

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,596, 26 ta' Marzu, 2021

Taqsim B

L.N. 118 of 2021

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

**Malta Financial Services Authority Act (Securitisation)
Regulations, 2021**

IN EXERCISE of the powers conferred by article 20A of the Malta Financial Services Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Malta Financial Services Authority Act (Securitisation) Regulations, 2021. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the Securitisation Regulation as herein defined, and they shall be interpreted and applied accordingly.

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

"the Act" means the Malta Financial Services Authority Act; Cap. 345

"Securitisation Regulation" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"subject person" means any institutional investor, originator, sponsor, original lender and securitisation special purpose entities ("SSPE") as defined in the Securitisation Regulation.

(2) Words and expressions used in these regulations which are also used in the Securitisation Regulation but which are not defined herein, shall have the same meaning assigned to them in the Securitisation Regulation.

Applicability.	3. These regulations shall apply to subject persons involved in securitisations.
Competent authority. Cap. 330.	4. The Malta Financial Services Authority, established by the Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the Securitisation Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.
Applicability of the Securitisation Regulation to the competent authority.	5. (1) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities in accordance with the Securitisation Regulation. (2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the Securitisation Regulation, exercise any of the powers assigned to it under the Act.
Power of the competent authority to issue Rules.	6. The Authority may issue Rules in terms of article 16(2)(a) and article 20A(3) of the Act for the better carrying out of these regulations and the Securitisation Regulation.
Supervisory powers and powers to impose administrative penalties and other administrative measures.	7. (1) The competent authority shall exercise its supervisory powers and its powers to impose administrative penalties and other administrative measures, in such a way as to ensure full and complete adherence to the requirements and obligations arising out of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the Securitisation Regulation, either directly, in collaboration with other authorities or by applications to the competent judicial authorities, in terms of the law as warranted by the relevant circumstances. (2) The competent authority shall ensure that administrative penalties and other administrative measures imposed on subject persons are effectively implemented. (3) The administrative penalties and other administrative measures imposed on subject persons shall be effective, proportionate and dissuasive. (4) When determining the type of administrative penalties or other administrative measures and the level of administrative penalties to be imposed on subject persons, the competent authority shall take into account the extent to which the breach is intentional or results from negligence and all other relevant circumstances including, where appropriate: (a) the materiality, gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person responsible for the breach;

(c) the financial strength of the natural or legal person responsible for the breach;

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach insofar as they can be determined;

(e) the losses for third parties caused by the breach insofar as they can be determined;

(f) the level of co-operation of the natural or legal person responsible for the breach with the competent authority;

(g) previous breaches by the natural or legal person responsible for the breach.

(5) Where obligations imposed in terms of the Act, any regulations issued thereunder, any Rules issued by the competent authority or the Securitisation Regulation apply to a subject person which is a legal person, the competent authority may impose administrative penalties and other administrative measures on members of the management body of such legal entity and to other individuals who are responsible for the breach of such obligations.

8. Without prejudice to the powers of the competent authority under the Act or any other law, the competent authority shall impose administrative penalties and other administrative measures for breaches of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the Securitisation Regulation.

Administrative penalties and other administrative measures.

9. (1) Without prejudice to the generality of regulation 8, the competent authority shall impose administrative penalties and other administrative measures for the following breaches:

Administrative penalties and other administrative measures for breaches of the Securitisation Regulation.

(a) an originator, sponsor or original lender has failed to meet the requirements provided for in Article 6 of the Securitisation Regulation;

(b) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 7 of the Securitisation Regulation;

(c) an originator, sponsor or original lender has failed to meet the criteria provided for in Article 9 of the Securitisation Regulation;

(d) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 18 of the Securitisation Regulation;

(e) a securitization is designated as STS and an originator, sponsor or SSPE of that securitization has failed to meet the requirements provided for in Articles 19 to 22 or Articles 23 to 26 of the Securitisation Regulation;

(f) an originator or sponsor makes a misleading notification pursuant to Article 27(1) of the Securitisation Regulation;

(g) an originator or sponsor has failed to meet the requirements provided for in Article 27(4) of the Securitisation Regulation; or

(h) a third party authorized pursuant to Article 28 of the Securitisation Regulation has failed to notify changes to the information provided in accordance with Article 28(1) of the Securitisation Regulation, or any other changes that could reasonably be considered to affect the assessment of the competent authority.

(2) Without prejudice to the generality of regulation 8, the competent authority shall have the power to impose the following administrative penalties and other administrative measures for the breaches indicated in sub-regulation (1):

(a) a public statement which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 37 of the Securitisation Regulation;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban preventing any member of the originator's, sponsor's or SSPE's management body or any other natural person held responsible for the infringement from exercising management functions in such undertakings;

(d) in the case of an infringement as referred to in paragraphs (e) and (f) of sub-regulation (1) a temporary ban preventing the originator and sponsor from notifying under Article 27(1) that a securitisation meets the requirements set out in Articles 19 to 22 or Articles 23 to 26 of the Securitisation Regulation;

(e) in the case of a natural person, administrative penalties of up to five million euro (€5,000,000);

(f) in the case of a legal person, administrative penalties of up to five million euro (€5,000,000) or of up to 10% of the total annual net turnover of the legal person according to the last available audited accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual net turnover shall be the total net annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(g) administrative penalties of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in paragraphs (e) and (f) of this sub-regulation;

(h) in the case of an infringement as referred to in paragraph (h) of sub-regulation (1), a temporary withdrawal of the authorisation referred to in Article 28 for the third party authorised to check the compliance of a securitisation with Articles 19 to 22 or Articles 23 to 26 of the Securitisation Regulation.

10. (1) The competent authority shall publish any decision imposing an administrative penalty or any other administrative measure for breaches of the provisions of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the Securitisation Regulation from which there is no appeal on its website without undue delay after the person on whom the penalty or measure was imposed has been informed of that decision. The publication referred to in this sub-regulation shall include at least information on the type and nature of the breach and the identity of the persons responsible.

Publication of the decisions of the competent authority.

(2) Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of the financial markets or an ongoing investigation, or where the publications would cause, insofar as can be determined, disproportionate damages to the person

involved, the competent authority shall either:

(a) defer the publication of the decision to impose the administrative penalty or any other administrative measure until the reasons for non-publication cease to exist;

(b) publish the decision to impose the administrative penalty or any other administrative measure on an anonymous basis in a manner which complies with Maltese law; or

(c) not publish the decision to impose an administrative penalty or any other administrative measure in the event that the options laid down in paragraphs (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of the financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(3) In the case of a decision to publish an administrative penalty or any other administrative measure on an anonymous basis, the publication of the relevant data may be postponed.

(4) Where the decision to impose an administrative penalty or any other administrative measure is subject to appeal before the relevant judicial or other authorities, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose an administrative penalty or any other administrative measure shall also be published.

(5) The competent authority shall ensure that any publication in accordance with this regulation shall remain on its official website for a period of at least five years from its publication:

Provided that personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection legislation.

Right of appeal.

11. A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of article 21 of the Act shall *mutatis mutandis* apply.