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institution.

10. (1) The Scheme shall pay compensation in accordance with these regulations in respect of an eligible deposit if it is satisfied that the eligible deposit is a deposit with a member which is in default.

Coverage of
eligible deposits.
Amended by:
L.N.132 of 2017.

(2) The maximum compensation sum payable for the aggregate deposits of each depositor is EUR 100,000, save that additional compensation may be payable in cases to which sub-regulation (3) applies.

(3) In addition to the maximum compensation sum payable pursuant to sub-regulation (2), the maximum compensation sum payable for a temporary high balance is EUR 500,000.

(4) Notwithstanding the provisions of sub-regulations (1) to (3), the Scheme shall also, in accordance with the provisions of article 26(3)(e) of the Arbitrator for Financial Services Act, settle any

judgment or award of up to twenty thousand euro (€20,000), in respect of any civil liability in regard to the business of banking, which is obtained by a depositor against a member, which is, or has been declared, in default, and such payment shall be made within ten (10) working days from the day when the judgement or award becomes *res judicata*:

Provided that following the settlement of any such amount by the Scheme, the maximum compensation sum payable for the aggregate deposits of each depositor in terms of sub-regulation (2) shall be reduced by the amount settled by the Scheme in accordance with this sub-regulation.

Temporary high
balances.

11. (1) In order to qualify as a temporary high balance, a part of an eligible deposit in excess of EUR 100,000 must meet any one of the following additional criteria:

- (a) it comprises:
 - (i) monies deposited in preparation for the purchase of a private residential property by the depositor; or
 - (ii) monies which represent the proceeds of sale of a private residential property of the depositor; or
- (b) it comprises sums paid to the depositor in respect of:
 - (i) a separation, divorce or dissolution of their civil union; or
 - (ii) benefits payable on retirement; or
 - (iii) a claim for compensation for unfair dismissal; or
 - (iv) a claim for compensation for redundancy; or
 - (v) benefits payable for death or bodily injury; or
 - (vi) a claim for compensation for wrongful conviction.

(2) In the notice published pursuant to regulation 8(3), the Scheme shall inform depositors of the credit institution concerned of the following:

- (a) that depositors may be entitled to additional compensation if all or part of the eligible deposit in excess of EUR 100,000 qualifies as a temporary high balance;
- (b) that in order to claim such additional compensation, a depositor must provide the Scheme with a written application and evidence supporting the depositor's claim that all or part of the eligible deposit in excess of EUR 100,000 qualifies as a temporary high balance;
- (c) that a depositor may make more than one claim if there are multiple events giving rise to temporary high balances; and
- (d) the date by which such written application and supporting evidence should be submitted to the Scheme.

(3) The Scheme shall pay compensation to a depositor in respect of a temporary high balance in accordance with regulation 10(3) if it is satisfied that there is a sufficient link between an event giving rise to a temporary high balance and the part of the eligible deposit in excess of EUR 100,000, taking into account the following considerations:

- (a) the written application and evidence provided by the depositor under sub-regulation (2); and
- (b) any other information that the Scheme considers relevant.

(4) The Scheme shall pay compensation to a depositor in accordance with regulation 10(3) in respect of each temporary high balance that the depositor has with any one member.

(5) The protection for temporary high balances under regulation 10(3) shall run for a period of six months from the later of:

- (a) the first date on which a temporary high balance is credited to a depositor's account, or to another account on a person's behalf; and
- (b) the first date on which the temporary high balance becomes legally transferable to the depositor.

(6) The Scheme shall, within three months of the compensation date, pay to the depositor a sum representing the amount due to the depositor in respect of the temporary high balance unless one or more of the provisions of sub-regulations (7) and (8) applies.

(7) The Scheme may defer payment in respect of a temporary high balance for a period in excess of the period specified in sub-regulation (6) where:

- (a) the depositor provides the written application and evidence referred to in sub-regulation (2) to the Scheme more than two months following the date of the written notice from the Scheme under sub-regulation (2); or
- (b) one or more of the circumstances set out in regulation 14 arise.

(8) If the Scheme considers that the written application and evidence provided by a depositor under sub-regulation (2) does not demonstrate a sufficient link between an event giving rise to a temporary high balance and the eligible deposit in excess of EUR 100,000, the Scheme shall write as soon as reasonably possible to that depositor to:

- (a) request, within such time as the Scheme may specify, any additional information that the Scheme considers necessary to determine the claim; or
- (b) confirm that the Scheme has determined that the deposit is not a temporary high balance, setting out the reasons for its determination and a summary of any right for reconsideration or appeal.

Calculating
compensation.

12. (1) Compensation shall be calculated by reference to eligible deposits held on the compensation date.

(2) The limit referred to in regulation 10 applies to the aggregate eligible deposits placed by a depositor with the same member, irrespective of the number of accounts, the currency, or the location within the EEA.

(3) The share of each depositor of a joint account shall be considered separately in calculating the limits provided for in regulation 10, except where sub-regulation (4) applies. In the absence of contrary provision, the joint account shall be divided equally among the depositors.

(4) Deposits in an account to which two or more persons are entitled as members of a business partnership, association, or grouping of a similar nature, without legal personality, shall be aggregated and treated as if made by a single depositor for the purpose of calculating the limit provided for in regulation 10.

(5) Where a depositor is not absolutely entitled to the sums held in an account and another person is absolutely entitled to such sums, the person who is absolutely entitled shall be entitled to compensation in respect of the deposit, provided that such person has been identified or is identifiable before the compensation date.

(6) Where several persons are absolutely entitled, the share of each under the arrangements subject to which the deposit is managed shall be taken into account when the limit provided for in regulation 10 is calculated.

(7) Liabilities of the depositor due to the member shall not be taken into account when calculating the repayable amount.

(8) Any compensation payable by the Scheme shall be calculated on the amounts credited to a depositor's accounts and on any interest which has accrued until, but has not been credited on the compensation date. Such compensation shall not exceed the limits referred to in regulation 10 in the aggregate.

