



## BANKING SUPERVISION

### **BANKING RULES**

*CAPITAL BUFFERS OF  
CREDIT INSTITUTIONS AUTHORISED  
UNDER THE BANKING ACT 1994*

## **CAPITAL BUFFERS OF CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT 1994**

### **INTRODUCTION**

1. In terms of Article 4 of the Banking Act 1994 (Cap. 371) (hereinafter referred to as ‘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 Capital Buffers of Credit Institutions Rule (hereinafter referred to as ‘the Rule’) is being made pursuant to Article 16B of the Act, which states that:

*“The competent authority shall issue a Banking Rule as it shall consider appropriate for the regulation of capital buffers.”*

### **SCOPE AND APPLICATION**

3. The Rule applies to all credit institutions licensed under the Act.
4. The Rule transposes paragraph 30 of Article 3(1), Articles 128(1) – (8), 129(1), (5), and (6), 130(1), (5), and (6), 131, 140, 141, 142, 160 and 162(5) of the CRD:

Provided that Article 131 of the CRD is hereby being transposed by the authority in conjunction with Central Bank of Malta.

### **DEFINITIONS**

5. For the purposes of the Rule, the following definitions shall apply:
  - (i) ‘capital conservation buffer’ means the own funds that a credit institution is required to maintain in accordance with paragraphs 6 to 8 of the Rule [Article 129 of the CRD];

- (ii) 'CBM Directive' means the Central Bank of Malta Directive No. 11 on Macro-prudential policy;
- (iii) 'Central Bank of Malta' means:
  - (a) the 'designate authority' in conjunction with the authority, in charge of identifying on a consolidated basis, global systemically important credit institutions (G-SIIs) and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (OSIIs) which have been authorised in Malta in terms of Article 131 of the CRD as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014; and
  - (b) the 'designate authority' responsible for setting the countercyclical buffer rate in accordance with Article 136 of the CRD as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014;
- (iv) 'combined buffer requirement' means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following as applicable:
  - (a) an institution-specific countercyclical capital buffer;
  - (b) a G-SII buffer;
  - (c) an O-SII buffer;
  - (d) a systemic risk buffer;
- (v) 'Common Equity Tier 1 capital' shall have the same meaning as that assigned to it in Article 50 of the CRR;
- (vi) 'countercyclical buffer rate' means the rate that credit institutions must apply in order to calculate their institution specific countercyclical capital buffer, and that is set in accordance with Articles 136 and 137 of the CRD or by a relevant third-country authority, as the case may be;
- (vii) 'discretionary pension benefits' means enhanced pension benefits granted on a discretionary basis by an institution to an employee as part of that employee's variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;

- (viii) ‘G-SII buffer’ means the own funds that are required to be maintained in accordance with paragraph 24 of the Rule [Article 131(4) of the CRD];
- (ix) ‘institution-specific countercyclical capital buffer’ means the own funds that a credit institution is required to maintain in accordance with paragraphs 9 to 11 of the Rule [Article 130 of the CRD];
- (x) ‘O-SI buffer’ means the own funds that may be required to be maintained in accordance with paragraph 25 of the Rule [Article 131(5) of the CRD];
- (xi) ‘systemic risk buffer’ means the own funds that a credit institution is or may be required to maintain in accordance with paragraphs 14 to 32 of the CBM Directive [Article 133 of the CRD];
- (xii) ‘systemically important institution’ means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

#### **CAPITAL CONSERVATION BUFFER**

6. In addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the CRR, credit institutions shall maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92(3) of the CRR on an individual and consolidated basis, as applicable in accordance with Part One, Title II of the CRR.
7. Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement prescribed in terms of paragraph 6 of the Rule to meet any requirements imposed under Article 104 of the CRD.
8. Where a credit institution fails to meet fully the requirement prescribed in terms of paragraph 6 of the Rule, it shall be subject to the restrictions on distributions set out in paragraphs 40 to 49 of the Rule. [Article 141(2) and (3) of the CRD].

