

THE REGULATORY FRAMEWORK OF CRD IV INVESTMENT FIRMS IN MALTA

12 DECEMBER 2014

OBJECTIVE OF THIS EDUCATIONAL CLINIC

Update since last seminar

- Finalised subordinated loan agreement;
- Established criteria for 'significant' investment firms;
- Conducted CRD IV compliance visits.

Current tasks

- New category of investment firms;
- Recovery & Resolution Directive.

Plans for next year

- To update links in IS Rules;
- Capital buffers proposals.

UPDATE FROM MARCH'S SEMINAR

- Subordinated loan agreement;
- 'Significant' investment firms;
- CRD IV compliance visits.

Subordinated Loan Agreement



SUBORDINATED LOAN AGREEMENT (SLA)

- Previous specimen of SLA included in Annex IV to Appendix 1 of Part B of the Investment Services Rules for Investment Services Providers;
- Amended previous specimen to ensure compliance with the conditions laid down in CRR, namely article 63;
- New specimen of SLA included in Annex 1 to Appendix 1 of Part B of the Investment Services Rules for Investment Services.

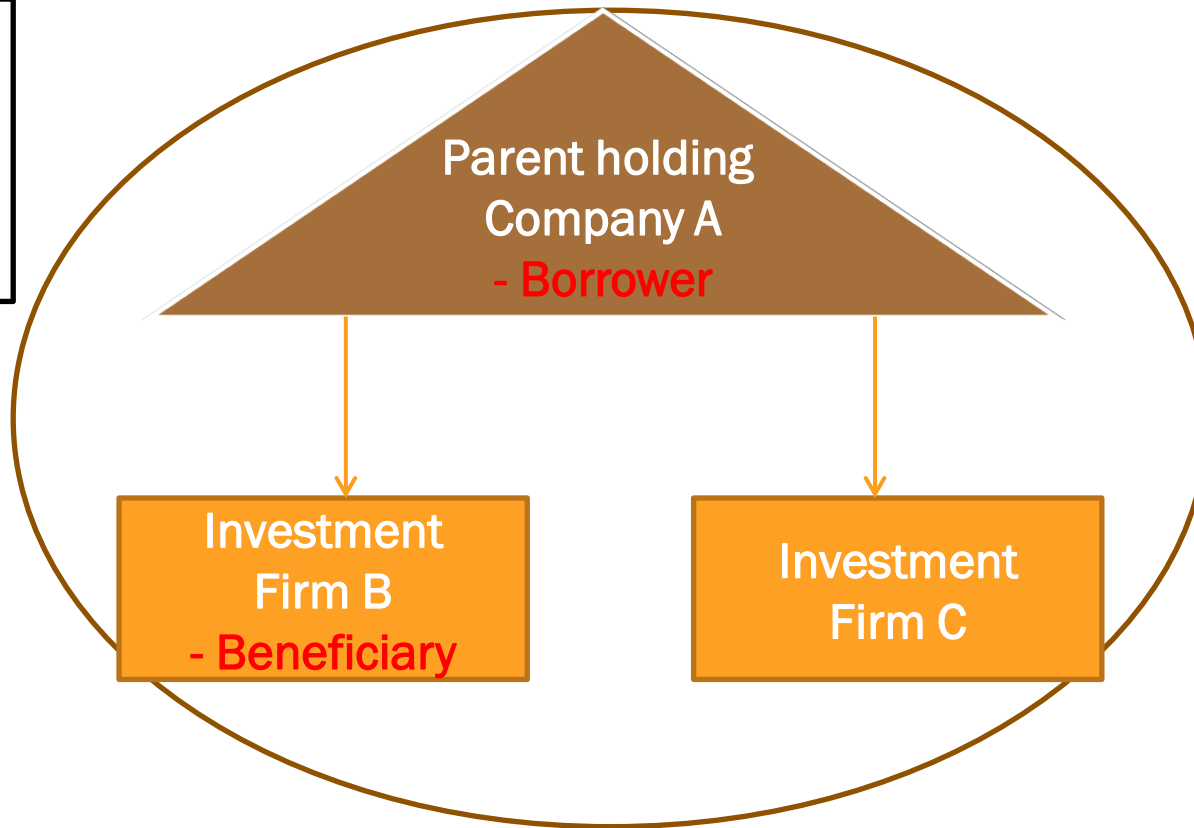
SLA - ARTICLE 63 (N) OF THE CRR

“... where the subordinated loans are not raised directly by an institution ... both of the following conditions shall be met:

- (i) the ... subordinated loans are raised ... through an entity, which is part of the consolidation pursuant to Chapter 2 of Title II of Part One;*
- (ii) the proceeds are immediately available to the institution without limitation in a form that satisfies the conditions laid down in this paragraph.”*