Time limits.
Amended by:
L.N.132 of 2017.

13. (1) The Scheme shall pay compensation in respect of eligible deposits without a request to the Scheme being necessary within the applicable time period and as soon as reasonably practicable after:

- (a) it is satisfied that the conditions in regulation 10(1) have been satisfied; and
- (b) it has calculated the amount of compensation due to the depositor.

(2) Saving sub-regulation (3), the applicable time period referred to in sub-regulation (1) shall be reckoned the day following the compensation date as follows:

- (a) twenty working days until 31 December 2018;
- (b) fifteen working days from 1 January 2019 until 31 December 2020;
- (c) ten working days from 1 January 2021 and until 31 December 2023;

(d) seven working days from 1 January 2024.

(3) The applicable period shall be three months reckoned the day following the compensation date in those cases where regulation 12(5) and (6) applies or where the Scheme reasonably believes that regulation 12(5) and (6) may apply.

(4) During the transitional period until 31 December 2023, where the Scheme cannot pay compensation within seven working days, the Scheme shall ensure that depositors have access to an amount, equivalent to three times the gross weekly minimum wage on the compensation date, to cover the cost of living, within five working days of a request from the depositor. The Scheme shall only grant access to the amount referred to in this sub-regulation, within five (5) working days, on the data provided by the member. Such amount shall be deducted from the compensation which may be payable.

14. (1) The Scheme may defer the payment of compensation beyond the time period set out in regulation 13 where: Deferred payment.

- (a) the deposit is in a not active account;
- (b) the amount to be repaid is deemed to be part of a temporary high balance; or
- (c) the amount to be repaid is to be paid out by the DGS of a host Member State in accordance with regulation 35(1).

(2) Notwithstanding the provisions of sub-regulation (1), the Scheme shall not pay compensation in respect of a deposit which is a dormant account where the value of the deposit is lower than the administrative costs that would be incurred by the Scheme in making such a repayment.

(3) Notwithstanding the provisions of sub-regulation (1), the Scheme may suspend any payment referring to any account in respect of which a depositor or any person entitled to or interested in sums held therein has been charged with an offence arising out of or in relation to money laundering, pending the judgment of the court.

15. (1) All compensation repayments shall be made in euro.

Currency of compensation.

(2) Where deposits are maintained in a currency other than the euro, the exchange rate used shall be the applicable euro foreign exchange reference rate quoted by the European Central Bank on the compensation date.

16. (1) Without prejudice to the rights which the Scheme may have at law, the Scheme shall, upon paying compensation under these regulations, immediately and automatically be subrogated to all the rights of the depositor, up to the amount of the compensation paid, as against the member and, or any third party in respect of or arising out of the deposits being unavailable to the depositor.

Subrogation and recovery.

(2) Upon paying compensation under these regulations, the Scheme shall decide in its absolute discretion which recoveries are likely to be both reasonably possible and cost effective to pursue.

(3) Where the Scheme makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers in accordance with regulation 33, the Scheme shall have a claim against the relevant credit institution for an amount equal to its payments. That claim shall rank at the same level as covered deposits under Maltese law governing normal insolvency proceedings.

Forfeiture of right to claim compensation.

17. Depositors, whose deposits were not repaid or acknowledged by the Scheme within the time-limits set out in regulation 13, shall forfeit their right to claim repayment of their deposit after the lapse of a peremptory term of two years from the compensation date.

Claims against the Scheme.

18. (1) A depositor who is aggrieved by a decision of the Scheme in his regard may request the Scheme to reconsider its decision. The Scheme shall within two months from such request provide the said depositor with a reasoned decision. The foregoing shall be without prejudice to the right of a depositor to bring forward any claim he may have against the Scheme before a competent court or tribunal of civil jurisdiction.

(2) The Scheme shall, if requested by any person who is affected by a decision of the Scheme, give reasons to such person for any such decision.

PART IV

Information Requirements

Depositor information.

19. (1) Credit institutions shall make available to actual and intending depositors the information necessary for the identification of the Scheme or other deposit guarantee schemes of which the institution and its branches are members within the European Union. Credit institutions shall inform actual and intending depositors of the applicable exclusions from protection under these regulations or the Directive.

(2) Before entering into a contract on deposit-taking, members shall provide depositors with the information referred to in sub-regulation (1). The depositors shall acknowledge the receipt of that information. The template set out in the Schedule shall be used for that purpose.

(3) Confirmation that the deposits are eligible deposits shall be provided by members to depositors on their statements of account. Such statements of account shall include a reference to the information sheet set out in the Schedule. The website of the Scheme shall be indicated on the information sheet. The information sheet set out in the Schedule shall be provided to the depositor at least once annually.

(4) The information provided for in sub-regulation (1) shall be made available in the manner prescribed by these regulations in the language that was agreed by the depositor and the member when the account was opened or in an official language of Malta.

(5) Credit institutions shall limit the use in advertising of the information referred to in sub-regulations (1), (2) and (3) to a

factual reference to the DGS guaranteeing the product to which the advertisement refers and to any additional information required at law. Such information may extend to the factual description of the functioning of the DGS but shall not contain a reference to unlimited coverage of deposits.

(6) In the case of a merger, conversion of subsidiaries into branches or similar operations, the credit institution undergoing such operation shall inform its depositors of such operation at least one month before the operation takes legal effect unless the competent authority allows a shorter deadline on the grounds of commercial secrecy or financial stability.

(7) The credit institution referred to in sub-regulation (6) shall give its depositors a three-month period following notification of the merger or conversion or similar operation to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level pursuant to regulation 28 at the time of the operation.

(8) If a credit institution withdraws or is excluded from the DGS of which it is a member, the credit institution shall inform its depositors within one month of such withdrawal or exclusion.

(9) If a depositor uses internet banking, the information required to be disclosed by the credit institution in terms of this regulation may be communicated by electronic means. Where the depositor so requests, it shall be communicated on paper.