#### **INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER**

9. Credit institutions shall maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of the CRR multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with paragraphs 12 to 19 of the Rule [Article 140 of the CRD] on an individual and consolidated basis, as applicable in accordance with Part One, Title II of the CRR.
10. Credit institutions shall meet the requirement imposed by paragraph 9 of the Rule with Common Equity Tier 1 capital, which shall be additional to:
  - i. any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the CRR;
  - ii. the requirement to maintain a capital conservation buffer in terms of paragraphs 6 to 8 of the Rule [Article 129 of the CRD]; and
  - iii. any requirement imposed under Article 104 of the CRD.
11. Where a credit institution fails to meet fully the requirement prescribed in terms of paragraph 9 of the Rule, it shall be subject to the restrictions on distributions set out in paragraphs 40 to 49 of the Rule [Article 141(2) and (3) of the CRD].

#### **CALCULATION OF INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER RATES**

12. The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the credit institution are located or are applied for the purposes of paragraphs 12 to 19 of the Rule by virtue of paragraphs 62 and 63 of the CBM Directive [Article 139(2) or (3) of the CRD].
13. In order to calculate the weighted average referred to in paragraph 12 of the Rule, credit institutions shall apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of the CRR, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.
14. If, in accordance with paragraph 55 of the CBM Directive, the Central Bank of Malta sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, credit institutions shall apply that buffer rate in excess of 2.5% of total risk exposure amount to relevant credit exposures located in Malta for the purposes of the calculation prescribed in terms of

paragraphs 12 and 13 of the Rule including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the credit institution in question.

15. If, in accordance with Article 136(4) of the CRD, a designated authority in another Member State sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, the following buffer rates shall apply to relevant credit exposures located in the Member State of that designated authority for the purposes of the calculation prescribed in terms of paragraphs 12 and 13 of the Rule including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the credit institution in question:
  - (a) credit institutions shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the Central Bank of Malta has not recognised the buffer rate in excess of 2.5 % in accordance with paragraph 59 of the CBM Directive [Article 137(1) of the CRD];
  - (b) credit institutions shall apply the countercyclical buffer rate set by the designated authority of another Member State appointed for the purposes of Article 136(1) of the CRD if the Central Bank of Malta has recognised the buffer rate in accordance with paragraphs 59 and 60 of the CBM Directive [Article 137 of the CRD].
  
16. If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, the following buffer rates shall apply to relevant credit exposures located in that third country for the purposes of the calculation prescribed in terms of paragraphs 12 and 13 of the Rule including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the credit institution in question:
  - (a) credit institutions shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the Central Bank of Malta has not recognised the buffer rate in excess of 2.5% in accordance with paragraph 59 of the CBM Directive [Article 137(1) of the CRD];
  - (b) credit institutions shall apply the countercyclical buffer rate set by the relevant third-country authority if the Central Bank of Malta has recognised the buffer rate in accordance with paragraphs 59 and 60 of the CBM Directive [Article 137 of the CRD].

17. Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of the CRR, that are subject to:
- (a) the own funds requirements for credit risk under Part Three, Title II of the CRR;
  - (b) where the exposure is held in the trading book:
    - i. own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of the CRR; or
    - ii. incremental default and migration risk under Part Three, Title IV, Chapter 5 of the CRR;
  - (c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of the CRR.
18. Credit institutions shall identify the geographical location of a relevant credit exposure in accordance with the [Commission Delegated Regulation \(EU\) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to Regulatory Technical Standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates](#). Moreover, pursuant to Article 440 of the CRR, credit institutions shall disclose key elements of the calculation of their countercyclical capital buffer in accordance with Regulatory Technical Standards (RTS) developed by the EBA for this purpose. Until such time these RTS are published in the Official Journal of the European Union, credit institutions are to refer to the [Final Draft Technical Standards on Countercyclical Buffer Disclosures](#), which were published by the EBA on the 23<sup>rd</sup> of December 2014.
19. For the purposes of the calculation prescribed in terms of paragraphs 12 and 13 of the Rule:
- (a) a countercyclical buffer rate for Malta shall apply from the date specified in the information published in accordance with paragraphs 58(e) or 60(c) of the CBM Directive if the effect of that decision is to increase the buffer rate;
  - (b) a countercyclical buffer rate for another Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) of the CRD if the effect of that decision is to increase the buffer rate;

