

# **BANKING RULE BR/15**

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



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## REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	2022	Amendments to the Rule in order to transpose certain provisions of Directive (EU) 2019/878 (the CRD V).
2.00	21 June 2022	Amendment to paragraph 56 for minor incorrect referencing.

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

## INTRODUCTION

1. In terms of Article 4 of the Banking Act (Cap. 371 of the Laws of Malta) (the 'Act'), the Malta Financial Services Authority (the 'Authority'), as appointed under Article 3(1) of the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta), 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. The Banking Rules and any amendments 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 Authorised under the Banking Act 1994 Rule ('the Rule') is being made pursuant to Article 16B of the Act.

## SCOPE AND APPLICATION

3. This Rule applies to all credit institutions licensed under the Act.
4. The Rule transposes paragraph 30 of Article 3(1), Articles 128(1) – (7), 129(1) and (5), 130(1) and (5), 131, 140, 141, 141a, 141b, 141c, 142, 160 and 162(2) and (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) "global systemically important institution" or "G-SII" means a G-SII as defined in point (133) of Article 4(1) of the CRR;
  - (ii) 'capital conservation buffer' means the own funds that a credit institution is required to maintain in accordance with paragraphs 9 to 12 of the Rule;

- (iii) 'CBM Directive' means the Central Bank of Malta Directive No. 11 on Macro-prudential policy;
- (iv) '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 institutions (G-SIIs) and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs) 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;
  - (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;
  - (c) the 'designate authority' responsible for setting the systemic risk buffer in accordance with Article 133 of the CRD as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014; and
  - (d) the 'designate authority' responsible for identifying changes in the intensity of macro-prudential or systemic risk in the financial system in accordance with Article 458(1) of the CRR as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014.
- (v) '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;
- (vi) 'Common Equity Tier 1 capital' shall have the same meaning as that assigned to it in Article 50 of the CRR;

- (vii) '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 paragraphs 54 to 67 of the CBM Directive or Articles 136 and 137 of the CRD or by a relevant third-country authority, as the case may be;
  - (viii) '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;
  - (ix) 'G-SII buffer' means the own funds that are required to be maintained in accordance with paragraph 26 of the Rule;;
  - (x) 'institution-specific countercyclical capital buffer' means the own funds that a credit institution is required to maintain in accordance with paragraphs 11 to 12 of the Rule;;
  - (xi) 'O-SII buffer' means the own funds that may be required to be maintained in accordance with paragraph 27 of the Rule;
  - (xii) 'systemic risk buffer' means the own funds that a credit institution is or may be required to maintain in accordance with paragraphs 15 to 32 of the CBM Directive;
  - (xiii) 'systemically important institution' means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or a credit institution the failure or malfunction of which could lead to systemic risk.
6. For the purposes of applying the requirements and supervisory powers laid down in the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD or in the CRR, on a consolidated or sub-consolidated basis in accordance with this Act and any regulations made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the terms "institution", "parent institution" and "EU parent institution" used in this Rule shall also include, where applicable:
- (a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 11B and, or Article 21a of the CRD;

- (b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 11B(5) and, or Article 21a(4) of the CRD; and
  - (c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 29AA(1)(f) and, or Article 21a(6)(d) of the CRD.
7. For the purposes of applying the requirements and supervisory powers laid down in paragraphs 5, 8-20, 24(d), 35, 36, 38-64 of this Rule on a consolidated or sub-consolidated basis in accordance with this Act and any regulations made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the terms “credit institution” used in this Rule shall also include, where applicable:
- (a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 11B and, or Article 21a of the CRD;
  - (b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 11B(5) and, or Article 21a(4) of the CRD; and
  - (c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 29AA(1)(f) and, or Article 21a(6)(d) of the CRD.

The words and expressions used in this Rule, which are also used in the Act, and subsidiary legislation issued thereunder, but which are not defined herein, shall have the same meaning as in the Act and the subsidiary legislation.

## GENERAL REQUIREMENTS ON CAPITAL BUFFERS

8. Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in paragraph 5(v), to meet any of the requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR, the additional own funds requirements imposed pursuant to Regulation 9A of the Banking Act



(Supervisory Review) Regulations to address risks other than the risk of excessive leverage, and the guidance communicated in accordance with Regulation 9B(3) of the Banking Act (Supervisory Review) Regulations to address risks other than the risk of excessive leverage.

Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of its combined buffer requirement to meet the other applicable elements of its combined buffer requirement.

Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in paragraph 5(v) to meet the risk-based components of the requirements set out in Articles 92a and 92b of the CRR and in Articles 45c and 45d of Directive 2014/59/EU.

## CAPITAL CONSERVATION BUFFER

9. In addition to the Common Equity Tier 1 capital maintained to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) 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.
10. 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 39 and 40 of the Rule.

## INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER

11. 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 11 to 20 of the Rule on an individual and consolidated basis, as applicable in accordance with Part One, Title II of the CRR. That buffer shall consist of Common Equity Tier 1 capital.

12. Where a credit institution fails to meet fully the requirement prescribed in terms of paragraph 11 of the Rule, it shall be subject to the restrictions on distributions set out in paragraphs 38 and 39 of the Rule.

## CALCULATION OF INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER RATES

13. 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 13 to 20 of the Rule by virtue of paragraphs 60 and 61 of the CBM Directive.
14. In order to calculate the weighted average referred to in paragraph 13 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.
15. If, in accordance with paragraph 53 of the CBM Directive, the Central Bank of Malta sets a countercyclical buffer rate in excess of 2.5% of the 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 13 and 14 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.
16. 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 13 and 14 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 60 of the CBM Directive;

- 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 57 and 58 of the CBM Directive.
17. 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 13 and 14 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 57 of the CBM Directive;
  - 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 57 and 58 of the CBM Directive.
18. 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.

19. 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).
20. For the purposes of the calculation prescribed in terms of paragraphs 13 and 14 of the Rule:
  - a. a countercyclical buffer rate for Malta shall apply from the date specified in the information published in accordance with paragraphs 56(e) or 58(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 60 and 61 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 57 and 58 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 63(c) or 58(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

21. 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 authorised within Malta.

G-SIIs shall be any of the following:

- (a) a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or
- (b) a credit institution that is not 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 may either be a credit institution or a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State.

22. 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 21 of the Rule, which allows G-SIIs to be identified and allocated into a sub-category as described in paragraph 32 of the Rule.

23. An additional identification methodology for G-SIIs shall be based on the following categories:
- (a) the categories referred to in points (a) to (d) of paragraph 22 of this Rule;
  - (b) cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in point (a) of the first subparagraph, the indicators shall be the same as the corresponding indicators determined pursuant to paragraph 22 of this Rule.

The additional identification methodology shall produce an additional overall score for each entity as referred to in paragraph 21 assessed, on the basis of which the Authority, acting jointly with the Central Bank of Malta may take one of the measures referred to in point (c) of paragraph 33.

24. O-SIIs shall be identified in accordance with paragraph 21. 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.
25. In determining the conditions of application of paragraph 24 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.

26. 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.
27. The Authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 3% 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 Common Equity Tier 1 capital.

28. Subject to the Commission authorisation referred to in the third subparagraph, the Authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR:

Provided that such buffer shall consist of Common Equity Tier 1 capital.

29. 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.
30. Before setting or resetting an O-SII buffer, the Authority, acting jointly with the Central Bank of Malta, shall notify the ESRB one month before the publication of the decision referred to in paragraph 27 and shall notify the ESRB three months before the publication of the decision of the Authority, acting jointly with the Central Bank of Malta, referred to in paragraph 28.

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.
31. Without prejudice to paragraphs 15 to 27 of the CBM Directive and paragraph 27 of this Rule, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:
- (a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR; and
  - (b) 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of CRR, or the rate the Commission has authorised to be applied to the group on a consolidated basis in accordance with paragraph 30 above.
32. The Authority, acting jointly with the Central Bank of Malta, shall establish at least five sub-categories of G-SIIs.

The lowest boundary and the boundaries between each sub-category shall be determined by the scores in accordance with the identification methodology referred to in paragraph 22 above.

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 sub-category five and any added higher sub-category.

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

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.