(10) The competent authority may from time to time, and in addition, specify such other information that members are to provide to depositors regarding the Scheme and its operations, as well as the manner and form in which such information shall be provided.

(11) The website of the Scheme shall contain the necessary information for depositors, in particular information concerning the provisions regarding the process for and conditions of deposit guarantee as envisaged under these regulations.

20. (1) Members shall ensure that they mark -

- (a) eligible deposits, other than those specified in sub-paragraph (b) and (c);
- (b) eligible deposits which hold any funds to which the depositor is not absolutely entitled; and
- (c) eligible deposits which are not active;

Single customer
view file and
deferred file
reporting.

in a way that allows an immediate identification of such deposits.

(2) The information required in sub-regulation (1) shall be electronically stored.

(3) A member shall prepare and provide the Scheme with a single customer view file and deferred file for each depositor with an eligible deposit:

- (a) within twenty-four hours of its relevant deposits becoming unavailable deposits;

- (b) within twenty-four hours of a request by the Scheme;
- (c) within three months of first accepting deposits; and
- (d) within three months of a material change in the member's SCV system.

(4) If a depositor does not have any accounts or balances which are required to be included within the single customer view file and, or deferred file, the member should provide confirmation of this to the Scheme.

(5) The information required to be provided in a single customer view file and deferred file pursuant to sub-regulation (3) shall include such data and shall be in such format and meet such technical requirements as shall be published from time to time by the Scheme by notice on its website. The publication of such notice on the Scheme's website shall be binding on members.

SCV report.

21. (1) A member shall provide the Scheme with an SCV report:

- (a) within three months of first accepting deposits;
- (b) within three months of a material change in the member's SCV system;
- (c) annually by not later than the 30th June of each calendar year;
- (d) promptly upon request by the Scheme.

(2) The information required to be provided in an SCV report pursuant to sub-regulation (1) shall include such data and shall be in such format and meet such technical requirements as shall be published from time to time by the Scheme by notice on its website. The publication of such notice on the Scheme's website shall be binding on members.

(3) Every member shall have a contingency plan in place so that, in the event of its failure, it retains adequate resources in order to provide the Scheme with any relevant information required by it for repayment to depositors.

Obligation to provide information to the Scheme.

22. (1) In addition to the requirements pursuant to regulations 20 and 21, members shall ensure that they have electronic information systems in place to the satisfaction of the Scheme to be able to provide to the Scheme, at any time and upon its request, all information relevant for the achievement of the Scheme's objective and functions or for the proper administration of the Scheme, including the repayment of depositors and testing purposes.

(2) The Scheme may require members, either directly or through the competent authority, to prepare and provide the information referred to in sub-regulation (1), within a period of time as may be established by the Scheme. The request may be addressed to the member or to any of its directors or officials who are in possession of such information.

(3) A member shall by notice to the Scheme by the end of January of each year provide a statement of its total covered

deposits (excluding temporary high balances), at the end of the preceding financial year for the purpose of determining the member's contribution for the relevant financial year.

(4) If a member does not give notice of the statement referred to in the preceding paragraph by the date on which it is due in accordance with any prescribed requirements:

- (a) the member shall pay an administrative fee of five hundred euro (€500) to the Scheme; and
- (b) the member's contribution will be calculated using (where relevant) the statement of the member's total covered deposits (excluding temporary high balances) applicable to the previous period, multiplied by the factor of 1.20 or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the member provides a correct statement as required by these regulations.

(5) If a member does not comply with the obligations incumbent on it as a member of the Scheme, including those pursuant to regulations 20, 21 and this regulation, the competent authority shall be notified immediately and, in cooperation with the Scheme, shall promptly take all appropriate measures to ensure that the member complies with its obligations.

(6) If the measures taken under these regulations fail to secure compliance on the part of the member, the Scheme may, subject to the express consent of the competent authority, give not less than one month's notice of its intention to exclude the member from membership of the Scheme. Deposits made before the expiry of that notice period shall continue to be fully covered by the Scheme. If, on expiry of that notice period, the member has not complied with its obligations, the Scheme shall exclude it from membership.

(7) Deposits held on the date on which a member is excluded from membership of the Scheme shall continue to be covered by the Scheme.

PART V

Funding

23. (1) The competent authority shall ensure that:

- (a) the Scheme has in place adequate systems to determine its potential liabilities; and
- (b) the available financial means of the Scheme is proportionate to those liabilities.

(2) The available financial means of the Scheme shall amount to 1.3% of the covered deposits of its members, or such higher percentage as may be established by banking rules pursuant to regulation 42:

Provided that:

- (a) where the financing capacity falls short of such target level, the payment of contributions shall resume at least until the target level is reached again;

Financing of the
Scheme.
Amended by:
L.N. 43 of 2019.

- (b) if the available financial means have been reduced to less than two-thirds of such target level, the regular contribution shall be set at a level allowing such target level to be reached within six years;
- (c) if the available financial means have been reduced to a level which is more than two-thirds of such target level, the regular contribution shall be set at a level allowing such target level to be reached within four years;
- (d) subject to the overriding provision of regulation 23(3), but notwithstanding the maximum portion of a Compensation Contribution which by reference to the relative financial year can be provided as payment commitment in regulation 25(8), where the available financial means of the Scheme have been reduced on account of the Scheme having paid compensation to depositors under Part III of these regulations, the Scheme may provide in its absolute discretion that the payment of contributions by members under paragraphs (a), (b) and, or (c), as the case may be, be provided in whole or in part to the Scheme by means of a payment commitment;
- (e) the payment of contributions under paragraph (a) and paragraph (b) and, or paragraph (c) shall be determined by the Scheme in accordance with regulation 25(3).
- (f) the regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of these regulations.

