

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,852, 6 ta' Mejju, 2022

Taqsimha B

L.N. 132 of 2022

**BANKING ACT
(CAP. 371)**

**CRR (Implementing and Transitional Provisions) (Amendment)
Regulations, 2022**

IN EXERCISE of the powers conferred by article 3 of the Banking 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 CRR (Implementing and Transitional Provisions) (Amendment) Regulations, 2022 and these regulations shall be read and construed as one with the CRR (Implementing and Transitional Provisions) Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 371.17.

(2) The purpose of these regulations is to implement Articles 4(2), 7, 8, 49(2), 116(4), 284(4) and (9), 327(2), 396(1) of the CRR and, in part, points (12), (37), (39), (60), (67), (108), (116), (117), (118) and (119) of Article 1 of Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

2. Sub-regulation (2) of regulation 1 of the principal regulations shall be substituted by the following:

Amends regulation 1 of the principal regulations.

"(2) The purpose of these regulations is to implement Articles 4(2), 7, 8, 18(5), 18(6), 18(7), 49(1), 49(2), 78(1), 78(4), 79(1), 89(3), 116(4) 124(2), 125(2)(d), 164(5), 284(4) and (9), 327(2), 396(1), 400(2), 414, 428b(5), 428f(1), 428h, 428p(10), 428q(2), 428ai, 428aq(10), 428ar(2), 429a(5), 430(11), 439, 465, 467, 468, 469, 473(1), 474(a), 476(a), 478, 479, 480, 481, 486 and 493(3) of the CRR."

3. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "Additional Tier 1

items", there shall be added the following new definitions:

""committed credit or liquidity facility" shall have the same meaning as that assigned to it in point (17) of Article 411 of the CRR;

"Commission Delegated Regulation (EU) 241/2014" means Commission Delegated Regulation (EU) 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, as amended from time to time;"

(b) immediately after the definition "CRR", there shall be added the following new definition:

""Delegated Regulation (EU) 2015/61" means Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions, as amended from time to time;"

(c) immediately after the definition "parent mixed financial holding company", there shall be added the following new definitions:

" "participation" shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR;

"Regulation (EU) No 648/2012" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

Adds regulations 2A, 2B, 2C, 2D, 2E and 2F to the principal regulations.

4. Immediately after regulation 2 of the principal regulations, there shall be added the following new regulations:

"Treatment of indirect holdings in real estate.

2A. The competent authority may allow shares constituting an equivalent indirect holding of real estate to be treated as a direct holding of real estate in accordance with Article 4(2) of the CRR, provided that, such indirect holding, when pledged as collateral, shall provide an equivalent protection to creditors.

Application of prudential requirements on an individual basis.

2B. (1) The competent authority may waive the application of Article 6(1) of the CRR as follows:

(a) where both the subsidiary and the credit institution are licensed by the competent authority, the competent authority may grant the waiver to the subsidiary where it is included in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and all the conditions laid down in Article 7(1) of the CRR are fulfilled, in order to ensure that the own funds are distributed adequately between the parent undertaking and the subsidiary; and

(b) where a parent institution in Malta is licensed and supervised by the competent authority and is included in the supervision on a consolidated basis, the competent authority may grant the waiver to the parent institution in Malta where all the conditions laid down in Article 7(3) of the CRR are fulfilled to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries.

(2) The competent authority may, in a Banking Rule, lay down the conditions upon which the waivers referred to above may be granted.

Application of liquidity requirements on an individual basis.

2C. (1) The competent authority shall waive in full or in part, the application of Part Six of the CRR to a credit institution and to all or some of its subsidiaries when these are established in the European Union or in Malta and supervise them as a single liquidity subgroup as long as the conditions referred to in Article 8 of the CRR are fulfilled.

(2) The competent authority may, in a Banking Rule, lay down the conditions upon which the waiver referred to above may be granted.

Consolidation in the case of participations or capital ties.

2D. In the case of participations or capital ties other than those referred to in paragraphs 1 and 4 of Article 18 of the CRR, the competent authority may supervise such participation or capital ties on a consolidated basis, in particular by requiring or permitting the use of the equity method. In such case, this method shall not constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

Consolidation in the case of significant influence and single management.

2E. The competent authority may decide to supervise on a consolidated basis, credit institutions referred to in Article 18(6) of the CRR in accordance with the Supervisory Consolidation (Credit Institutions) Regulations.

Consolidation in the case of other subsidiaries or participations.

2F. Where a credit institution has a subsidiary which is an undertaking other than an institution, a financial institution or an ancillary services undertaking or holds a participation in such an undertaking, it shall apply to that subsidiary or participation the equity method. In such case, this method shall not constitute inclusion of the undertakings concerned in supervision on a consolidated basis:

Provided that the competent authority may allow or require a credit institution to apply a different method to such subsidiaries or participations, including the method required by the applicable accounting framework, in accordance with points (a) to (c) of Article 18(7) of the CRR."

Adds regulations 3A, 3B, 3C and 3D of the principal regulations.

5. Immediately after regulation 3 of the principal regulations, there shall be added the following new regulations:

"Deduction of holdings of financial sector entities.

