

07 January 2022

## Circular to Credit Institutions in relation to Amendments to the Banking Act and Subsidiary Legislation transposing the CRDV and the IFD

### Introduction

The aim of this Circular is to inform credit institutions of the coming into effect of the changes made to the Banking Act (hereinafter referred to as the “Act”) to transpose Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capitals conservation measures (hereinafter referred to as the “CRD V”). The said amendments were published by virtue of [Act No. LXXI of 2021](#).

The Act is amended further to transpose the amendments made to the CRD by virtue of Article 62 of Directive (EU) 2019/2034 of the European Union and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (hereinafter referred to as the “IFD”). The said amendments were published by virtue of [Act No. LXXII of 2021](#).

Furthermore, amendments have also been affected to the Administrative Penalties, Measures and Investigatory Powers Regulations, the European Passport Rights for Credit Institutions Regulations and the Banking Act (Supervisory Review) Regulations. The Supervisory Consolidation Regulations have been repealed and replaced by the Supervisory Consolidation (Credit Institutions) Regulations and the Investment Services Act (Supervisory Consolidation Regulations (Capital Requirements Directive)), which mainly transpose the amendments introduced by CRD V and by Article 62 of the IFD. It shall be noted that the afore-mentioned amendments to such Regulations issued under the Banking Act shall enter into force shortly and on such date as the Minister shall establish.

## Amendments to the Act

### Main amendments pursuant to CRDV:

- (Mixed) Financial Holding Companies

Article 11B of the Act introduces a new requirement for Financial Holding Companies and Mixed Financial Holding Companies (collectively referred to as “(M)FHCs”) to seek approval or exemption from approval from the Authority, in accordance with the conditions set out in the said article.

In instances where (M)FHCs do not meet or cease to meet the conditions for approval, the Act provides the competent authority with the power to impose supervisory measures pursuant article 29AA of the Act, to ensure compliance with consolidated prudential requirements set out by the applicable legislation.

- Intermediate EU parent undertaking

The Act establishes a new requirement for a credit institution licensed in terms of the Act which is part of a third-country group having one or more other credit institution or investment firm licensed in Malta or in another Member State. Such change requires banks forming part of these third-country groups to have a single intermediate EU parent undertaking to be established in Malta or in another Member State. This requirement does not apply in instances where the total value of assets of the third-country groups in the EU is less than €40bn.

- Annual reporting requirement for branches having their head office outside the EU

Article 11A of the Act introduces a new requirement with respect to the submission to the Authority of specific reporting on an annual basis by branches of credit institutions which are established in Malta and which have their head office in a third country.

- Gender neutral policies and practices

Article 17B(1) of the Act has been amended to add a new proviso providing for remuneration policies and practices to be gender neutral.

- Replacement of auditor

The amendments to article 31 of the Act empower the Authority to require the auditor of a credit institution to be replaced where such auditor breaches his or her obligations set out in the same article.

### Amendments pursuant to the IFD

The main amendment to the Act aimed at transposing the IFD amendments to the CRD is the introduction article 6A which requires larger investment firms currently licensed in

terms of the Investment Services Act and having a value of average monthly total assets of over €30bn, to apply for a licence as credit institutions in terms of the Banking Act.

The amendments to article 9(2) of the Act also provide the Authority's with the power to withdraw the licence of a credit institution granted under article 6A of the Act subject to the conditions stipulated therein.

## **Amendments to Subsidiary Legislation**

### **i. Administrative Penalties, Measures and Investigatory Powers Regulations (S.L.371.05)**

The Administrative Penalties, Measures and Investigatory Powers Regulations have been amended to empower the Authority to impose an administrative penalty or measure on (M)FHCs which fail to comply with the new approval requirement set out under article 11B of the Act or any other applicable provision.

The Authority is also empowered to take administrative action against such (M)FHCs and parent institutions in instances where they fail to ensure compliance with the applicable CRR and CRD requirements on a consolidated or sub-consolidated basis.

Furthermore, the Regulations were amended to empower the Authority to impose administrative measures and penalties upon the new category of credit institutions licensed in terms of article 6A of the Act referred to above.

### **ii. European Passport Rights for Credit Institutions Regulations (S.L.371.11)**

A minor amendment is affected to the European Passport Rights for Credit Institutions Regulations, specifically in regulation 17(7) which specifies the entities considered as 'financial institutions' transposing minor changes made to CRD by virtue of the IFD.

### **iii. Banking Act (Supervisory Review) Regulations (S.L.371.16)**

The amendments to these regulations include changes to the additional own funds requirements and changes requiring the Authority to regularly review the level of internal capital of credit institutions throughout the SREP assessment.

### **iv. Supervisory Consolidation (Credit Institutions) Regulations (S.L.371.22)**

The Supervisory Consolidation Regulations issued both under both the Banking Act and the Investment Services Act are hereby being repealed and replaced by two separate Regulations applicable for credit institutions and investment firms respectively.

The Supervisory Consolidation (Credit Institutions) Regulations transpose the CRD including the amendments introduced by the IFD specifically with respect to credit institutions.

In case of any queries in relation to the above, please do not hesitate to contact your supervisory contact at the MFSA.

*Disclaimer: The content of this Circular shall only be considered for information purposes. It should not be construed as advice and should not be treated as such. Credit institutions shall refer to the applicable legislation and shall carry out their own assessments in order to ensure compliance with the applicable regulatory requirements.*