

07 January 2022

Circular to Credit Institutions on the Amendments to Banking Rules BR/01, BR/12, BR/14, BR/15 and BR/21, and the Introduction of BR/24

The Authority is hereby issuing a revised version of **Banking Rules BR/01, BR/12, BR/14, BR/15 and BR/21**, and issuing a **new Banking Rule BR/24** (hereinafter referred to collectively as the “Rules”).

The Rules, with the exception of BR/14, have primarily been amended 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”), as explained further hereunder.

Amendments to BR/01 on Application Procedures And Requirements For Authorisation Of Licences For Banking Activities Under The Banking Act 1994

Appendix III to BR/01, which constituted a list of entities that are not subject to the requirements of the CRD and transposes Article 2(5) of such Directive, has been deleted. Such deletion follows the incorporation of such list to the Banking Act, as a Schedule thereto. Furthermore, Form 3 of this Rule, which constituted the Personal Questionnaire to be submitted by individuals intending to take up influential positions within credit institutions, has also been deleted. Such Personal Questionnaire can be accessed through the dedicated MFSA webpage.

Amendments to BR/12 on the Supervisory Review Process of Credit Institutions Authorised Under The Banking Act 1994

BR/12 has been amended to reflect the amendments introduced by the CRD V with respect to the level of application of the requirements stipulated in the said Rule specifically in relation to the elements which are assessed throughout the SREP.

Amongst other amendments, this Rule has been revised to provide that subsidiary undertakings which are not subject to the CRD shall comply with sector-specific rules on an individual basis. Furthermore, the amendments specify the types of subsidiaries to which the remuneration requirements do not apply on a consolidated basis, and the exception to such rule. In this regard, the newly introduced paragraph 13 of BR/21 refers to the relevant provisions of BR/12 which transpose such provisions of Article 109 of the CRD.

Amendments to BR/14 on Outsourcing by Credit Institutions Authorised Under The Banking Act 1994

The minor amendments introduced to BR/14 serve to clarify that the 60-day period within which the Authority is to assess an outsourcing notification may start to run from the submission of any other information which the Authority may require to process such notification.

Additionally, the amendments also implement the requirements with respect to the outsourcing policy of credit institutions emanating from the EBA Guidelines on Internal Governance (EBA/GL/2021/05).

Amendments to BR/15 on Capital Buffers of Credit Institutions Authorised Under The Banking Act 1994

Amongst other changes, BR/15 has been amended to transpose the CRD V provisions related to the restrictions on the composition of the combined buffer requirement. Moreover, the section on 'Global and Other Systematically Important Institutions' (G-SIIs and O-SIIs) has been amended to define and provide the identification methodology for G-SIIs together with changes to the implementation of an O-SII buffer that is higher than 3% of the total risk exposure amount. Furthermore, changes were made to the provisions on the calculation of the combined buffer requirement whilst a provision on the failure of credit institutions to meet the leverage ratio buffer requirement is introduced.

Amendments to BR/21 on Remuneration Policies and Practices

BR/21 has also been amended to introduce the definition of the term 'gender neutral remuneration policy' and to provide a list of staff members who are considered as having a material impact on the credit institution's risk profile.

The amendments to this Rule also relate to the principles on variable elements of remuneration and the introduction of specific exceptions thereto in order to ensure proportionality in this regard. The latter amendment provides that the requirement of a portion of the variable remuneration component to be deferred over three to five years shall be inapplicable where certain thresholds of assets of the institution are met, or where a staff member's remuneration does not exceed a specific threshold. This is a change (brought about by a direct transposition of the CRDV) to the MFSA's previous approach to proportionality in the context of variable remuneration, which had been communicated to institutions in the [Circular](#) dated 10 November 2015.

Furthermore, Part II of the Rule has been amended so as to implement the revisions brought about by the EBA Guidelines on sound remuneration (EBA/GL/2021/04), which revisions are aimed at reflecting the CRD V amendments related to remuneration. Further to the CRD and EBA Guidelines amendments, credit institutions shall document and make available to the Authority, upon request, the data on loans to members of the management body and their related parties. Additionally, a new section has been introduced providing further

information on exemptions with respect to waivers on the variable remuneration pay-out process, whilst the sections relating to disclosures on remuneration requirements have been deleted since they are now included in the Implementing Technical Standards issued by the EBA, which are directly applicable.

Introduction of BR/24 on Internal Governance of Credit Institutions Authorised Under The Banking Act

Finally, the Authority is introducing BR/24 on Internal Governance of Credit Institutions Authorised Under The Banking Act. Consequently, Annex 2B of BR/12, entitled 'Technical Criteria on Governance Arrangements and the Treatment of Risks' has been repealed since the provisions of the Annex 2B are included in the said new Rule. The Rule also introduces new requirements in line with the amendments made by virtue of the CRD V including that data on loans to directors of credit institutions and their related parties, as defined therein, should be documented and made available to the Authority.

Furthermore, the EBA Guidelines on Internal Governance (EBA/GL/2021/05) and the EBA Guidelines on product oversight for retail banking products (EBA/GL/2015/18), have also been implemented in this Rule, the latter in Annex I.

The revised Rules and the newly introduced BR/24 will come into force with immediate effect.

Any queries in relation to the above should be directed to Banking Supervision (Policy Section) on bsupolicy@mfsa.mt.