33. Without prejudice to paragraphs 21 and 32, and using the sub-categories and cut-off scores referred to in paragraph 32, 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 21 of the Rule, which has an overall score as referred to in paragraph 22 that is lower than the cut-off score of the lowest sub-category, to that sub-category or to a higher sub-category, thereby designating it as a G-SII;
  - c. taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in paragraph 23 re-allocate a G-SII from a higher sub-category to a lower sub-category.
34. Pursuant to paragraph 47 of the CBM Directive, the Authority shall act jointly with the Central Bank of Malta for the notification to the ESRB and public disclosure of the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated. The notification shall contain full reasons why supervisory judgment has been exercised or not in accordance with points (a), (b) and (c) of paragraph 33 above.
- 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 and to the ESRB.
35. Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer the higher buffer shall apply.
36. Where a credit institution is subject to a systemic risk buffer, set in accordance with paragraphs 15 to 27 of the CBM Directive, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with the paragraphs above.

Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraphs 22, 23 and 24 of the CBM Directive and the O-SII buffer rate or the G-SII buffer rate to which the same credit institution is subject to would be higher than 5 %, the procedure set out in paragraph 28 shall apply.

## SYSTEMIC RISK BUFFER

37. 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

38. 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.
39. 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 41 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 requirement; or
- c. make payments on Additional Tier 1 instruments.

40. 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 41 of the Rule through any action referred to in sub-paragraphs (a), (b) and (c) of paragraph 39 of the Rule.

41. A credit institution shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 42 of the Rule by the factor determined in accordance with paragraph 43 of the Rule.

The MDA shall be reduced by any amount resulting from any of the actions referred to in subparagraphs (a), (b) or (c) of paragraph 39 of the Rule.

42. The sum to be multiplied in accordance with paragraph 41 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, net of any distribution of profits or any payment resulting from the actions referred to in point (a), (b) or (c) of paragraph 39;

plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR net of any distribution of profits or any payment resulting from the actions referred to in point (a), (b) or (c) of paragraph 39;

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.

43. 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)(a), (b) and (c) of the CRR, and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations (S.L. 371.16), 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)(a), (b) and (c) of the CRR, and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations, 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)(a), (b) and (c) of the CRR, and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations, 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)(a), (b) and (c) of the CRR, and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations, 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:

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

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

where:

$Q_n$  = the ordinal number of the quartile concerned.

44. The restrictions imposed by paragraphs 38 to 47 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.
45. 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 39 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 41 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.
46. 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.
47. For the purposes of paragraphs 38 and 39, 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.
48. A credit institution shall be considered as failing to meet the combined buffer requirement for the purposes of paragraphs 38 to 43 above where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following requirements in:
- (a) point (a) of Article 92(1) of CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations;
  - (b) point (b) of Article 92(1) of CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations;
  - (c) point (c) of Article 92(1) of CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations.
49. A credit institution that meets the leverage ratio buffer requirement pursuant to Article 92(1a) of the CRR shall not make a distribution in connection with Tier 1 capital to an extent that would decrease its Tier 1 capital to a level where the leverage ratio buffer requirement is no longer met.
50. A credit institution that fails to meet the leverage ratio buffer requirement shall calculate the leverage ratio related maximum distributable amount (L-MDA) in accordance with paragraph 52 and shall notify the Authority thereof.

Where the first paragraph above applies, the credit institution shall not undertake any of the following actions before it has calculated the L-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 requirement; or
  - (c) make payments on Additional Tier 1 instruments.
51. Where a credit institution fails to meet or exceed its leverage ratio buffer requirement, it shall not distribute more than the L-MDA calculated in accordance with paragraph 51 through any action referred to in points (a), (b) and (c) of paragraph 50 above.
52. Credit institutions shall calculate the L-MDA by multiplying the sum calculated in accordance with paragraph 53 by the factor determined in accordance with paragraph 54. The L-MDA shall be reduced by any amount resulting from any of the actions referred to in point (a), (b) or (c) of paragraph 50.
53. The sum to be multiplied in accordance with paragraph 52 above shall consist of:
- (a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of CRR net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 50;
- plus
- (b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 50;
- 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.

