

07 January 2022

Circular to Investment Firms in relation to the Transposition of the CRD V

Introduction

The aim of this Circular is to inform Class 1 and Class 1 Minus investment firms, as defined in previous [briefings](#) issued by the Malta Financial Services Authority (“the MFSA” or “the Authority”), of:

- the changes made to the Investment Services Act (“Act”) through Acts [LXXI](#) and [LXXII](#) of 2021;
- the repeal of Subsidiary Legislation (“SL”)371.15, Supervisory Consolidation Regulations;
- the publication of its replacement, namely Legal Notice (“LN”) 495 of 2021, Investment Services Act (Supervisory Consolidation) (Capital Requirements Directive) Regulations, 2021;
- the amendments to SL 370.15;
- the amendments to SL 370.25; and
- changes to the Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms (“the Rulebook”)

to transpose Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU (“CRD V”).

Amendments to the Act

Main amendments pursuant to CRDV:

- (Mixed) Financial Holding Companies

Article 10CA 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 to article 16AA 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 an investment firm 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 licence holders 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.

- Replacement of auditor

The amendments to article 18 of the Act empower the Authority to require the auditor of a licence holder to be replaced where such auditor breaches his or her obligations set out in the same article.

Subsidiary Legislation

- i. Repeal of SL 371.15

This SL used to regulate both credit institutions and investment firms. Following the publication of the Investment Firms Regulation and Directive and the introduction of Classes by such legislative package, the MFSA decided to repeal such SL and introduce two new ones to regulate credit institutions and investment firms separately for the benefit of all stakeholders.

- ii. Investment Services Act (Supervisory Consolidation) (Capital Requirements Directive) Regulations (LN 495)

Such LN replicates the provisions which were present in SL 371.15 and applied to investment firms. There have also been amendments to transpose the CRD V, one of which is of note.

The CRD V has clarified and has inserted new provisions determining when the MFSA shall be the consolidating supervisor. There are five main scenarios, with the common denominator being a link to Malta which is stronger than any other link to any other country.

- iii. Investment Services Act (Supervisory Review) Regulations (SL 370.15)

The amendments to these regulations include changes to the additional own funds requirements, changes requiring the Authority to regularly review the level of internal capital of investment firms through the SREP assessment, increase of supervisory powers of the Authority, and the discretion to ask investment firms to report more often.

- iv. Administrative Penalties, Measures and Investigatory Powers Regulations (S.L.370.25)

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 contravene the Act, any SLs issued thereunder, and/or the Rulebook.

The Rulebook

The CRD V amends 14 CRD IV Articles which were transposed in the Rulebook, and introduces 3 new ones which relate to Articles which were previously transposed in the Rulebook. The below table lists the Rule being amended or introduced, the subject of the Rule, and a comment on each one to outline the main changes.

<u>Rule No.</u>	<u>Subject</u>	<u>Comments</u>
R2-3.2.12	Internal Governance and recovery and resolution plans	Reinforces proportionality principle
R1-1.5.1.13, R1-1.5.1.14	Governance	The Licence Holder shall keep data on loans to members of the management body and their related parties are properly and made available to the MFSA
R2-3.6.1, R2-3.6.3, R2-3.6.4	Management Body	Financial holding companies and mixed financial holding companies are now responsible for the adequacy of their own and the subsidiaries' management body
R2-3.2.66, R2-3.2.67	Remuneration Policy	It now specifies that remuneration policies shall be gender neutral. It also specifies which members of staff have a material impact on investment firms
R2-3.2.66	Variable elements of remuneration	Introduces new rules to cater for Class 1 and Class 1 Minus firms
R2-3.2.76, R2-3.2.77, R2-3.2.78	ICAP	Deletes a rule relating to the internal capital adequacy assessment process where an investment firm controlled by a parent financial holding company or a parent mixed financial holding company is required to meet the internal capital requirements on the basis of the

		consolidated situation of those companies.
R2-3.3.1, R2-3.3.2, R2-3.3.3, R2-3.3.4, R2-3.3.5, R2-3.3.6	Institutions' arrangements, processes and mechanisms	Now caters for non-EU investment firms and clarifies the position when consolidation is required, or when it doesn't happen due to parents not established in Malta
R2-3.5.1, R2-3.5.2, R2-3.5.3, R2-3.5.4	Requirement to maintain a capital conservation buffer	The MFSA is now required to inform the ESRB rather than an array of entities if there are amendments to or exemptions from the capital conservation buffer
R2-3.5.5, R2-3.5.6, R2-3.5.7	Requirement to maintain an institution-specific countercyclical capital buffer	Refines the exemption process and the way it should be followed up
R2-3.5.9, R2-3.5.10, R2-3.5.11, R2-3.5.16, R2-3.5.17, R2-3.5.19, R2-3.5.18, R2-3.5.21, R2-3.5.24, R2-3.5.25, R2-3.5.27	Global and other systemically important institutions	Introduces an additional identification methodology for G-SIIs, changes the buffer percentages for G-SIIs and O-SIIs, refines the exemption and notification procedure to the ESRB, and introduces the Single Resolution Mechanism
R2-3.5.40, R2-3.5.41, R2-3.5.42, R2-3.5.43, R2-3.5.44, R2-3.5.45	Restrictions on distributions	Clarifies what can and cannot be distributed, and amends the formula which is used to calculate the lower and upper bounds of each quartile of the combined buffer requirement
R2-3.5.46	Failure to meet the combined buffer requirement	Defines what failure is
R2-3.5.47, R2-3.5.48, R2-3.5.49, R2-3.5.50,	Restriction on distribution in case of failure to meet the leverage ratio buffer requirement	Introduces the power of the MFSA to restrict distributions in case of failure to meet the leverage ratio buffer requirement, introduces new

R2-3.5.51, R2-3.5.52, R2-3.5.53, R2-3.5.54, R2-3.5.55, R2-3.5.56		calculations, and exemptions from this rule
R2-3.5.56	Failure to meet the leverage buffer requirement	Defines what failure is
R2-3.5.57	Capital Conservation Plan	Introduces a new requirement regarding the new its leverage ratio buffer requirement

In case of any queries in relation to the above, please do not hesitate to contact the MFSA on investmentfirms@mfsa.mt or smspolicy@mfsa.mt.

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. Investment Firms shall refer to the applicable legislation and shall carry out their own assessments in order to ensure compliance with the applicable regulatory requirements.