ARTICLE 63 (N) - EXAMPLE

Ultimate
shareholder
Mr. X –
Lender




Consolidated
group

OTHER CHARACTERISTICS OF ARTICLE 63

1. The agreement should be entered into for a period of at least five years.
 2. The annual rate of interest on the loan should be declared.
 3. The loan shall be repayable by the borrower to lender on the redemption date.
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OTHER CHARACTERISTICS OF ARTICLE 63


4. The loan may be redeemed early only if the borrower/beneficiary is the subject of liquidation / insolvency proceedings or if on the application of the borrower, the MFSA allows early redemption of the loan for the reasons set out in article 78 (4) (a) & (b).
 5. The Redemption Date may be deferred by a written agreement of all the parties involved.
 6. In the above two cases, prior written consent by MFSA should be obtained.
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OTHER CHARACTERISTICS OF ARTICLE 63

7. The agreement should be dated. This will have an impact on when the loan should be amortised. During the final five years of maturity of the loan, the loan is subject to the amortisation provisions as set out in article 64 of the CRR.

ARTICLE 64 – AMORTISATION PROVISIONS

Multiply the result in point (a) by the amount referred to in point (b) :

- (a) the nominal amount of the instruments or subordinated loans on the first day of the final five year period of their contractual maturity divided by the number of calendar days in that period;
 - (b) the number of remaining calendar days of contractual maturity of the instruments or subordinated loans.
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Significant investment firms



ARE YOU SIGNIFICANT?

If yes, the following rules apply:

- the limit on the number of directorships which are held by members of the management body;
- the requirement to establish a risk committee / a nomination committee / remuneration committee;
- certain quantitative information relating to the remuneration of members of the management body should also be made available to the public; and
- the applicability of the liquidity risk component.

DEFINITION OF A SIGNIFICANT LICENCE HOLDER

A Licence Holder is considered significant in terms of size, internal organisation and the nature, scope and complexity of its Investment Services / activities; if it meets the following conditions:

- a. total balance sheet assets > €43 million;
- b. annual turnover relating to its investment services activities > €50 million;
- c. clients' money > €100 million; and
- d. assets that it holds or controls in the course of, or connected with investment services activities > €3 billion.

CRD IV Focused Visits

CRD IV VISITS FINDING



The investment firms which we visited were not yet prepared for CRD IV implementation.


CURRENT TASKS

- Recovery and Resolution Directive;
- New category of investment firms.

Recovery and Resolution Directive



RECOVERY PLANS – CRD IV & BRRD

- Article 74 (4) of CRD IV requires investment firms to prepare, maintain and update recovery plans for the restoration of their financial situation following a significant deterioration.
 - CRD IV applies this requirement to all investment firms.
 - BRRD restricts this requirement to Category 3 Investment Services Licence Holders.
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LINK TO EBA'S DRAFT RTS ON RECOVERY PLANS



www.eba.europa.eu/documents/10180/760167/EBA-RTS-2014-11+Draft+RTS+on+content+of+recovery+plans.pdf/60899099-2dcb-4915-879d-8b779a3797cc

New Category of Investment firms under CRD IV



NEW CATEGORY OF INVESTMENT FIRMS


Investment firms that provide the following services:

- Execution of orders on behalf of clients;
- Individual portfolio management;