- (c) subject to point (d), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;
- (d) where the Central Bank of Malta sets the countercyclical buffer rate for a third country pursuant to paragraphs 62 and 63 of the CBM Directive [Article 139(2) or (3) of the CRD], or recognises the countercyclical buffer rate for a third country pursuant to paragraphs 59 and 60 of the CBM Directive [Article 137 of the CRD], that buffer rate shall apply from the date specified in the information published in accordance with paragraphs 65(c) or 60(c) of the CBM Directive [Article 139(5)(c) or Article 137(2)(c) of the CRD], if the effect of that decision is to increase the buffer rate;
- (e) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (c), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

## **GLOBAL AND OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS**

20. The Authority shall, in accordance with article 4(2) of the Act, together with the Central Bank of Malta, appointed as the designate authority for the purposes of Article 131(1) of the CRD in terms of the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014, be responsible for identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been licensed in terms of the Act.

G-SIIs shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution as defined in the CRR. G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.



O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution as defined in the CRR.

21. The identification methodology for G-SIIs shall be based on the following categories:
  - (a) size of the group;
  - (b) interconnectedness of the group with the financial system;
  - (c) substitutability of the services or of the financial infrastructure provided by the group;
  - (d) complexity of the group;
  - (e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity assessed as referred to in paragraph 20 of the Rule, which allows GSIIIs to be identified and allocated into a sub-category as described in paragraph 29 of the Rule.

22. O-SIIs shall be identified in accordance with paragraph 20 of the Rule. Systemic importance shall be assessed on the basis of at least any of the following criteria:
  - (a) size;
  - (b) importance for the economy of the European Union or of Malta;
  - (c) significance of cross-border activities;
  - (d) interconnectedness of the credit institution or group with the financial system.
23. In determining the conditions of application of paragraph 22 of the Rule in relation to the assessment of O-SIIs, the authority may be guided, *inter alia*, by any guideline/s published by the EBA in accordance with Article 131(3) of the CRD.
24. Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.
25. The authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 2% of the total risk exposure amount calculated in accordance with Article 92(3) of

the CRR, taking into account the criteria for the identification of the O-SII:

Provided that such buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

26. When requiring an O-SII buffer to be maintained, the authority, acting jointly with the Central Bank of Malta, shall comply with the following:
  - (a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;
  - (b) the authority, acting jointly with the Central Bank of Malta, shall review the O-SII buffer at least annually.
27. Before setting or resetting an O-SII buffer, the authority, acting jointly with the Central Bank of Malta, shall notify the European Commission, the ESRB, the EBA, and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in paragraph 25 of the Rule.

The said notification shall describe in detail:

- (a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
  - (b) an assessment of the likely positive or negative impact of the OSII buffer on the internal market, based on information which is available to the authority and the Central Bank of Malta;
  - (c) the O-SII buffer rate that the authority, acting jointly with the Central Bank of Malta, wishes to set.
28. Without prejudice to paragraphs 14 to 32 of the CBM Directive [Article 133 of the CRD] and paragraph 25 of the Rule, where an OSII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the OSII shall not exceed the higher of:
  - (a) 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR; and
  - (b) the G-SII or O-SII buffer rate applicable to the group at consolidated level.
29. The authority, acting jointly with the Central Bank of Malta, shall establish at least five subcategories of G-SIIs.

The lowest boundary and the boundaries between each sub-category shall be determined by the scores under the identification methodology.

The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest subcategory.

The lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and the buffer assigned to each sub-category shall increase in gradients of 0.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR up to and including the fourth sub-category.

The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR.

For the purposes of this paragraph, “systemic significance” is the expected impact exerted by the G-SII's distress on the global financial market.

