

Banking Rule BR/25

Financial Holdings Companies and Mixed
Financial Holding Companies under the
Banking Act (Chapter 371 of the Laws of
Malta)

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FINANCIAL HOLDING COMPANIES AND MIXED FINANCIAL HOLDING COMPANIES UNDER THE BANKING ACT (CHAPTER 371 OF THE LAWS OF MALTA)

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 out any of the provisions of the Act. The Authority may also amend or revoke such Banking Rules. The Banking Rules and any amendment or revocation thereof shall be officially communicated to credit institutions, financial holding companies and mixed financial holding companies, as applicable, and the Authority shall make copies thereof available to the public.
2. The Banking Rule BR/25 on Financial Holdings Companies and Mixed Financial Holding Companies under the Banking Act (Chapter 371 of the Laws of Malta) (the 'Rule') is made pursuant to article 11B(3) and 29AA(1) of the Act transposing Article 21a of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amended recently by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ('the CRD'). Article 21a of the CRD introduces an approval or exemption process for prospective or financial holding companies and mixed financial holding companies, as the case may be, within a banking group, i.e. those having a credit institution as a subsidiary (hereinafter referred to as 'FHC' and '(M)FHC' respectively and collectively referred to as '(M)FHCs'). Consequently, certain (M)FHCs shall be subject to specific obligations and are brought under direct scrutiny by the Authority.
3. In terms of article 11B(3) of the Act, additional information on the requirements for the approval or exemption process for entities listed in paragraphs 5 and 8 below, and other ancillary matters related thereto are governed by the provisions

of this Rule, which the Authority may amend from time to time and as required. Furthermore, certain additional clarifications and obligations are also set out in this Rule in terms of article 29AA of the Act.

4. This Rule shall not be construed to be a substitute for a reading of the Act itself or of any other law, including directly applicable European Union legislation, unless otherwise specified, by which a (M)FHC subject to this Rule shall abide.

SCOPE, APPLICATION AND DEFINITIONS

SCOPE & APPLICATION

5. For the purpose of this Rule, the following (M)FHCs shall fall within scope of the provisions stipulated in this Rule, as applicable, in terms of article 11B of the Act or Article 21a of the CRDV:
 - a. Parent financial holding companies;
 - b. Parent mixed financial holding companies;
 - c. EU parent financial holding companies;
 - d. EU parent mixed financial holding companies or;
 - e. Other financial holding companies and mixed financial holding companies, which do not fall within points (a)-(d) above and which are required to comply with the CRD and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms ('the CRR') on a sub-consolidated basis.
6. In the event of reasonable doubt as to whether a (M)FHC falls within the scope of this Rule, more specifically as referred to in the paragraph above, the matter shall be conclusively determined by the Authority. In such event, the applicable (M)FHC shall request a clarification in writing from the Authority.

DEFINITIONS

7. Unless otherwise specified in this Rule, the terms and expressions used in this Rule, which are used in the Act and any regulations issued thereunder and which

are not defined herein, shall have the same meaning as that assigned to them in the Act and regulations.

THE APPROVAL OR EXEMPTION PROCESS

8. Subject to the paragraphs below, a (M)FHC listed in paragraph 5 above shall, in terms of article 11B of the Act, submit information and, or documentation to the Authority, as applicable, where one of the conditions listed below is satisfied:
 - a. The (M)FHC is established in Malta or in another Member State, and the Authority is the consolidating supervisor in terms of the Supervisory Consolidation (Credit Institutions) Regulations (Subsidiary Legislation 371.22) or Article 111 of the CRD, as applicable; or
 - b. The Authority is not the consolidating supervisor, but the (M)FHC in paragraph 5 above is established in Malta.
9. Where, in accordance with article 11B(1) of the Act and paragraph 8(a) above, the Authority is the consolidating supervisor, an (M)FHC referred to in paragraph 5 shall seek the approval or exemption, as applicable, of the Authority and shall submit to the Authority the information and, or documentation referred to in this Rule and Annex I to this Rule.
10. In terms of Article 21a of the CRD, where the Authority is not the consolidating supervisor, the (M)FHC referred to in paragraph 5 above shall seek the approval or exemption, as applicable, of the consolidating supervisor determined in accordance with Article 111 of the CRD. Where, in accordance with paragraph 5 and 8(b) above, the (M)FHC is established in Malta and the consolidating supervisor is situated in another Member State, the (M)FHC shall submit, concurrently with the submission for approval or exemption to the consolidating supervisor, to the Authority the documentation and, or information referred to in article 11B(2) of the Act, this Rule and Annex I to this Rule.
11. The (M)FHCs referred to in paragraph 5 above and which are established within a significant banking group within the Single Supervisory Mechanism ('the 'SSM') shall apply for the approval or exemption as required in terms of article

