VERŻJONI ELETTRONIKA

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Taqsima B

L.N. 127 of 2015

BANKING ACT
(CAP. 371)

Banking Act (Supervisory Review) Regulations, 2015

IN exercise of the powers conferred by article 3 of the Banking Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Banking Act (Supervisory Review) Regulations, 2015.

(2) The purpose of these regulations is to implement Articles 3 (in part), 75, 77(2), 78(2), 78(3), 78(4), 78(5), 86(3), 91(11), 97, 98, 99, 100, 101, 103, 104, 105, 107 and 110 of the CRD.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

"the Act" means the Banking Act; Cap. 371.

"the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the 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, as amended from time to time, and includes any implementing measures that have been or may be made thereunder;

"the CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"European regulatory authority" means an authority which is in a country or territory outside Malta that is a Member State and is empowered by law or regulation to supervise credit institutions;

"internal approach" means the internal ratings based approach referred to in Article 143(1), the internal models approach referred to in Article 221, the own estimates approach referred to in Article 225, the advanced measurement approaches referred to in Article 312(2),

the internal models method referred to in Articles 283 and 363, and the internal assessment approach referred to in Article 259(3) of the CRR;

"systemic risk" means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein, shall have the same meaning as in the Act.

Supervisory review and evaluation.

3. (1) The competent authority shall, taking into account the technical criteria set out in regulation 4, review the arrangements, strategies, processes and mechanisms implemented by credit institutions to comply with the Act and any regulations or Banking Rules issued thereunder, and the CRR and evaluate:

(a) risks to which credit institutions are or might be exposed;

(b) risks that a credit institution poses to the financial system taking into account the identification and measurement of systemic risk in terms of Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate; and

(c) risks revealed by stress testing taking into account the nature, scale and complexity of a credit institution's activities.

(2) The scope of the review and evaluation referred to in sub-regulation (1) shall cover all requirements of the Act and any regulations or Banking Rules issued thereunder, and the CRR.

(3) On the basis of the review and evaluation referred to in sub-regulation (1), the competent authority shall determine whether the arrangements, strategies, processes and mechanisms implemented by credit institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

(4) The competent authority shall establish the frequency and intensity of the review and evaluation referred to in sub-regulation (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for credit institutions covered by the supervisory examination programme

referred to in regulation 5(2).

(5) Where a review shows that a credit institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010, the competent authority shall inform EBA without delay about the results of the review.

Technical criteria for the supervisory review and evaluation.

4. (1) In addition to credit, market and operational risks, the review and evaluation performed by the competent authority in accordance with regulation 3 shall include at least:

(a) the results of the stress test carried out in accordance with Article 177 of the CRR by credit institutions applying an internal ratings based approach;

(b) the exposure to and management of concentration risk by credit institutions, including their compliance with the requirements set out in Part Four of the CRR and those on concentration risk in Article 81 of the CRD;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by credit institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

(d) the extent to which the own funds held by a credit institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, measurement and management of liquidity risk by credit institutions including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

(f) the impact of diversification effects and how such effects are factored into the risk measurement system;

(g) the results of stress tests carried out by credit institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the CRR;

(h) the geographical location of credit institutions' exposures;

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

(j) the assessment of systemic risk, in accordance with the criteria set out in regulation 3.

(2) For the purposes of sub-regulation (1)(e), the competent authority shall regularly carry out a comprehensive assessment of the overall liquidity risk management by credit institutions and promote the development of sound internal methodologies. While conducting these reviews, the competent authority shall have regard to the role played by credit institutions in the financial markets. The competent authority shall also duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned.

(3) The competent authority shall monitor whether a credit institution has provided implicit support to a securitisation. If a credit institution is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(4) For the purposes of the determination to be made under regulation 3(3), the competent authority shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the CRR, enable the credit institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(5) The review and evaluation performed by the competent authority shall include the exposure of credit institutions to the interest rate risk arising from non-trading activities. Measures shall be required at least in the case of credit institutions whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(6) The review and evaluation performed by the competent authority shall include the exposure of credit institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of the CRR. In determining the adequacy of the leverage ratio of credit institutions and of the arrangements, strategies, processes and mechanisms implemented by credit institutions to manage the risk of excessive leverage, the competent authority shall take into account the business model of those credit institutions.