30. Without prejudice to paragraphs 20 and 29 of the Rule, the authority, acting jointly with the Central Bank of Malta, may, in the exercise of sound supervisory judgment:
  - (a) re-allocate a G-SII from a lower sub-category to a higher subcategory;
  - (b) allocate an entity as referred to in paragraph 20 of the Rule, which has an overall score that is lower than the cut-off score of the lowest sub-category, to that sub-category or to a higher subcategory, thereby designating it as a G-SII.
31. Where the authority, acting jointly with the Central Bank of Malta, takes a decision in accordance with paragraph 30(b) of the Rule, it shall notify the EBA accordingly, providing reasons.
32. The authority, acting jointly with the Central Bank of Malta, shall notify the names of the G-SIIs and O-SIIs and the respective subcategory to which each G-SII is allocated, to the European Commission, the ESRB and the EBA, and shall disclose their names to the public. The authority, acting jointly with the Central Bank of Malta, shall disclose to the public the sub-category to which each GSII is allocated.

The authority, acting jointly with the Central Bank of Malta, shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the European Commission, the ESRB and the EBA and disclose the updated list of identified systemically important institutions to the public.

The authority, acting jointly with the Central Bank of Malta, shall disclose to the public the sub-category into which each identified GSII is allocated.

33. Systemically important institutions shall not use the Common Equity Tier 1 capital which is maintained in terms of paragraphs 24 and 25 of the Rule, to meet any of the following requirements:
- (i) requirements imposed under Article 92 of the CRR;
  - (ii) requirements to maintain a capital conservation buffer as prescribed in paragraphs 6 to 8 of the Rule;
  - (iii) requirements to maintain an institution-specific countercyclical capital buffer as prescribed in paragraphs 9 to 11 of the Rule;
  - (iv) any requirements imposed under Article 102 of the CRD; and
  - (v) any requirements imposed under Article 104 of the CRD.
34. Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case:
- (a) a G-SII buffer and an O-SII buffer;
  - (b) a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with Article 133 of the CRD.

Where a credit institution, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with Article 133 of the CRD, the higher of the two shall apply.

35. Notwithstanding the provisions of paragraph 34 of the Rule, where the systemic risk buffer applies to all exposures located in Malta, but does not apply to exposures outside Malta, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with paragraphs 20 to 38 of the Rule.

36. Where paragraph 34 of the Rule applies and a credit institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that credit institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.
37. Where paragraph 35 of the Rule applies and a credit institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that such credit institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.
38. The authority, acting jointly with the Central Bank of Malta, shall identify an EU parent institution or EU parent financial holding company or EU parent mixed financial holding company as a G-SII and shall define the sub-categories and the allocation of G-SIIs in sub-categories based on their systemic significance in accordance with the methodology specified in the [Commission Delegated Regulation \(EU\) No 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to Regulatory Technical Standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions](#):

Provided that, pursuant to Article 441 of the CRR, credit institutions identified as G-SIIs shall disclose indicator values used in the identification process in accordance with the Commission Implementing Regulation (EU) No 1030/2014 of 29 September 2014 laying down Implementing Technical Standards with regard to the uniform formats and date for the disclosure of the values used to identify global systemically important institutions according to Regulation (EU) No 575/2013 of the European Parliament and the [Guidelines on Disclosure of Indicators of Global Systemic Importance](#), which were published by the EBA on the 5<sup>th</sup> of June 2014.

#### **SYSTEMIC RISK BUFFER**

39. Credit institutions are to refer to the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014 and to the CBM Directive with regards to the maintenance of a systemic risk buffer under Article 133 of the CRD.

## RESTRICTIONS ON DISTRIBUTIONS

40. A credit institution that meets the combined buffer requirement shall be prohibited from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.
41. A credit institution that fails to meet the combined buffer requirement shall be required to calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 43 of the Rule. Such credit institutions shall be required to notify the authority of that MDA.