54. The factor referred to in paragraph 52 shall be determined as follows:

(a) where the Tier 1 capital maintained by the credit institution which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under Regulation 9(1) of the Banking Act (Supervisory Review) Regulations when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor shall be 0;

(b) where the Tier 1 capital maintained by the credit institution which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under Regulation 9(1) of the Banking Act (Supervisory Review) Regulations when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0.2;

(c) where the Tier 1 capital maintained by the credit institution which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under Regulation 9(1) of the Banking Act (Supervisory Review) Regulations when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0.4;

(d) where the Tier 1 capital maintained by the credit institution which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under point (a) of Regulation 9(1) of the Banking Act (Supervisory Review) Regulations when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the fourth quartile (that is, the highest) quartile of the leverage ratio buffer requirement, the factor shall be 0.6.

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



$$\text{Lower bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot Q_n$$

where:

$Q_n$  = the ordinal number of the quartile concerned.

55. The restrictions imposed by paragraphs 48 to 58 shall only apply to payments that result in a reduction of 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.
56. Where a credit institution fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of paragraph 50, it shall notify the Authority and provide the information listed in paragraph 45 of this Rule with the exception of point (a)(iii) thereof, and the L-MDA calculated in accordance with paragraph 52 above.
57. Credit institutions shall maintain arrangements to ensure that the amount of distributable profits and the L-MDA are calculated accurately and shall be able to demonstrate that accuracy to the Authority on request.
58. For the purposes of paragraphs 49 and 50, a distribution in connection with Tier 1 capital shall include any of the items listed in paragraph 47 of this Rule.
59. Credit institutions shall be considered as failing to meet the leverage ratio buffer requirement for the purposes of paragraphs 48 to 58 above where it does not have Tier 1 capital in the amount needed to meet at the same time the requirement laid down in Article 92(1a) of the CRR and the requirement laid down in point (d) of Article 92(1) of the CRR and in Regulation 9(1)(a) of the Banking Act (Supervisory Review) Regulations when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR.

## CAPITAL CONSERVATION PLAN

60. 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.

61. As from 1 January 2022, where a credit institution fails to meet the leverage ratio buffer requirement, it shall also prepare a capital conservation plan in terms of paragraph 60 above.

62. 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 63 of the Rule.

63. 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 requirement within a period which the Authority considers appropriate.

64. If the Authority does not approve the capital conservation plan in accordance with paragraph 63 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 17E(1) and (2) of the Act to impose more stringent restrictions on distributions than those required by paragraphs 38 to 47 of the Rule.

## TRANSITIONAL PROVISIONS

65. 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.
66. 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.

67. The requirement for a capital conservation plan and the restrictions on distributions referred to in paragraphs 38 to 47 and 60 to 64 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 65 and 66 of the Rule.
68. The G-SII buffer shall be implemented as follows:
  - a. 25% of the G-SII buffer, set in accordance with paragraph 26 of the Rule, in 2016;
  - b. 50% of the G-SII buffer, set in accordance with paragraph 26 of the Rule, in 2017;
  - c. 75% of the G-SII buffer, set in accordance with paragraph 26 of the Rule, in 2018;
  - d. 100% of the G-SII buffer, set in accordance with paragraph 26 of the Rule, in 2019.

## ENTRY INTO FORCE

69. The capital conservation buffer shall apply from 1 January 2016 subject to the transitional periods prescribed in paragraph 65 of the Rule.

The Authority may also recognise shorter transitional periods than those prescribed by Article 160(2)(a), (3)(a) and (4)(a) of the CRD 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.

70. The institution-specific countercyclical capital buffer shall apply from 1 January 2016 subject to the transitional periods prescribed in paragraph 66 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.
71. Subject to the transitional periods prescribed in paragraph 68 of the Rule, the G-SII buffer shall apply from 1 January 2016.
72. The Authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated or sub-consolidated or individual basis,

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as applicable, to maintain, as from 1 January 2016, an O-SII buffer as prescribed in paragraph 27 of the Rule.

73. Paragraphs 49 to 58 on the restriction on distributions in case of failure to meet the leverage ratio buffer requirement shall apply from 1 January 2022.
74. Paragraph 59 on the failure to meet the leverage ratio buffer requirement shall apply from 1 January 2022.

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