

**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

**BANKING SUPERVISION UNIT**

**BANKING RULES**

*PUBLICATION OF ANNUAL REPORT AND  
AUDITED FINANCIAL STATEMENTS  
OF CREDIT INSTITUTIONS AUTHORISED  
UNDER THE BANKING ACT 1994*

Ref: BR/07/2014

# **PUBLICATION OF ANNUAL REPORT AND AUDITED FINANCIAL STATEMENTS OF CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT 1994**

## **INTRODUCTION**

1. In terms of Article 4 of the Banking Act 1994 (Cap. 371) ('the Act') the competent authority ('the authority') as defined in Article 2(1) of the Act is empowered to make Banking Rules as may be required for carrying into effect any of the provisions of the Act. The authority may also amend or revoke such Banking Rules and any amendment or revocation thereof shall be officially communicated to credit institutions and the authority shall make copies thereof available to the public.
2. The publication of audited financial statements by credit institutions is to be made pursuant to Article 30 of the Act:

*“Every credit institution shall, not later than four months from the closing of its financial year or at any other time as may be authorised in writing by the competent authority -*

*(a) forward to the competent authority and the Central Bank, and*

*(b) exhibit in a conspicuous position in each of its offices and branches in Malta and keep so exhibited throughout the year,*

*a copy of its audited financial statements drawn up and published in such manner as may be specified in accordance with a Banking Rule.”*

## **SCOPE AND APPLICATION**

3. The Rule applies to all credit institutions licensed under the Act 1994.
4. The Rule takes into account the requirements of the Act and the Companies Act (Cap. 386) which mandates compliance by all companies with International Financial Reporting Standards (“IFRS”) as adopted by the European Union (EU) through Commission Regulation (EC) No 1126/2008 of 3 November 2008 in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002, locally applied through Legal Notice 19 of 2009, and any subsequent amendments thereto.
5. Accordingly, the Rule requires credit institutions to prepare their annual accounts, both on a solo and consolidated basis, in accordance with IFRS as adopted by the EU. Moreover, the Rule aims:
  - (a) to outline the authority’s views and interpretations of the provisions of Article 30 of the Act;
  - (b) to implement Articles 89, 90 and 96 of the CRD as amended from time to time; and

- (c) to enhance transparency through public disclosures by credit institutions, thus facilitating assessment of such institutions by the public.

#### **SUBMISSIONS TO THE AUTHORITY AND THE CENTRAL BANK**

- 6. Article 30(a) of the Act requires a credit institution to forward a copy of its audited financial statements to the authority and the Central Bank of Malta.
- 7. The authority expects that the copy submitted as in paragraph 6 above, shall be accompanied by the Declaration under Appendix 1, as well as all statements under paragraph 9 to 10 of this Rule and shall:
  - (a) bear the original signatures of the credit institution's auditor, the credit institution's Chairman and/or other officials signing the accounts as the case may be; or
  - (b) be authenticated by the company secretary where such signatures are not the originals.
- 8. In terms of Article 20(1) of the Act, every credit institution licenced in terms of the Act, and where applicable, a financial holding company or a mixed financial holding company shall submit to the authority any information which it may reasonably require in the exercise of its duties under the Act and any regulations or Banking Rules made thereunder and the CRR and the authority may enquire into and ask for clarification of any information so submitted. In this respect, apart from the submission of audited financial statements as required by Article 30 of the Act, credit institutions are also required to submit a copy of the auditors' management letter and the institution's reply thereto, within six (6) months from the closing of its financial year.

#### **PUBLISHED ANNUAL REPORT AND AUDITED FINANCIAL STATEMENTS**

- 9. The authority expects that the published Annual Report shall at a minimum include the following:
  - i. Directors' Report;
  - ii. Statement of Directors' Responsibilities;
  - iii. Report of the Auditors on Financial Statements;
  - iv. A complete set of financial statements including notes thereto;
  - v. Five year summary figures; and
  - vi. *Supplementary Financial Information* in accordance to Appendix 1 paragraph ii of this Rule.
- 10. In the case where a credit institution is listed on a regulated market authorised in Malta in terms of the Financial Markets Act (Cap. 345) the publication of the financial

statements should include all other financial information required for publication under the listing requirements in terms of the Financial Markets Act (Cap. 345).