3A. For the purposes of calculating own funds on an individual basis and a sub-consolidated basis, in terms of Article 49(2) of the CRR, where a credit institution is subject to supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of the CRR, the competent authority may require the credit institution to deduct holdings of own funds instruments issued by financial sector entities included in the scope of consolidated supervision:

Provided that this shall only be required in specific cases, in particular in the case of structural separation of banking activities and resolution planning.

General prior permission to reduce own funds.

3B. (1) The competent authority may grant the general prior permission referred to in the second subparagraph of Article 78(1) of the CRR for a credit institution to reduce its own funds where the conditions laid down in Article 78(1) of the CRR and of the Commission Delegated Regulation (EU) 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, are fulfilled.

(2) The competent authority may, in a Banking Rule, lay down the conditions upon which the margin referred to in the second sub-paragraph of Article 78(1) of the CRR shall be determined.

Reduction of additional Tier 1 or Tier 2 instruments.

3C. In accordance with Article 78(4) of the CRR, the competent authority may grant permission for credit institutions to call, redeem, repay or repurchase Additional Tier 1 or Tier 2 instruments during the five years following their date of issuance under:

(a) the conditions laid down in points (c) and (e) of Article 78(4) of the CRR;

(b) the conditions laid down in points (a), (b) and (d) of Article 78(4) of the CRR:

Provided that the conditions laid down in Article 78(1) of the CRR are met.

Temporary waiver of the deduction from own funds instruments or eligible liabilities.

3D. The competent authority shall grant a temporary waiver for the deduction of own funds instruments or eligible liabilities for the purpose of facilitating a financial assistance operation in accordance with the conditions specified in Article 79(1) of the CRR and in Article 33 of Commission Delegated Regulation (EU) No 241/2014.

6. Immediately after regulation 4 of the principal regulations, there shall be added the following new regulations:

Adds regulations 4A and 4B of the principal regulations.

"Exposures to public sector entities.

4A. For the purposes of Article 116(4) of the CRR, the competent authority shall, in a Banking Rule, provide a list of the public sector entities established in Malta for which exposures to such entities shall be considered by credit institutions as exposures to the Government of Malta.

Exposures secured by mortgages on immovable property (risk weights).

4B. In terms of Article 4(2) of the Act, the competent authority shall, at least annually and jointly with the Central Bank, assess whether the risk weights referred to in Article 125(2) or 126(2) of the CRR adequately reflect the actual risks related to exposures to one or more property segments fully secured by mortgages on residential property or on commercial immovable property located in Malta in accordance with Article 124 of the CRR. Where such risk weight is deemed not appropriate, the competent authority, jointly with the Central Bank, may adjust the risk weights in accordance with the following ranges:

(a) 35% to 150% for exposures secured by mortgages on residential property;

(b) 50% to 150% for exposures secured by mortgages on commercial immovable property."

Amends regulation 5 of the principal regulations.

7. Regulation 5 of the principal regulations shall be substituted by the following:

"Exposures secured by mortgages on residential immovable property.

5. For the purposes of Article 125(2)(d) of the CRR, the part of the loan to which the 35% risk weight is assigned, unless otherwise determined in accordance with regulation 4B, shall not exceed 70% of the market value of the property in question, as long as the conditions laid down in Article 125 of the CRR are met."

Adds regulations 5A, 5B and 5C to the principal regulations.

8. Immediately after regulation 5 of the principal regulations, as amended, there shall be added the following new regulations:

"Exposures secured by mortgages on immovable property (Loss Given Default values).

5A. In terms of Article 4(2) of the Act, the competent authority shall, at least annually, and jointly with the Central Bank, assess whether the minimum Loss Given Default (LGD), as referred to in paragraph 4 of Article 164 of the CRR, are appropriate for exposures secured by mortgages on residential property or commercial immovable property located in Malta. Where the competent authority, jointly with the Central Bank, conclude that such minimum LGD values are not adequate and could adversely affect Malta's current or future financial stability, the competent authority, jointly with the Central Bank, may set higher minimum LGD values for those exposures located in Malta. Such higher minimum LGD values may also be applied at the level of one or more property segments of such exposures.

Exposure value under internal models.

5B. For the purposes of calculating the exposure value in terms of Article 284 of the CRR, the competent authority may require credit institutions to use a higher alpha (α) or grant them the permission to use their own estimates of α in accordance with the conditions laid down in paragraph 9 of the Article 284 of the CRR.

Limits to large exposures.

5C. For the purposes of Article 396(1) of the CRR, the competent authority may, in exceptional cases, where exposures exceed the limit set out in Article 395(1), allow a credit institution a limited period of time within which to comply with such limit."

9. In sub-regulation (1) of regulation 6 of the principal regulations, for the words "Article 400(3) of the CRR are met." there shall be substituted the words "Article 400(3) of the CRR, and as may be further specified in a Banking Rule, are met."

Amends regulation 6 of the principal regulations.

10. Immediately after regulation 6 of the principal regulations, there shall be added the following new regulation:

Adds regulations of 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, and 6I of the principal regulations.

