

Amendments to Chapter 12 of the Listing Rules for the purposes of the transposition of Article 121 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 (the “bank recovery and resolution directive” or “BRRD”)

Introduction

The bank recovery and resolution directive was adopted in spring 2014 to provide authorities with comprehensive and effective arrangements to deal with failing banks at national level; and cooperation arrangements to tackle cross-border banking failures. Briefly, the BRRD requires banks to prepare recovery plans to overcome financial distress and also grants national authorities powers to ensure an orderly resolution of failing banks with minimal costs for taxpayers. The directive includes rules to set up a national resolution fund that must be established by each EU country. All financial institutions have to contribute to these funds. Contributions are calculated on the basis of the institution's size and risk profile.

The EU's bank resolution rules ensure that the banks' shareholders and creditors pay their share of the costs through a "bail-in" mechanism. If that is still not sufficient, the national resolution funds set up under the BRRD can provide the resources needed to ensure that a bank can continue operating while it is being restructured.

The bank recovery and resolution directive amends a number of existing Directives. One of such amendments is to provisions of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (the “Shareholders’ Rights Directive”). The provisions of the Shareholders’ Rights Directive are transposed into Maltese law in Chapter 12 of the Listing Rules. Accordingly certain amendments, outlined in section 2 below, are to be made to Chapter 12 of the Listing Rules.

Proposed Amendments

In terms of Article 121(1) of the BRRD the scope of the Shareholders' Rights Directive is to be amended to specifically exclude the applicability thereof to "*the use of resolution tools, powers and mechanisms*" in terms of the BRRD. For such purpose it is being proposed to include Listing Rule 12.2.4 to such effect.

Article 121(2) of the BRRD provides for the shortening of the pre-established 21 day notice period in a specified instance, for such purpose the inclusion of the Article 12.4A is being proposed.

12.4A For the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in Listing Rule 12.4, to decide on a capital increase, provided that:

12.4A.1 that meeting takes place at least ten calendar days after the convocation is issued;

12.4A.2 the conditions of Article 27 or 29 of Directive 2014/59/EU are met; and

12.4A.3 the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of Directive 2014/59/EU.

The inclusion of the following definition of the bank recovery and resolution directive is also being proposed to be included in the definitions section of the Listing Rules:

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| <i>Directive 2014/59/EU</i> | <i>Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012.</i> |
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Amended Listing Rules

The Revised Listing Rules are annexed to this Circular.

Effective Date

The amendments to the Listing Rules shall become effective from 13th February 2019.

Contacts

Any queries or requests for clarifications in respect of the above should be submitted on email address capitalmarkets@mfsa.com.mt

Communications Unit