#### **EXHIBIT OF AUDITED FINANCIAL STATEMENTS**

11. Article 30(b) of the Act requires a credit institution to exhibit, and keep so exhibited throughout the year, a copy of its audited financial statements in a conspicuous position in each of its offices and branches in Malta.
12. In the authority's view such exhibit should as a minimum also include items (i) to (iii) under paragraph 9 of this Rule. This should be accompanied by a note to the effect that the published Annual Report is kept and is made available to any person interested in viewing it.

#### **BRANCHES OF THIRD COUNTRY CREDIT INSTITUTIONS**

13. Paragraph 29 of the Rule on Application for a Licence under the Act (Banking Rule BR/01) states that a licence issued to a credit institution incorporated in a third country, to operate its business of banking through a branch in Malta is deemed to have been granted to that credit institution as a whole.
14. In this respect, the requirements of Article 30 of the Act shall be deemed as having been satisfied by the institution incorporated in a third country by:
  - (a) forwarding to the authority and the Central Bank of Malta; and
  - (b) exhibiting in a conspicuous position in each of its offices in Malta and keep so exhibited throughout the year,  
a copy of its audited financial statements.
15. Notwithstanding the provisions of paragraph 14, the authority may require branches established in Malta of credit institutions incorporated in a third country, to publish in accordance with IFRS as adopted by the EU, separately abridged or full branch audited accounts, together with other financial or non-financial information as may be relevant to their own activities in Malta.
16. As an alternative to paragraph 15, the authority may, if it deems it appropriate, require the overseas credit institution to include with its audited financial statements additional information required in pursuance of paragraph 9 of this Rule, as applicable, provided that as a minimum the following information is included:
  - (1) the income and costs of the branch deriving from:
    - (a) Interest receivable and similar income, showing separately that arising from fixed-income securities
    - (b) Income from securities:
      - (i) Income from shares and other variable-yield securities

- (ii) Income from participating interests
    - (iii) Income from shares in affiliated undertakings
  - (c) Commissions receivable
  - (d) Net profit or net loss on financial operations
  - (e) Other operating income
  - (f) General administrative expenses:
    - (i) Staff costs, showing separately:
      - wages and salaries
      - social security costs, with a separate indication of those relating to pensions
    - (ii) Other administrative expenses
  - (g) Tax on profit or loss on ordinary activities;
- (2) the average number of staff employed by the branch;
- (3) the total claims and liabilities attributable to the branch, broken down into those in respect of credit institutions and those in respect of customers, together with the overall amount of such claims and liabilities expressed in Euro;
- (4) the total assets and the amounts corresponding to:
- (a) Treasury bills and other bills eligible for refinancing with central banks:
    - (i) Treasury bills and similar securities
    - (ii) Other bills eligible for refinancing with central banks
  - (b) Loans and advances to credit institutions:
    - (i) repayable on demand
    - (ii) other loans and advances
  - (c) Loans and advances to customers
  - (d) Debt securities including fixed-income securities:
    - (i) issued by public bodies
    - (ii) issued by other borrowers, showing separately:
      - own-debt securities
  - (e) Shares and other variable-yield securities;
- (5) the total liabilities and the amounts corresponding to:
- (a) Amounts owed to credit institutions:
    - (i) repayable on demand

- (ii) with agreed maturity dates or periods of notice
- (b) Amounts owed to customers:
  - (i) savings deposits, showing separately those repayable on demand and those with agreed maturity dates or periods of notice
  - (ii) other debts
    - repayable on demand
    - with agreed maturity dates or periods of notice
- (c) Debts evidenced by certificates:
  - (i) debt securities in issue
  - (ii) others;
- (6) the off-balance sheet items corresponding to:
  - (a) Contingent liabilities, showing separately:
    - (i) acceptances and endorsements
    - (ii) guarantees and assets pledged as collateral security
  - (b) Commitments, showing separately:
    - (i) commitments arising out of sale and repurchase transactions;

and in the case of paragraph 16 sub-paragraphs 4 (a), (d) and (e), a breakdown of securities according to whether they have or have not been regarded as financial fixed assets<sup>1</sup>.