In such circumstances the credit institution shall be prohibited from undertaking any of the following actions before it has calculated the MDA:

- (a) make a distribution in connection with Common Equity Tier 1 capital;
  - (b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the credit institution failed to meet the combined buffer requirements;
  - (c) make payments on Additional Tier 1 instruments.
42. A credit institution that fails to meet or exceed its combined buffer requirement shall be prohibited from distributing more than the MDA calculated in accordance with paragraph 43 of the Rule through any action referred to in sub-paragraphs (a), (b) and (c) of paragraph 41 of the Rule.
  43. A credit institution shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 44 of the Rule by the factor determined in accordance with paragraph 45 of the Rule.

The MDA shall be reduced by any of the actions referred to in subparagraphs (a), (b) or (c) of paragraph 41 of the Rule.

44. The sum to be multiplied in accordance with paragraph 43 of the Rule shall consist of:
  - (a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR that have been generated since the most recent decision on the distribution of profits or any

of the actions referred to in sub-paragraphs (a), (b) or (c) of paragraph 41 of the Rule;

plus

- (b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in sub-paragraphs (a), (b) or (c) of paragraph 41 of the Rule;

minus

- (c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

45. The factor shall be determined as follows:

- (a) where the Common Equity Tier 1 capital maintained by the credit institution which is not used to meet the own funds requirement under Article 92(1)(c) of the CRR, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
- (b) where the Common Equity Tier 1 capital maintained by the credit institution which is not used to meet the own funds requirement under Article 92(1)(c) of the CRR, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;
- (c) where the Common Equity Tier 1 capital maintained by the credit institution which is not used to meet the own funds requirement under Article 92(1)(c) of the CRR, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;
- (d) where the Common Equity Tier 1 capital maintained by the credit institution which is not used to meet the own funds requirement under Article 92(1)(c) of the CRR, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement} \times (Q_n - 1)}{4}$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement} \times Q_n}{4}$$

"Q<sub>n</sub>" indicates the ordinal number of the quartile concerned.

46. The restrictions imposed by paragraphs 40 to 49 of the Rule shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the credit institution.
47. Where a credit institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in sub-paragraphs (a), (b) and (c) of paragraph 41 of the Rule, it shall notify the authority and provide the following information:
  - (a) the amount of capital maintained by the credit institution, subdivided as follows:
    - i. Common Equity Tier 1 capital,
    - ii. Additional Tier 1 capital,
    - iii. Tier 2 capital;
  - (b) the amount of its interim and year-end profits;
  - (c) the MDA calculated in accordance with paragraph 43 of the Rule;
  - (d) the amount of distributable profits it intends to allocate between the following:
    - i. dividend payments,
    - ii. share buybacks,
    - iii. payments on Additional Tier 1 instruments,
    - iv. the payment of variable remuneration or discretionary pension benefits whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the credit institution failed to meet its combined buffer requirements.
48. Credit institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately,



and shall be able to demonstrate that accuracy to the authority on request.

49. For the purposes of paragraphs 40 and 41 of the Rule, a distribution in connection with Common Equity Tier 1 capital shall include the following:
- (a) a payment of cash dividends;
  - (b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of the CRR;
  - (c) a redemption or purchase by a credit institution of its own shares or other capital instruments referred to in Article 26(1)(a) of the CRR;
  - (d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of the CRR;
  - (e) a distribution of items referred to in points (b) to (e) of Article 26(1) of the CRR.

#### **CAPITAL CONSERVATION PLAN**

50. Where a credit institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the authority no later than five working days after it identified that it was failing to meet that requirement, unless the authority authorises a longer delay up to 10 days.

The authority shall grant such authorisations only on the basis of the individual situation of a credit institution and taking into account the scale and complexity of the credit institution's activities.

51. The capital conservation plan shall include the following:
- (a) estimates of income and expenditure and a forecast balance sheet;
  - (b) measures to increase the capital ratios of the credit institution;
  - (c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;
  - (d) any other information that the authority considers to be necessary to carry out the assessment required in terms of paragraph 52 of the Rule.