"Compliance with liquidity requirements.

6A. For the purposes of Article 414 of the CRR, the competent authority may allow a credit institution that does not meet, or does not expect to meet, the requirements set out in Article 412 or 413(1) of the CRR, including during times of stress, to report the items referred to in Title III and IV, in the implementing act referred to in Article 415(3) or (3a) of the CRR or in the delegated act referred to in Article 460(1) of the CRR, at a lower reporting frequency and apply a longer reporting delay, depending on the situation of the credit institution.

Restriction on currency mismatches for the calculation of NSFR.

6B. For the purposes of restricting currency mismatches, the competent authority shall set limits on the proportion of required stable funding in a particular currency that can be met by available stable funding that is not denominated in that currency, in accordance with the conditions laid down in Article 428b(5) of the CRR:

Provided that such restriction may only be applied for a currency that is subject to separate reporting in accordance with Article 415(2) of the CRR.

Interdependent assets and liabilities for the calculation of NSFR.

6C. (1) The competent authority may grant approval to a credit institution to treat an asset and a liability as interdependent where all of the conditions that are laid down in Article 428f of the CRR are fulfilled.

(2) The competent authority may issue a Banking Rule laying down the requirements on the information that shall be submitted by the credit institution on such assets and liabilities.

Preferential treatment within a group or within an institutional protection scheme for NSFR.

6D. (1) The competent authority may, in accordance with Article 428h of the CRR, allow a credit institution to apply a higher available stable funding factor or a lower required stable funding factor to assets, liabilities and committed credit or liquidity facilities which meet all of the conditions laid down in the said Article 428h.

(2) The competent authority may issue a Banking Rule laying down the information that shall be submitted by such credit institution when it applies for preferential treatment and the conditions that shall be met.

Required stable funding for off-balance sheet exposures.

6E. For off-balance sheet exposures not referred to in Chapter 4 of Title IV of Part Six of the CRR, the competent authority shall, in accordance with Article 428p(10) of the CRR, apply required stable funding factors that correspond to the outflow rates applicable to related products and services referred to in Article 23 of the Delegated Regulation (EU) 2015/61 in the liquidity coverage requirement.

Term of encumbrance of segregated assets.

6F. Credit institutions that are not able to freely dispose of assets which have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012, shall consider such assets as encumbered for a period corresponding to the term of the liabilities to the credit institutions' customers to whom that segregation requirement relates.

Application of Simplified Net Stable Funding Ratio.

6G. The competent authority may, in terms of Article 428ai of the CRR, allow a small and non-complex institution, as defined in point (145) of Article 4(1) of the CRR, to calculate the ratio between the credit institution's available and required stable funding as referred to in Chapters 6 and 7 of Title IV, Part Six of the CRR, expressed as a percentage.

Required stable funding factors for off-balance-sheet exposures under the simplified NSFR.

6H. Where a credit institution has been granted permission in accordance with regulation 6G, it shall, for the purposes of off-balance sheet exposures not referred to in Chapter 4 of Title IV of Part Six of the CRR and in terms of Article 428aq(10) of the CRR, apply the required stable funding factors that correspond to the outflow rates applicable to related products and services referred to in Article 23 of the Delegated Regulation (EU) 2015/61 in the liquidity coverage requirement.

Term of encumbrance of segregated asset under the simplified NSFR.

6I. Where a credit institution has been granted permission in accordance with regulation 6G, it shall, where it is not able to freely dispose of assets which have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012, consider such assets as encumbered for a period corresponding to the term of the liabilities to the credit institutions' customers to whom that segregation requirement relates, in accordance with Article 428ar(2) of the CRR.

11. Immediately after regulation 7 of the principal regulations, there shall be added the following new regulations:

Adds regulations 7A, 7B and 7C to the principal regulations.

"Exemption of central bank exposures from the leverage ratio.

7A. The competent authority shall, in order to facilitate the implementation of monetary policies in terms of Article 429a(5) of the CRR, and in consultation with the Central Bank, publicly determine whether exceptional circumstances exist under which exposures listed in point (n) of paragraph 1 of Article 429a of the CRR may be excluded from the total exposure measure referred to in such paragraph.

Waiver for reporting requirements of duplicative points.

7B. Where the competent authority determines that the reporting templates specified in the implementing technical standards referred to in Article 430 of the CRR contain duplicative data points as defined in such article, the competent authority may waive the reporting requirements for such data points in accordance with Article 430(11) of the CRR.

Disclosure of exposures to counterparty credit risk.

7C. (1) For the purposes of Article 439 of the CRR, the competent authority may, where the Central Bank provides liquidity assistance in the form of collateral swap transaction, and where the competent authority considers that the disclosure of such information could reveal that emergency liquidity assistance has been provided, exempt credit institutions from abiding by the requirements laid down in points (d) and (e) of Article 439 of the CRR.

(2) The competent authority may issue a Banking Rule to set out the appropriate thresholds and the objective criteria."

12. Regulation 12 of the principal regulations shall be deleted.

Deletion of regulation 12 of the principal regulations.