The said documentation should be submitted to the authority in accordance with the time limit stipulated in paragraph 2 of this Rule.

#### **BRANCHES OF EEA CREDIT INSTITUTIONS**

17. Where branches of credit institutions within the European Economic Area (EEA) are established in Malta in terms of Article 35 of the CRD, paragraphs 13 and 15 above shall not apply. However, the authority, in line with the provisions of the Branch Accounts Directive 89/117/EEC, may if it deems appropriate require a branch of an EEA institution to publish the additional information relevant to the activities of the branch in Malta as laid down in paragraph 16 above.

#### **AUTHORISATIONS REGARDING LATE SUBMISSIONS**

18. In terms of Article 30 of the Act, if for valid reasons a credit institution is not able to carry out its obligations under that Article within four months from the closing of its

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<sup>1</sup> For the purpose of this Rule, ‘financial fixed assets’ shall be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking’s activities.

financial year, it should apply to the authority for consent to extend the period of submission as the authority may authorise.

19. When a credit institution is applying for authorisation under paragraph 18 above it has to provide all relevant details and reasons for such application and should allow appropriate time for the authority to consider such application.
20. It is at the authority's discretion to approve such application and, if and when approval is given, this shall be for exceptional cases only.

#### **PUBLISHED FINANCIAL STATEMENTS**

21. In terms of sub-article (4) of Article 2 of the Companies Act 1995, credit institutions are expected to adhere to IFRS as adopted by the EU.
22. Appendix 1 of this Rule defines *Supplementary Financial Information* that is to form part of the institutions' Annual Report in accordance with paragraphs 9 to 10 of this Rule.

#### **ADDITIONAL REGULATORY DISCLOSURES**

23. Credit institutions shall refer to the CRR, in particular, Part Eight (Articles 431 to 455).

Disclosures under Part Eight of the CRR (Articles 431 to 455) are to be published at least on an annual basis. In terms of Article 30A of the Act, annual disclosures by credit institutions under Part Eight of the CRR (Articles 431 to 455) shall form part of the institutions' Annual Report. Where applicable, credit institutions shall also publish any disclosures under Part Eight of the CRR (Articles 431 to 455) on their website.

- 23A. Credit institutions shall also refer to Appendix 2 hereof transposing the provisions of the EBA Guidelines on Disclosure of Encumbered and Unencumbered Assets [EBA/GL/2014/03] and ensure compliance with the contents thereof:

Provided that in complying with the obligations prescribed in Appendix 2, credit institutions shall compile the disclosure templates prescribed in Appendix 3;

Provided further that credit institutions may omit disclosure of information which is not regarded as material in terms of Article 432 of the CRR.

- 23B. Credit institutions shall publish the disclosures required in terms of the EBA Guidelines at least on an annual basis. Furthermore, credit institutions shall further comply with the provisions of Article 433 of the CRR with regards to the assessment of a more frequent disclosure of relevant characteristics of their business.

- 23C. Credit institutions shall disclose the information required in terms of the EBA Guidelines in the same currency and units as the other disclosure requirements provided for in Part Eight of the CRR (Articles 431 to 455).

Provided that the currency and units of the disclosure of asset encumbrance shall be the same as those used in the financial statements, whether such disclosure is provided in the notes to the financial statements or whether it is included elsewhere within the Annual Report;

Provided further that credit institutions may, where applicable, provide additional disclosures using different currencies other than the currency used for the disclosures required in terms of Part Eight of the CRR (Articles 431 to 455).

- 23D. Credit institutions shall disclose information based on median values of at least quarterly data on a rolling basis over the previous twelve months:

Provided that, for the disclosure of the first period, credit institutions may instead choose to use data as of 31 December 2014. In such case, credit institutions shall however include the type of time reference in their narrative information.