(7) The review and evaluation conducted by the competent

authority shall include governance arrangements of credit institutions, their corporate culture and values, and the ability of directors to perform their duties. In conducting that review and evaluation, the competent authority shall, at least, have access to agendas and supporting documents for meetings of the board of directors and its committees, and the results of the internal or external evaluation of performance of the board of directors.

Supervisory examination programme

5. (1) The competent authority shall, at least annually, adopt a supervisory examination programme for the credit institutions it supervises. Such programme shall take into account the supervisory review and evaluation process referred to in regulation 3, and shall contain the following:

(a) an indication of how the competent authority intends to carry out its tasks and allocate its resources;

(b) an identification of which credit institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in sub-regulation 3; and

(c) a plan for inspections at the premises used by a credit institution, including its branches and subsidiaries established in other Member States in accordance with regulation 12 of the European Passport Rights for Credit Institutions Regulations and regulation 10(2) and (3) and regulation 19(1) and (2) of the Supervisory Consolidation Regulations.

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(2) Supervisory examination programmes shall include the following credit institutions:

(a) credit institutions for which the results of the stress tests referred to in regulation 4(1)(a) and (1)(g) and in regulation 6, or the outcome of the supervisory review and evaluation process under regulation 3, indicate significant risks to their ongoing financial soundness or indicate breaches of the Act and any regulations or Banking Rules issued thereunder transposing the requirements of the CRD, and of the CRR;

(b) credit institutions that pose systemic risk to the financial system; and

(c) any other credit institution for which the competent authority deems it to be necessary.

(3) Where appropriate under regulation 3, the following measures shall, in particular, be taken if necessary:

(a) an increase in the number or frequency of on-site inspections of the credit institution;

(b) a permanent presence of the competent authority at the credit institution;

(c) additional or more frequent reporting by the credit institution;

(d) additional or more frequent review of the operational, strategic or business plans of the credit institution; and

(e) thematic examinations monitoring specific risks that are likely to materialise.

(4) Adoption of a supervisory examination programme by the European regulatory authority of a home Member State shall not prevent the competent authority from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches established in Malta of credit institutions authorised by such European regulatory authorities in accordance with regulation 8(2) and (3) of the European Passport Rights for Credit Institutions Regulations.

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Supervisory stress testing.

6. The competent authority shall carry out, as appropriate but at least annually, supervisory stress tests on credit institutions it supervises, to facilitate the review and evaluation process under regulation 3.

Ongoing review of the permission to use internal approaches.

7. (1) The competent authority shall review on a regular basis, and at least every three years, credit institutions' compliance with the requirements regarding approaches that require permission by the competent authority for the calculation of own funds requirements in accordance with Part Three of the CRR. The competent authority shall have particular regard to changes in a credit institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by a credit institution's internal approach, the competent authority shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(2) The competent authority shall in particular review and assess whether the credit institution uses well developed and up-to-date techniques and practices for those approaches.

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(3) If for an internal market risk model numerous over-shootings as referred to in Article 366 of the CRR indicate that the model is not or is no longer sufficiently accurate, the competent authority shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(4) If a credit institution has received permission to apply an approach that requires permission by the competent authority before using such an approach for the calculation of own funds requirements in accordance with Part Three of the CRR but no longer meets the requirements for applying that approach, the competent authority shall require the credit institution to either demonstrate to the satisfaction of the competent authority that the effect of non-compliance is immaterial, where applicable in accordance with the requirements of the CRR, or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authority shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the credit institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

(5) The competent authority shall take into account the analysis carried out by the EBA in terms of Article 101(5) of the CRD and the guidelines containing benchmarks on the basis of that analysis issued by the EBA, for the review of the permissions it grants to credit institutions to use internal approaches for the calculations of own funds requirements.