(3) The available financial means to be taken into account in order to reach the target level may include payment commitments. By not later than 3 July 2024, the total share of payment commitments shall not exceed 30% of the total amount of available financial means raised in accordance with this regulation:

Provided that the competent authority may issue banking rules pursuant to regulation 42 on payment commitments, account being taken of any guidelines issued by the European Banking Authority.

(4) The target level referred to in sub-regulation (2) shall not include contributions to resolution financing arrangements under Directive 2014/59/EU, including available financial means to be taken into account in order to reach the target level of the resolution financing arrangements under Directive 2014/59/EU.

(5) The Scheme shall ensure that it has in place adequate alternative funding arrangements to enable it to obtain short-term funding to meet claims against the Scheme.

(6) The Scheme shall, by 31 March each year, inform the European Banking Authority of the amount of covered deposits in Malta and of the amount of the available financial means of the Scheme on 31 December of the preceding year.

24. The Scheme may at any time require members to pay the following contributions:

Contributions to the Scheme.

- (a) Compensation Contribution;
- (b) Management Expenses Contribution.

25. (1) Subject to regulation 23 (2), the Scheme may require members to pay a Compensation Contribution at least once in every financial year, commencing from the financial year ending 31 December 2016. The Compensation Contribution shall be allocated to the available financial means.

Compensation Contribution.
Amended by:
L.N. 43 of 2019.

(2) If the available financial means of the Scheme are insufficient to repay depositors when deposits become unavailable, the Scheme shall require members to pay an extraordinary Compensation Contribution not exceeding 0.5% of their covered deposits per financial year. The Scheme may in exceptional circumstances and with the consent of the competent authority require higher contributions.

(3) The Compensation Contribution (including any extraordinary Compensation Contribution) shall be based on the amount of covered deposits (excluding temporary high balances) of each member and the degree of risk incurred by the respective member:

Provided that a member may be required to pay a minimum contribution under a Compensation Contribution irrespective of the amount of its covered deposits or its degree of risk.

For the avoidance of doubt and saving the provisions of these regulations, the annual compensation contributions shall be determined by the Scheme for each member having regard to:

- (a) the applicable percentage of the covered deposits of its members as specified under regulation 23(2);
- (b) the covered deposits of each member at the end of the year immediately preceding the relevant financial year;
- (c) the degree of risk incurred by each member by reference to an aggregate risk weight in terms of regulation 25(5) for the year immediately preceding the relevant financial year; and
- (d) an adjustment coefficient in terms of regulation 25(6).

(4) Subject to the provisions of sub-regulation (3), the competent authority shall by banking rules establish:

- (a) a method (hereinafter referred to as the "risk-based method") for determining the degree of risk incurred by members;
- (b) a method (hereinafter referred to as the "Compensation Contribution method") for determining the amount of Compensation Contribution due by each member in each financial year:

Provided that:

- (i) the competent authority may review or amend any risk-based method or Compensation Contribution method, account being taken where appropriate of any guidelines which may be issued by the European Banking Authority;
- (ii) the competent authority shall inform the European Banking Authority about the risk-based method.

(5) The competent authority shall determine at least once in every financial year the Aggregate Risk Weight for each member (ARWi) in accordance with the risk-based method for the purpose of determining the compensation contribution in respect of the relevant financial year.

(6) The competent authority shall determine at least once in every financial year the Adjustment Coefficient (μ) for all members with the aim of reaching the target level whenever the total risk-adjusted contributions would be too high or too low for the purpose of determining the compensation contribution in respect of the relevant financial year.

(7) Every member shall provide to the competent authority the information required for the determination of the Aggregate Risk Weight of that member.

(8) Subject to the provisions of regulation 23(3), the Scheme may provide that a portion of a Compensation Contribution be provided to the Scheme by means of a payment commitment:

Provided that by reference to the financial year shown in the first column, the total portion of payment commitment shall not exceed the percentage shown in the second column:

Financial Year	Payment Commitments (maximum)
2016	74.50%
2017	69.00%
2018	63.50%
2019	58.00%
2020	52.50%
2021	47.00%
2022	41.50%
2023	36.00%
2024	30.00%

(9) The competent authority may issue banking rules in order to review and amend the effective date or percentages indicated in sub-regulation (8).

(10) Any payment commitment shall become payable to the Scheme on the Scheme's demand. The payment commitment of a member shall also become payable to the Scheme whenever that member ceases to be licensed in Malta for any reason whatsoever:

Provided that when a member ceases to be licensed on account of a merger with or acquisition by another member, the

Scheme may, at its discretion, either:

- (a) demand payment of the payment commitment; or
- (b) require that the payment commitment is transferred to the other member which has acquired the member who has ceased to be licensed in Malta or with which the latter member has merged.

(11) Details on the type of assets which may be accepted as collateral for Payment Commitments and on the modalities used to implement such Payment Commitments may be specified by banking rules.

(12) The value of assets comprising collateral for the Payment Commitments shall be the market value of such assets, determined in accordance with such discounting rules ("Valuation Haircuts") as shall be established by banking rules.

(13) The assets comprising collateral for the Payment Commitments shall be denominated in euro irrespective of the currency of the covered deposits.

(14) A member may not switch from one asset comprising collateral for the Payment Commitments to another asset, without the prior written consent of the Scheme.

(15) A member may, with the prior approval of the Scheme, pay the equivalent amount of the Payment Commitments directly with the Scheme, in which case such payment shall be on account of the member's liability under sub-regulation (8), and the provisions of this regulation shall, where applicable, also be applicable to such payment. No interest shall be payable by the Scheme to the member in respect of such payment. The Scheme may, in its absolute discretion, request the member to substitute such payment with the Payment Commitments due under these regulations.

26. (1) The Scheme may impose a Management Expenses Contribution on members in any financial year if it has reasonable grounds to believe that the funds available to it to meet management expenses in that financial year are, or will be, insufficient.

Management
Expenses
Contribution.

(2) The Scheme shall apply any amount collected from a Management Expenses Contribution to the payment of management expenses, and shall not treat such funds as available financial means of the Scheme.