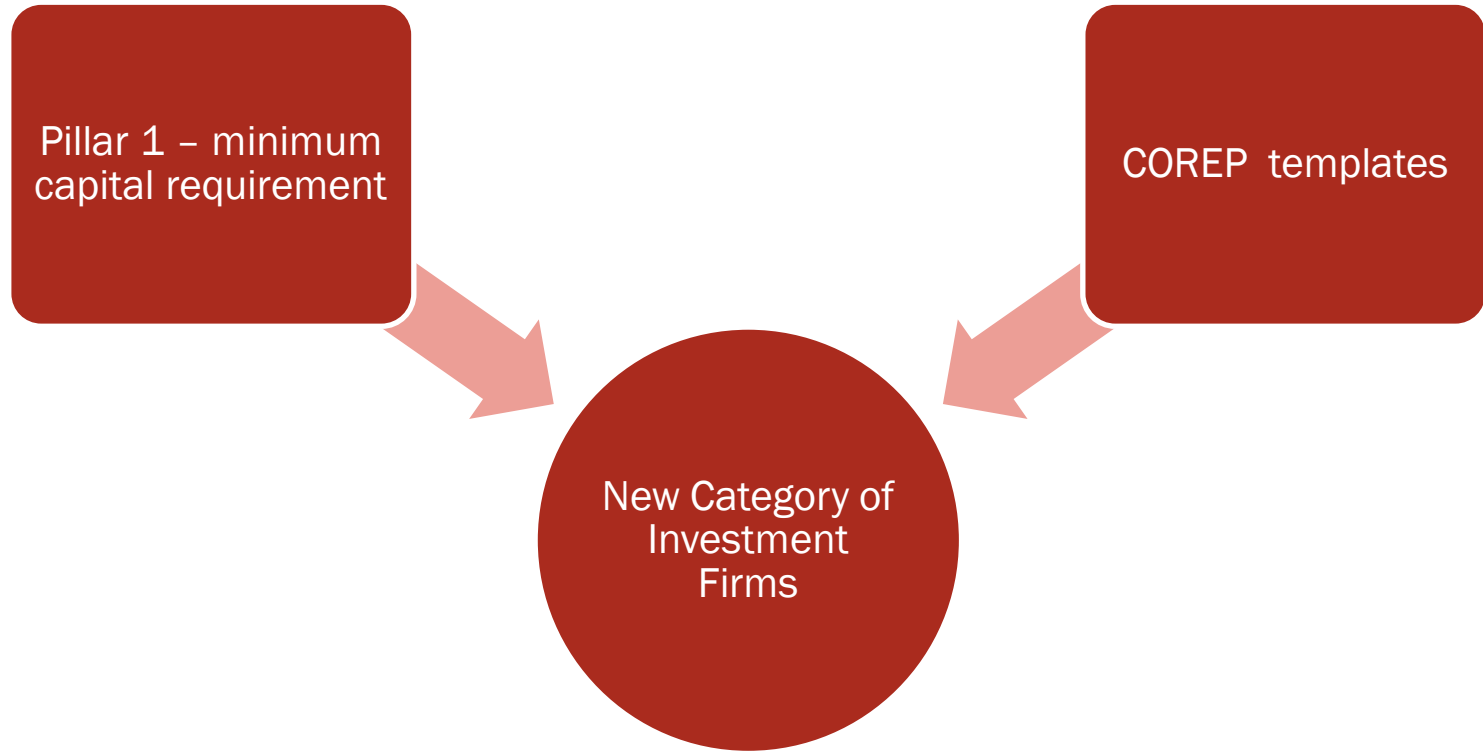
And are **not** authorised to:

- Provide safekeeping / administration of financial instruments;
- Hold money or securities belonging to their clients.