Application of supervisory measures to credit institutions with similar risk profiles.

8. (1) Where the competent authority determines in terms of regulation 3 that credit institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it may apply the supervisory review and evaluation process referred to in regulation 3, to those credit institutions in a similar or identical manner and the competent authority shall notify the EBA accordingly.

(2) For this purpose, the competent authority shall have the necessary legal power to impose the requirements under the CRD and under the CRR on the credit institutions referred to in sub-regulation (1) in a similar or identical manner, including in particular the exercise of supervisory powers contained in regulations 9, 10 and

article 30A of the Act.

(3) The type of credit institutions referred to in sub-regulation (1) may be determined in accordance with the criteria referred to in regulation 4(1)(j).

Supervisory powers.

9. (1) For the purposes of regulations 3, 4(4), 7(4), 8 and article 17E of the Act and the application of the CRR, the competent authority shall have at least the following powers:

(a) to require credit institutions to hold own funds in excess of the requirements set out in Chapter 4 of Title VII of the CRD, and in the CRR relating to elements of risks and risks not covered by Article 1 of the CRR;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with articles 17B and 17C of the Act;

(c) to require credit institutions to present a plan to restore compliance with supervisory requirements in accordance with the Act and any regulations made or Banking Rules issued thereunder, and to the CRR and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(d) to require credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of credit institutions or to request the divestment of activities that pose excessive risks to the soundness of a credit institution;

(f) to require the reduction of the risk inherent in the activities, products and systems of credit institutions;

(g) to require credit institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

(h) to require credit institutions to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions or interest payments by a credit institution to shareholders, members or holders of Additional Tier 1 instruments within the meaning of

the CRR, where the prohibition does not constitute an event of default of the credit institution;

(j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; and

(l) to require additional disclosures.

(2) The additional own funds requirements referred to in sub-regulation (1)(a), shall be imposed by the competent authority at least where:

(a) a credit institution does not meet the requirement set out in articles 17B and 17C of the Act or in Article 393 of the CRR;

(b) risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of Title VII of the CRD, or in the CRR;

(c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;

(d) the review referred to in regulation 4(4) or in regulation 7(4), reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;

(e) the risks are likely to be underestimated despite compliance with the applicable requirements of the Act and any regulations made or Banking Rules issued thereunder, and of the CRR; or

(f) a credit institution reports to the competent authority in accordance with Article 377(5) of the CRR that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of an additional own funds

requirement in excess of the own funds requirement is necessary to capture risks to which a credit institution is or might be exposed, taking into account the following:

(a) the quantitative and qualitative aspects of a credit institution's assessment process referred to in article 17C of the Act;

(b) a credit institution’s arrangements, processes and mechanisms referred to in article 17B of the Act;

(c) the outcome of the review and evaluation carried out in accordance with regulations 3 and 7; and

(d) the assessment of systemic risk.

Specific liquidity requirements.

10. (1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which a credit institution is or might be exposed, taking into account the following:

(a) the particular business model of the credit institution;

(b) the credit institution’s arrangements, processes and mechanisms referred to in Section II of Chapter 2 of Title VII of the CRD and in particular in Article 86 of the CRD in relation to liquidity risk;

(c) the outcome of the review and evaluation carried out in accordance with regulation 3;

(d) systemic liquidity risk that threatens the integrity of the financial markets in Malta.

(2) In particular, without prejudice to regulation 7 of the Administrative Penalties, Measures and Investigatory Powers Regulations, the competent authority shall consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of a credit institution and any liquidity and stable funding requirements established at national or at European Union level.

(3) The competent authority shall monitor developments in

relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

(4) The competent authority shall take effective action where developments referred to in sub-regulation (3) may lead to the instability of an individual credit institution or systemic instability.

(5) The competent authority shall inform EBA about any actions carried out pursuant to sub-regulation (4).

Notification to EBA by the competent authority.