(3) The competent authority shall by banking rules establish a method (hereinafter referred to as the "Management Expenses Contribution method") for determining the amount of Managements Expenses Contribution due by each member in any financial year:

Provided that the competent authority may review or amend any Management Expenses Contribution method.

(4) Notwithstanding any other provision in these Regulations, a member which becomes a member of the Scheme part way through the financial year, shall for the financial year in which it has

Assessment of
Compensation
Contribution and
Management
Expenses
Contribution.

become a member pay an Initial Management Expenses Contribution amounting to thirty-five thousand euro (€35,000).

27. (1) The Scheme shall assess at least once in every financial year the Compensation Contribution for each member in respect of the relevant financial year in accordance with the Compensation Contribution method.

(2) The Scheme shall give notice to each member about the amount of its Compensation Contribution, the risk factor established in the determination of that contribution and the amount of its Management Expenses Contribution in respect of any relevant financial year. The obligation of the member towards the Scheme in respect of its Compensation Contribution for any relevant financial year shall be deemed to arise on the date of such notice.

(3) A member which is aggrieved by any such assessment may request the Scheme to reconsider such assessment.

(4) A request for reconsideration shall be made within thirty days from notification of the assessment and may not be made concurrently with an appeal.

(5) The request for reconsideration shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended.

(6) On receipt of a request for reconsideration, the Scheme may require the member making the request to furnish such information as the Scheme may deem necessary.

(7) In the event that the Scheme accedes to the request for reconsideration or otherwise the member agrees with the Scheme as to the amount of the contribution or any relevant risk factors, the assessment shall be amended accordingly, and notice of the amount of contribution payable or the risk factors established shall be notified upon such member.

(8) If no agreement is reached, the Scheme shall assess the amount of the contribution payable and any relevant risk factors in writing, and give notice thereof to the member:

Provided always that in the event of any member who has applied for a reconsideration, failing to agree with the Scheme on such assessment, its right of appeal against the assessment, shall remain unimpaired.

(9) A member may not appeal against an assessment of the contribution or any relevant risk factors unless it has first exhausted its right to a reconsideration of such assessment.

(10) An appeal shall be filed against the Scheme and made to the Financial Services Tribunal in accordance with article 10 of the Banking Act, within thirty days of service of the notice to the member of the notice of the assessment referred to in sub-regulation (8). In those instances where the appeal is contesting the risk factor established in the determination of the contribution, the appeal shall also be filed against the competent authority. The request for an appeal shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended. The Financial Services Tribunal shall have all the powers conferred upon it by article 21 of the Malta Financial Services Authority Act.

Cap. 371.

Cap. 330.

(11) An appeal on a question of law only from a decision of the Financial Services Tribunal shall lie to the Court of Appeal in its superior jurisdiction. An appeal shall be made by not later than twenty days from the date of the decision of the Financial Services Tribunal. In the determination of such an appeal, the Court of Appeal shall be constituted in terms of article 41(9) of the Code of Organization and Civil Procedure. An appeal from a partial decision of the Financial Services Tribunal may only be filed together with an appeal from the final decision of the Financial Services Tribunal.

Cap. 12.

(12) Where an assessment as referred to in sub-regulation (1) has not been appealed, or where such assessment has been agreed in accordance with sub-regulation (7), or where such assessment has been appealed, within fifteen days of the date when the decision of the Financial Services Tribunal or the Court of Appeal has become a *res judicata*, the assessment as contained in the notice of the Scheme or as reduced or increased by the decision of the Tribunal or the Court of Appeal shall be due to the Scheme.

(13) Upon the service of a copy of the notice or of the decision, as the case may be, by means of a judicial act on the member indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

28. (1) The calculation of contributions shall take into account previous contributions, where contributions raised prove either more or less than the amount actually due in accordance with these regulations.

Adjustment of
Compensation
Contribution and
Management
Expenses
Contribution.

(2) The Scheme may adjust the calculation of a member's share of any contribution to take proper account of any or all of the following:

- (a) any excess or shortfall, not already taken into account, between previous contributions of the same type assessed in relation to previous financial years and the relevant contributions actually due in that financial year;
- (b) amounts that the Scheme has not been able to recover from members for any reason whatsoever;
- (c) payments deferred under regulation 30;

(d) anything else that the Scheme believes on reasonable grounds should be taken into account.

(3) The Scheme may reduce, remit, or refund any overpaid contributions paid by a member in respect of any particular calendar year, or adjust the calculation of a member's share of any contribution, wherever there is a mistake of law or of fact, unless the reduction, remit, refund or adjustment is in respect of a contribution which is prescribed in accordance with regulation 29(9).

(4) A member who ceases to be a member of the Scheme for whichever reason shall not be entitled for any refund of payments to the Scheme in respect of its contributions.

Obligation to pay
Contributions.
Amended by:
L.N. 43 of 2019.

29. (1) A member shall pay to the Scheme its:

(a) Compensation Contribution; and

(b) Management Expenses Contribution.

(2) A member's contribution shall be due on, and payable within, thirty days of the date of the notice of an assessment pursuant to regulation 27(2).

(3) Where a member requests a reconsideration or files an appeal against an assessment of the contribution or any relevant risk factor, such request or appeal shall not delay the payment deadlines set out in sub-regulation (2). Such member shall be entitled to a refund from the Scheme of any amount of contribution paid in excess of the amount which is agreed in accordance with regulation 27(7), or where such assessment has been appealed, of the amount which is finally determined as due by a decision of the Financial Services Tribunal or the Court of Appeal which has become a *res judicata*.

(4) If a member ceases, for any reason, to be a member part way through a financial year of the scheme, it will remain liable for any unpaid contributions.

(5) If a member does not pay the total amount of its contribution, before the end of the date on which it is due, it shall pay an additional amount to the Scheme as follows:

(a) if the contributions was not paid in full before the end of the due date, an administrative fee of five hundred euro (€500); and

(b) interest on any unpaid part of the contribution at the rate of 12% per annum, accruing on a daily basis from the date on which the amount concerned became due.