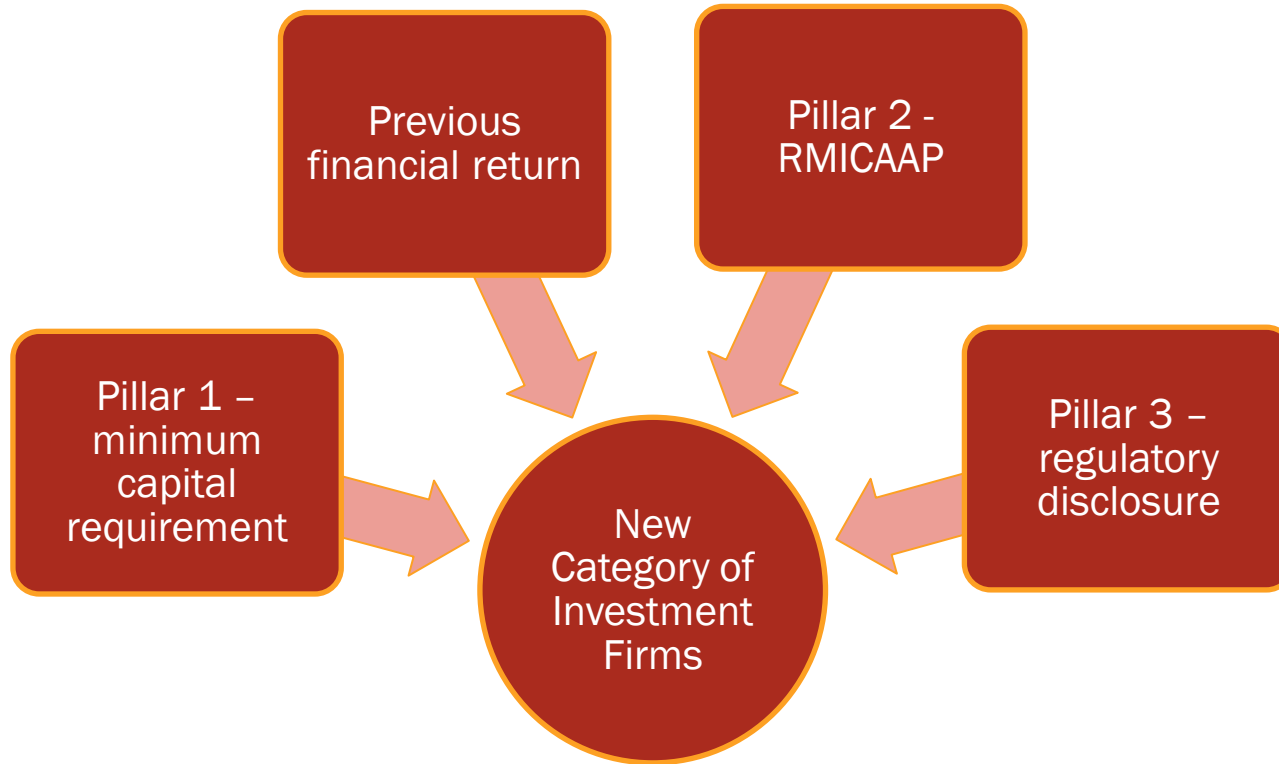
DISCUSSIONS WITH STAKEHOLDERS

- Distinction should be made between “**holding**” and “**controlling**” clients’ assets.
 - “Holding” refers to contractual arrangements whereby the LH is responsible for **maintaining** clients’ assets.
 - “Controlling” means contractual arrangements whereby the LH can **effect decisions** wrt management of clients assets.
 - Fund management industry does not usually tend to hold clients’ assets but to **control** clients’ assets.
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REPORTING REQUIREMENTS



COMPETENT AUTHORITY'S DISCRETION



ISSUES TO CONSIDER

- Separate definitions for “holding” and “controlling” clients’ assets may be required.
- A separate IS licence may be needed.
- The EC is to review the appropriateness of the whole prudential regime for all investment firms carrying out MiFID investment services by the end of 2015 (article 508 (3) of the CRR).

We believe it is appropriate to minimise changes for the time being until a more secure EU solution is found.

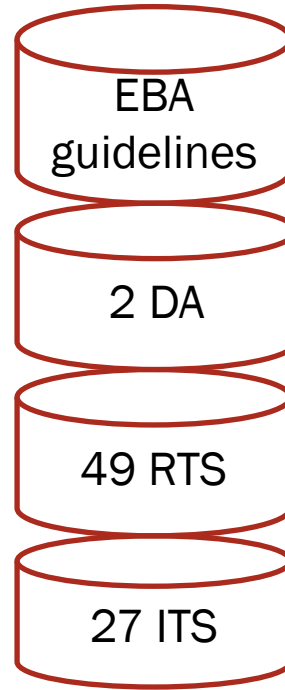
PLANS FOR 2015

- To update links in IS Rules;
- Capital buffers proposals.

Technical Standards



SOME FIGURES



STATUS OF TECHNICAL STANDARDS

www.ec.europa.eu/finance/bank/regcapital/acts/index_en.htm



Capital Buffers



CAPITAL BUFFERS

Minimum Capital Requirement	8%
Capital Conservation Buffer	2.5%
Countercyclical Capital Buffer	0-2.5%
Systemic Risk Buffer	1-5%
Global Systemically Important Institution Buffer (G-SII)	1-3.5%
Other Systemically Important Institution Buffer (O-SII)	0-2%



Higher of Systemic Risk buffer, G-SII and O-SII buffers **

** In certain cases, Systemic Risk Buffer and SII buffers are added together


Directive 2013/36/EU (CRDIV)	Designated Authority
Capital Conservation Buffer (article 129)	MFSA
Institution-specific Countercyclical Capital Buffer (article 130)	MFSA
Countercyclical Capital Buffer Rate (article 136)	CBM
Global and Other Systemically Important Institutions Buffer (article 131)	CBM jointly with MFSA
Systemic Risk Buffer (article 133)	CBM

TRANSPOSITION OF CAPITAL BUFFERS BY CBM

1. Legal Notice 29 of 2014 (Central Bank of Malta (Appointment of Designate authority to implement Macro-prudential instruments) Regulations) .
2. Central Bank of Malta Directive No.11 - may be accessed through the following link:

www.centralbankmalta.org/centralbankofmaltadirectives

TRANSPOSITION OF CAPITAL BUFFERS BY MFSA

1. Drafted the rules in a new Appendix to the Investment Services Rules for Investment Services Providers.
 2. Applicable only to Category 3 Investment Services Licence Holders.
 3. Member States may exempt small and medium sized (SME) investment firms from the Capital Conservation buffer and the Countercyclical capital buffer – articles 129 (2) and 130 (2) of CRD IV.
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***It is that obtaining and understanding accurate and complete information is in itself a rare event.
It's not the unexpected that causes trouble ...
it's what is ignored, unavailable or untrue!***

Source: William Gamble, *The main point about black swans and credit crises*, Financial Times, 17 May 2008.