52. The authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the credit institution to meet its combined buffer requirements within a period which the authority considers appropriate.
53. If the authority does not approve the capital conservation plan in accordance with paragraph 52 of the Rule, it shall impose one or both of the following:
  - (a) require the credit institution to increase own funds to specified levels within specified periods;
  - (b) exercise its powers under Article 102 of the CRD to impose more stringent restrictions on distributions than those required by paragraphs 40 to 49 of the Rule.

#### **TRANSITIONAL PROVISIONS**

54. The requirement for the capital conservation buffer shall be transitioned between 1 January 2016 and 31 December 2018 as follows:
  - (a) For the period from 1 January 2016 until 31 December 2016 the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0.625% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with Article 92(3) of the CRR;
  - (b) For the period from 1 January 2017 until 31 December 2017 the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.25% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with Article 92(3) of the CRR;
  - (c) For the period from 1 January 2018 until 31 December 2018 the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.875% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with Article 92(3) of the CRR.
55. The requirement for an institution-specific countercyclical capital buffer shall be transitioned between 1 January 2016 and 31 December 2018 as follows:
  - (a) For the period from 1 January 2016 until 31 December 2016 the institution-specific countercyclical capital buffer shall be no more than 0.625% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with

Article 92(3) of the CRR;

- (b) For the period from 1 January 2017 until 31 December 2017 the institution-specific countercyclical capital buffer shall be no more than 1.25% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with Article 92(3) of the CRR;
- (c) For the period from 1 January 2018 until 31 December 2018 the institution-specific countercyclical capital buffer shall be no more than 1.875% of the total of the risk-weighted exposure amounts of the credit institution calculated in accordance with Article 92(3) of the CRR.

56. The requirement for a capital conservation plan and the restrictions on distributions referred to in paragraphs 40 to 53 of the Rule [Articles 141 and 142 of the CRD] shall apply during the transitional period between 1 January 2016 and 31 December 2018 where credit institutions fail to meet the combined buffer requirement taking into account the requirements set out in paragraphs 54 and 55 of the Rule.

57. The G-SII buffer shall be implemented as follows:

- (a) 25% of the G-SII buffer, set in accordance with paragraph 24 of the Rule, in 2016;
- (b) 50% of the G-SII buffer, set in accordance with paragraph 24 of the Rule, in 2017;
- (c) 75% of the G-SII buffer, set in accordance with paragraph 24 of the Rule, in 2018;
- (d) 100% of the G-SII buffer, set in accordance with paragraph 24 of the Rule, in 2019.

#### **ENTRY INTO FORCE**

58. The capital conservation buffer shall apply from 1 January 2016 subject to the transitional periods prescribed in paragraph 54 of the Rule.

Notwithstanding the provisions of this paragraph and the transitional periods prescribed in paragraph 54 of the Rule, the authority may, in accordance with Article 160(6) of the CRD, impose a shorter transitional period and thereby implement the capital conservation buffer prior to 1 January 2016. Where the authority imposes such a shorter transitional period, it shall inform the relevant parties, including the European Commission, the ESRB, the EBA and the relevant supervisory colleges, accordingly.

The authority may also recognise shorter transitional periods than those prescribed by Article 160(2)(a), (3)(a) and (4)(a) concerning the introduction of the capital conservation buffer imposed by other Member States. Where the authority recognises such a shorter transitional period, it shall notify the European Commission, the ESRB, the EBA and the relevant supervisory college accordingly.

59. The institution-specific countercyclical capital buffer shall apply from 1 January 2016 subject to the transitional periods prescribed in paragraph 55 of the Rule and to any shorter transitional periods which may be imposed in accordance with paragraph 66 of the CBM Directive in respect of the countercyclical capital buffer.
60. Subject to the transitional periods prescribed in paragraph 57 of the Rule, the G-SII buffer shall apply from 1 January 2016.
61. The authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain, as from 1 January 2016, an O-SII buffer as prescribed in paragraph 25 of the Rule.