(6) Where the Scheme decides to sue for the recovery of a contribution, administrative fee or interest due to it by a member under these regulations, the Chairperson or an officer of the Scheme duly authorised by the Scheme to act on its behalf may make a declaration on oath before the Court Registrar or before any other officer authorised to administer the oath in judicial matters, wherein he states the nature of the debt and the name of the member and confirm that it is due.

(7) Saving the provisions of regulation 27(12), the declaration referred to in sub-regulation (6) shall be served upon the member by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the member shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application stating precisely the reasons for such opposition and demanding that the court declare the claim unfounded.

(8) The application filed in terms of sub-regulation (7) shall be served upon the Scheme, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(9) Any action by the Scheme for the payment of any contribution due by a member shall be barred by the lapse of a period of prescription of two years from the date on which the contribution was due.

30. (1) The competent authority may defer, in whole or in part, a member's obligation to pay a contribution if the competent authority considers that such contributions would jeopardise the liquidity or solvency of the member. Such deferral shall not be granted for a longer period than six months but may be renewed upon request of the member.

Deferral of
Contributions.

(2) Any contributions deferred pursuant to sub-regulation (1) shall be paid when the payment no longer jeopardises the liquidity and solvency of the member.

(3) Any such deferral shall suspend the period of prescription set out in regulation 29(9).

31. (1) If a member is lawfully entitled to cease to be a member and joins a DGS in another Member State, the Scheme shall transfer the Compensation Contributions paid by that member during the twelve months preceding the end of the membership to the relevant DGS.

Transfer of
Contributions.

(2) If some of the activities of a member are transferred to another Member State and become subject to a DGS in another Member State, the Compensation Contributions paid by that member during the twelve months preceding the transfer shall be transferred to the relevant DGS in proportion to the amount of covered deposits transferred.

(3) The provisions of the preceding sub-regulations shall not apply:

- (a) if the member has been excluded from the Scheme pursuant to regulation 22(6); or
- (b) to Management Expenses Contributions; or
- (c) to extraordinary Compensation Contributions pursuant to regulation 25(2).

(4) If a member intends to transfer some or all of its activities to another Member State, it shall give at least six months' notice of its intention to do so to the Scheme. During that period, the member

shall remain under the obligation to pay all contributions to the Scheme pursuant to these regulations.

Management of funds.

32. (1) The Scheme may place its available financial means in a low-risk and sufficiently diversified manner.

(2) The Scheme may hold any amounts collected from Management Expenses Contributions pursuant to regulation 26 and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(3) Interest or any other form of income or gain earned by the Scheme in respect of its assets held pursuant to sub-regulations (1) and (2) shall be allocated to the Scheme's reserves, including the "Accumulated Fund" and the "Revaluation Reserve".

(4) The Management Committee may at any time, and at its sole discretion, allocate any of the Scheme's reserves held pursuant to sub-regulation (3) to either of the class of funds representing the Scheme's available financial means or the Management Expenses contributions.

Use of available financial means.

33. (1) The available financial means shall be primarily used in order to repay depositors pursuant to these regulations.

(2) The available financial means of the Scheme shall be used in order to finance the resolution of members in accordance with Directive 2014/59/EU. The Resolution Committee shall determine, after consulting the Scheme, the amount by which the Scheme is liable.

(3) The Scheme, in consultation with the competent authority, may use the available financial means for alternative measures in order to prevent the failure of a member provided that the following conditions are met:

- (a) the Resolution Committee has not taken any resolution action under Directive 2014/59/EU;
- (b) the Scheme has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks;
- (c) the costs of the measures do not exceed the costs of fulfilling the statutory or contractual mandate of the Scheme;
- (d) the use of alternative measures by the Scheme is linked to conditions imposed on the member that is being supported, involving at least more stringent risk monitoring and greater verification rights for the Scheme;
- (e) the use of alternative measures by the Scheme is linked to commitments by the member being supported with a view to securing access to covered deposits;
- (f) the ability of the members to pay the extraordinary contributions in accordance with sub-regulation (5) is confirmed in the assessment of the competent authority.

The Scheme shall consult the Resolution Committee and the competent authority on the measures and the conditions imposed on the member.

(4) Alternative measures as referred to in sub-regulation (3) shall not be applied where the competent authority, after consulting the Resolution Committee, considers the conditions for resolution action under Directive 2014/59/EU to be met.

(5) If available financial means are used in accordance with sub-regulation (3), the members shall immediately provide the Scheme with the means used for alternative measures, where necessary in the form of extraordinary contributions, where:

- (a) the need to reimburse depositors arises and the available financial means of the Scheme amount to less than two-thirds of the target level;
- (b) the available financial means fall below 25% of the target level:

Provided that until the target level has been reached for the first time, the above thresholds shall apply in relation to the available financial means.

(6) The Scheme, in consultation with the competent authority, may decide that the available financial means may also be used to finance measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of insolvency proceedings, provided that the costs borne by the Scheme do not exceed the net amount of compensating covered depositors at the member concerned.

PART VI

Supplementary

34. (1) The Scheme may, in consultation with the competent authority, lend to other DGSs within the European Union on a voluntary basis, provided that it ensures that the following conditions are met:

Borrowing
between deposit
guarantee schemes.

- (a) the borrowing DGS is not able to fulfil its obligations under Article 9(1) of the Directive because of a lack of available financial means;
- (b) the borrowing DGS has made recourse to extraordinary contributions referred in Article 10(8) of the Directive;
- (c) the borrowing DGS undertakes the legal commitment that the borrowed funds will be used in order to pay claims under Article 12 of the Directive;
- (d) the borrowing DGS is not currently subject to an obligation to repay a loan to other DGSs under this regulation;
- (e) the borrowing DGS states the amount of money requested;
- (f) the total amount lent does not exceed 0.5% of covered deposits of the borrowing DGS;

- (g) the borrowing DGS informs the European Banking Authority without delay and states the reasons why the conditions set out in this sub-regulation are fulfilled and the amount of money requested.