11. The competent authority shall inform EBA of:

(a) the functioning of its review and evaluation process referred to in regulation 3;

(b) the methodology used to base decisions on the technical criteria for supervisory review referred to in regulation 4, the supervisory stress testing in regulation 6, the review of internal approaches in regulation 7, the supervisory measures in article 17E of the Act, the supervisory powers in regulation 9 and the specific liquidity requirements in regulation 10, on the process referred to in paragraph (a).

Review and evaluation and application of supervisory measures.

12. The competent authority shall apply the review and evaluation process referred to in these regulations in accordance with the level of application of the requirements of Part One, Title II of the CRR.

Oversight of remuneration policies.

13. (1) The competent authority shall collect the information disclosed by credit institutions in accordance with the criteria for disclosure established in Article 450(1)(g), (h) and (i) of the CRR and shall use it to benchmark remuneration trends and practices. The competent authority shall provide EBA with such information.

(2) The competent authority shall collect information on the number of natural persons per credit institution that are remunerated EUR 1 million or more per financial year, in pay brackets of €1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contributions. The competent authority shall forward such information to EBA.

Sole or mechanistic reliance on external credit ratings.

14. The competent authority shall, taking into account the nature, scale and complexity of the credit institutions' activities, monitor that credit institutions do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an

entity or financial instrument.

Supervisory benchmarking of internal approaches for calculating own funds requirements.

15. (1) Where the competent authority chooses to develop specific portfolios of internal approaches permitted to be used by credit institutions, it shall do so in consultation with the EBA and shall ensure that credit institutions report the results of the calculations for these specific portfolios separately from the results of the calculations for the benchmark portfolios required under Article 78 of the CRD.

(2) The competent authority shall, on the basis of the information submitted by credit institutions, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those credit institutions. The competent authority shall make an assessment, at least annually, of the quality of those approaches paying particular attention to:

(a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

(b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

(3) Where particular credit institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the competent authority shall investigate the reasons therefor and, if it can be clearly identified that a credit institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, the competent authority, shall take corrective action.

(4) The competent authority shall ensure that its decision on the appropriateness of corrective actions as referred to in sub-regulation (3) comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

(a) lead to standardisation or preferred methods;

(b) create wrong incentives; or

(c) cause herd behaviour.

Benchmarking of diversity practices by the competent authority.

16. The competent authority shall collect the information disclosed in accordance with Article 435(2)(c) of the CRR and shall use it to benchmark diversity practices. The competent authority shall provide that information to the EBA.

General disclosures by the competent authority.

17. (1) The competent authority shall, in accordance with Commission Implementing Regulation (EU) No 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council, as amended from time to time, publish the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta in the field of prudential regulation;

(b) the manner of exercise of the options and discretions available in European Union law;

(c) the general criteria and methodologies used in the review and evaluation referred to in regulation 3;

(d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of the CRD, aggregate statistical data on key aspects of the implementation of the prudential framework in Malta, including the number and nature of supervisory measures taken in accordance with article 17E(1)(a) of the Act, and of administrative penalties imposed in accordance with regulation 4(1), (2) and (3) and regulation 5 of the Administrative Penalties, Measures and Investigatory Powers Regulations.

(2) In terms of Article 143 of the CRD, the information published in accordance with sub-regulation (1) shall be sufficient to enable a meaningful comparison of the approaches adopted by the European regulatory authorities. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.

Specific disclosures by the competent authority.

18. (1) For the purpose of Part Five of the CRR, relating to exposures to transfer credit risk, the competent authority shall publish the following information:

(a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the CRR;

(b) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II of the CRD, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the CRR, identified on an annual basis.

(2) If the competent authority exercises the discretion laid down in Article 7(3) of the CRR, it shall publish the following information:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR and the number of those which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Malta:

(i) the total amount of own funds on the consolidated basis of the parent institution in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of parent institutions in Malta which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of the CRR on the consolidated basis of parent institutions in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country.

(3) If the competent authority exercises the discretion laid down in Article 9(1) of the CRR, it shall publish the following information:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the

prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR and the number of such parent institutions which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Malta:

(i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of the CRR of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country.

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