- 23E. Credit institutions having their financial year ending before 31 December 2014 and which on the date of coming into force of the provisions of Appendix 2 in accordance with paragraph 23H would not have yet published their financial statements, will be required, on a one-off basis, for the first reporting period following the entry into force of paragraphs 23A to 23G and of Appendix 2, to disclose the information prescribed in Appendix 3 either together with the interim financial statements (which in the case of listed entities relates to the published interim statements) or through a public statement on their web-site:

Provided that credit institutions shall be required to comply with the requirements prescribed in this paragraph by not later than five months from the coming into force of the provisions of Appendix 2 in accordance with paragraph 23H.

- 23F. Credit institutions shall provide the disclosure information prescribed in Appendices II and III in a single location or medium as specified in Article 434 of the CRR. To the extent possible, disclosure shall be included in the same document referred to in paragraph 23:

Provided that, where relevant, appropriate cross-references from the document containing the disclosures under Part Eight of the CRR (Articles 431 to 455) to the location of disclosures in accordance with Appendices II and III shall be provided pursuant to Article 434 of the CRR.

- 23G. In accordance with Article 433 of the CRR and the EBA Guidelines, annual disclosure referred to in paragraphs 23A to 23G as well as in Appendices II and III shall be published in conjunction with the date of publication of the financial statements. Such annual disclosure shall not be published any later than six months after the reference date of the financial statements.

- 23H. Paragraphs 23A to 23G as well as the provisions prescribed in Appendix 2 shall come into force on 27<sup>th</sup> December 2014.



## **DISCLOSURES FOR SUBSIDIARIES**

24. For the purposes of Article 13 of the CRR, unless as may be otherwise specified by the authority, a local credit institution which is a subsidiary of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company shall be deemed to be significant.

Disclosures by significant subsidiaries shall be limited to the information referred to in Article 13 of the CRR.

## **CURRENCY OF FINANCIAL STATEMENTS**

25. Where the financial statements of a credit institution are drawn up in a currency other than the Euro in terms of Article 187(2) of the Companies Act 1995, then that credit institution should state on its balance sheet the exchange rate applicable between the functional currency and the local currency.

## **RECONCILIATION REPORT**

26. Credit institutions shall undertake reconciliations as required by the [Commission Implementing Regulation \(EU\) No 1423/2013 of 20 December 2013 laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council](#).<sup>2</sup>

## **COUNTRY-BY-COUNTRY REPORTING**

27. From 1 January 2015 credit institutions shall disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year:
- (a) name(s), nature of activities and geographical location;
  - (b) turnover;
  - (c) number of employees on a full time equivalent basis;
  - (d) profit or loss before tax;
  - (e) tax on profit or loss;
  - (f) public subsidies received.
28. Notwithstanding paragraph 27, credit institutions shall disclose the information referred to in paragraph 27(a), (b) and (c) for the first time on 1 July 2014.

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<sup>2</sup> Until such time the ITS requirements relating to financial information (FINREP) become applicable, credit institutions shall continue reconciling the audited financial statements with their end of year statutory data presented under Banking Rule BR/06. The reconciliation report should be made available to the authority within four months from the end of the financial year.

29. The information referred to in paragraph 27 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the credit institution concerned.
30. To the extent that future European Union legislative acts for disclosure obligations go beyond those laid down in paragraphs 27 to 30 above, the latter paragraphs shall cease to apply.

#### **PUBLIC DISCLOSURE OF RETURN ON ASSETS**

31. Credit institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

#### **MAINTENANCE OF A WEBSITE ON CORPORATE GOVERNANCE AND REMUNERATION**

32. Credit institutions that maintain a website shall explain there how they comply with the requirements of Articles 88 to 95 of the CRD which relate to governance arrangements, country-by-country reporting, public disclosure of return on assets, management body, remuneration policies, variable elements of remuneration and remuneration committee.

#### **LANGUAGE OF PUBLICATION**

33. Any documents and/or submissions provided for in this Rule must be published in one of the official languages of Malta. Where the audited financial statements of institutions incorporated in third countries submitted in terms of paragraph 14, are primarily published in another language in the foreign jurisdiction, a certified translation thereof needs to be published locally.