(2) The Scheme shall ensure that the loan shall be subject to the following conditions:

- (a) the borrowing DGS must repay the loan within five years. It may repay the loan in annual instalments. Interest shall be due only at the time of repayment;
- (b) the interest rate set must be at least equivalent to the marginal lending facility rate of the European Central Bank during the credit period;
- (c) the Scheme must inform the European Banking Authority of the initial interest rate and the duration of the loan.

(3) The Scheme shall ensure that the contributions levied by the borrowing DGS are sufficient to reimburse the amount borrowed and to re-establish the target level as soon as possible.

Cooperation
between Member
States.
Amended by:
L.N.132 of 2017.

35. (1) Where a member sets up a branch in another Member State, the Scheme shall cover the depositors at such a branch. The DGS of the host Member State shall repay the depositors of that branch on behalf of the Scheme in accordance with the instructions of the Scheme. The DGS of the host Member State shall not bear any liability with regard to acts done in accordance with the instructions given by the Scheme. The Scheme shall provide the necessary funding prior to pay out and shall compensate the DGS of the host Member State for the costs incurred.

(2) Depositors at a branch operating in Malta set up by a credit institution established in another Member State shall be repaid by the Scheme on behalf of the DGS in the home Member State. The Scheme shall make repayments in accordance with the instructions of the DGS of the home Member State. The Scheme shall not bear any liability with regard to acts done in accordance with the instructions given by the DGS of the home Member State. The DGS of the home Member State shall provide the necessary funding prior to pay out and shall compensate the Scheme for the costs incurred. The Scheme shall also inform the depositors concerned on behalf of the DGS of the home Member State and shall be entitled to receive correspondence from those depositors on behalf of the DGS of the home Member State.

(3) The Scheme shall exchange information referred to under Article 4(7), (8) and (10) of the Directive with the DGSs in host Member States. The restrictions set out in Article 4 of the Directive shall apply to such exchanges of information.

(4) In order to facilitate an effective cooperation between the Scheme and DGSs in other Member States, with particular regard to this regulation and to regulation 34, the Scheme and the DGSs in other Member States shall have written cooperation agreements in place. Such agreements shall take into account the requirements laid down in Article 4(9) of the Directive.

(5) The Scheme shall notify the European Banking Authority of the existence and the content of such agreements. If the Scheme cannot reach an agreement with a DGS in a Member State or if there is a dispute about the interpretation of an agreement, the Scheme may refer the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010. The absence of such agreements shall not affect the claims of depositors under regulation 18(1) or of credit institutions under regulation 31(1).

(6) The Scheme shall ensure that appropriate procedures are in place to enable the Scheme to share information and communicate effectively with other DGSs, their affiliated credit institutions and the relevant competent and designated authorities within their own jurisdictions and with other agencies on a cross-border basis, where appropriate.

(7) The Scheme may cooperate with other DGSs operating in the European Union through a European scheme which may be set up by the European Parliament and the Council to prevent risks arising from cross-border activities and protect deposits from such risks.

36. (1) For the purpose of enabling the Scheme and the competent authority to carry out their respective functions and duties, the Scheme and the competent authority may share and exchange information and resources, and shall otherwise consult and collaborate with one another. The duties of confidentiality shall apply to any such communications.

Cooperation between the Scheme and the competent authority.

(2) The competent authority shall inform the Scheme as soon as possible in the event that the competent authority detects problems in a member that are likely to give rise to the intervention of the Scheme.

37. (1) The Scheme shall check that a branch established in Malta by a credit institution which has its head office outside the European Union has protection equivalent to that prescribed in these regulations and, in particular, shall check that depositors of that branch benefit from the same coverage level and scope of protection as provided for in these regulations.

Branches of credit institutions established in third countries.

(2) Each branch established in Malta by a credit institution which has its head office outside the European Union and which is not a member of the Scheme shall provide to actual or intending depositors at that branch all relevant information concerning the existence or otherwise of guarantee arrangements for deposits held in that branch.

(3) The information referred to in sub-regulation (2) shall be made available in the language that was agreed by the depositor and the credit institution when the account was opened or in an official language of Malta and shall be clear and comprehensible.

38. A notice or other document to be given, provided or served under these regulations shall be deemed to have been duly given or served on a person if the requirements of article 187(1) and (4) of the Code of Organization and Civil Procedure are complied with:

Mode of service.

Cap. 12.

Cap. 12.	Provided that a notice or other document may in all cases be served by means of a judicial act, in which case the relevant provisions of the Code of Organization and Civil Procedure shall apply.
Language.	39. The Scheme shall communicate and correspond with a depositor in any one of the official languages of Malta or in any other official language of the European Union that is used by the credit institution which holds the eligible deposit.
Confidentiality. Cap. 377.	40. (1) The Scheme and its officers or agents shall be subject to the provisions of the Professional Secrecy Act and shall keep confidential any information obtained by them in the course of performing their duties under these regulations, and shall not reveal any information to any person, credit institution, association or entity except as may be allowed by these regulations or any other law or by Court order. (2) The duty of confidentiality shall not be contravened in the case of: (a) exchange of information between the Scheme, the competent authority and the DGSs and, or competent authorities in other Member States, provided that the relevant information is necessary for the discharge of their duties under these regulations; and (b) any use or disclosure as may be required to enable the Scheme and its officers or agents to perform their duties and carry out their functions under these regulations.
Administrative penalty.	41. (1) Without prejudice to any other provision of these regulations, a credit institution or any director or official thereof, who fails to comply with the Scheme's request for information within the period of time established by the Scheme pursuant to these regulations, or who knowingly or recklessly furnishes information, or makes a statement which is inaccurate, false or misleading in any material respect, shall, for every such failure, be liable to an administrative penalty not exceeding one hundred and twenty-five thousand euro (€125,000) as may be imposed by the competent authority by means of a notice in writing and without recourse to a court hearing. (2) Where an administrative penalty has been imposed by the competent authority in terms of this regulation, an appeal shall lie to the Financial Services Tribunal in accordance with articles 10 and 35A of the Banking Act.
Cap. 371.	
Power to issue banking rules.	42. (1) The competent authority may issue banking rules to credit institutions for the purposes of these regulations. (2) Such banking rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purpose of these regulations.

43. The Scheme and officers or agents of the Scheme shall not be liable in damages for anything done or omitted in the discharge of functions under these regulations unless it is shown that the act or omission was in bad faith. Exemption from liability or damages.
44. (1) With effect from the date of entry into force of these regulations, any reference in any law, regulation or administrative provision to the Depositor Compensation Scheme Regulations, 2003, (hereinafter referred to as "the revoked regulations") shall, for all intents and purposes, be construed as a reference to these regulations. Saving.
L. N. 379 of 2003.
- (2) All appointments, decisions, contributions, claims, payments or other acts made or taken under the revoked regulations, before the coming into force of these regulations, shall continue in force and shall be deemed to have been made or taken under these regulations.
- (3) All assets and liabilities which vested in the Scheme before the coming into force of these regulations shall belong to the Scheme in virtue of these regulations. Upon the coming into force of these regulations, any balances held on the Scheme's "Contribution Fund" and on the "Special Contribution Fund" shall be allocated to the available financial means of the Scheme, and in determining the amount of compensation contribution due by any member, account shall be had of that member's previous contributions to the Scheme's "Contribution Fund" and to the "Special Contribution Fund".
- (4) The Scheme shall require all of its members to inform their depositors about the deposits or categories of deposits or other instruments which will no longer be covered by the Scheme from 3rd July 2015.
- (4) Any reference in any law, regulation or administrative provision to Directive 94/19/EC as amended shall, for all intents and purposes, be construed as a reference to Directive 2014/49/EU.
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Amended by:
L.N.132 of 2017.

SCHEDULE
Depositor Information Sheet

Basic information about the protection of deposit	
Deposits in (insert name of credit institution) are protected by:	The Depositor Compensation Scheme, established under regulation 4 of the Depositor Compensation Scheme Regulations, 2015.
Limit of protection:	EUR 100,000 per depositor per credit institution ²
If you have more deposits at the same credit institution:	All your deposits at the same credit institution are "aggregated" and the total is subject to the limit of EUR 100,000.
If you have a joint account with other person(s):	The limit of EUR 100,000 applies to each depositor separately ³
Reimbursement period in case of credit institution's failure:	20 working days ⁴
Currency of reimbursement:	Euro
Contact:	Depositor Compensation Scheme, c/o Malta Financial Services Authority, Notabile Road, Attard BKR3000, Malta; Tel: (+) 356 21441155; E-mail: info@compensationschemes.org.mt
More information:	www.compensationshemes.org.mt
Acknowledgement of receipt by the depositor:	

Scheme responsible for the protection of your deposit

Your deposit is covered by a statutory Deposit Guarantee Scheme. If insolvency of your credit institution should occur, your deposits would in any case be repaid up to EUR100,000.

² General limit of protection

If a deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by the Depositor Compensation Scheme, in accordance with the regulations. This repayment covers a maximum of EUR 100,000 per credit institution. This means that all deposits at

the same credit institution are added up in order to determine the coverage level. If, for instance, a depositor holds a savings account with EUR 90,000 and a current account with EUR 20,000, he or she will only be repaid EUR 100,000.

In addition to the protection described above, deposits may be protected in some cases up to a maximum of EUR 500,000 for six months after the amount has been credited or from the moment when such deposits become legally transferable. In order to qualify for such higher protection, a deposit in excess of EUR 100,000 must meet any one of the following additional criteria:

(A) it comprises:

- (a) monies deposited in preparation for the purchase of a private residential property by the depositor; or
- (b) monies which represent the proceeds of sale of a private residential property of the depositor; or

(B) it comprises sums paid to the depositor in respect of:

- (a) a separation, divorce or dissolution of their civil union; or
- (b) benefits payable on retirement; or
- (c) a claim for compensation for unfair dismissal; or
- (d) a claim for compensation for redundancy; or
- (e) benefits payable for death or bodily injury; or
- (f) a claim for compensation for wrongful conviction.

More information can be obtained under www.compensationschemes.org.mt

³ Limit of protection for joint accounts

In case of joint accounts, the limit of EUR 100,000 applies to each depositor.

However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of EUR 100,000.

⁴ Reimbursement

The responsible Deposit Guarantee Scheme is the Depositor Compensation Scheme, c/o Malta Financial Services Authority, Notabile Road, Attard BKR3000, Malta; Tel: (+)356 21441155; E-mail:

info@compensationschemes.org.mt.

It will repay your deposits up to EUR 100,000 within 20 working days until 31 December 2018; within 15 working days from 1 January 2019 until 31 December 2020; within 10 working days from 1 January 2021 until 31 December 2023; and within 7 working days from 1 January 2024 onwards.

Until 31 December 2023, where the Depositor Compensation Scheme cannot make the repayable amount(s) available within seven (7) working days, depositors shall have access to an amount, equivalent to three times the gross weekly minimum wage to cover the cost of living, within five (5) working days of a request from the depositor. The Depositor Compensation Scheme shall only grant access to such amount within five (5) working days on the basis of data provided by the credit institution. Such amount shall be deducted from the compensation which may be payable.

If you have not been repaid within these deadlines, you should make contact with the Depositor Compensation Scheme since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained from:

www.compensationschemes.org.mt.

Other important information

In general, all retail depositors and businesses are covered by the Depositor Compensation Scheme. Exceptions for certain deposits are stated on the website of the Depositor Compensation Scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are covered, the credit institution shall also confirm this on the statement of account.