11B of the Act and Article 21a of the CRD to the European Central Bank ('the 'ECB'), where it is acting as the consolidating supervisor in accordance with Article 111 of the CRD and, or where as directed by the ECB. The (M)FHCs shall be required to abide and be guided by any applicable guidance and other legal instruments that may be issued by the ECB from time to time.

12. A (M)FHC referred to in paragraphs 5 and 8 shall seek the approval or exemption of the Authority in terms of Annex I of this Rule before it comes into existence in the applicable banking holding chain, or, if already in existence, immediately in terms of article 11B of the Act.
13. Where a (M)FHC referred to in paragraph 5 is to become a qualifying shareholder of a credit institution, a qualifying holding approval in terms of articles 13 and 13A of the Act or Article 22 of the CRD, as applicable, shall be requested in addition to the approval or exemption required in terms of this Rule, article 11B or Article 21a of the CRD, as applicable. Pursuant to the proviso to article 13A(2) of the Act, the assessment period of the acquisition of the qualifying holding shall be suspended for a period exceeding twenty (20) working days until the process for approval or exemption of the (M)FHC in question is duly completed. In such case, the qualifying holding shall not be approved until the approval or exemption process is concluded in terms of article 11B of the Act, Article 21a of the CRD and this Rule, as applicable.
14. Where a new credit institution is licensed under the Act or authorised in another Member State, the (M)FHC referred to in paragraph 5 shall apply for the approval or exemption in terms of article 11B of the Act and this Rule or Article 21a of the CRD, as applicable, concurrently with the licensing or authorisation process of the credit institution in question, as applicable.
15. Where an (M)FHC referred to in paragraph 5 has not been duly approved or exempted in terms of this Rule, it shall not be allowed to acquire or have any participation in any subsidiary credit institution unless the Authority determines otherwise in terms of any applicable law.
16. Where an (M)FHC referred to in paragraph 5 is in the process of acquiring a holding in a credit institution licenced in Malta and, during such period, the credit institution informs the Authority of any intention to surrender its license, or there

is a process for the withdrawal of such licence, the (M)FHC in question shall still be required to apply for the necessary approval or exemption in terms of article 11B of the Act and this Rule or Article 21a of the CRD, until the said licence is surrendered or withdrawn, as applicable.

COOPERATION, COLLABORATION AND SHARING OF INFORMATION AND, OR DOCUMENTATION WITH OTHER AUTHORITIES

17. In terms of articles 11B and 29AA of the Act, or Article 21a of the CRD, as applicable, and as specified in this Rule, the Authority shall work together, share information and, or documentation and, or take joint decisions with overseas regulatory authorities, as applicable, where the Authority is acting as the consolidating supervisor, or where the overseas regulatory authority is the consolidating supervisor and the (M)FHC is established in Malta.

18. The Authority may also cooperate, collaborate and, or share information and, or documentation for the purpose of articles 11B and 29AA of the Act, or Article 21a of the CRD with other relevant national authorities as may be required from time to time and as necessary in the function of its powers and, or duties.

SUBMISSION OF INFORMATION AND, OR DOCUMENTATION

19. Pursuant to article 11B(2) of the Act, the (M)FHCs referred to in paragraph 5 and 8 above shall submit to the Authority the list of information and, or documentation for the approval or exemption, as applicable, in accordance with the provisions of this Rule and Annex I. Such (M)FHCs shall also submit, together with Annex I of this Rule, the Declaration Form annexed therein, where and when applicable. The Authority may request other information and, or documentation from the (M)FHC in question as may be reasonably required for the purposes of the approval or exemption, as applicable, including for the purpose of any cooperation, collaboration and, or sharing of information and, or documentation with any other national authorities and the relevant overseas regulatory authority in terms of article 11B or Article 21a of the CRD.

20. Upon receipt of the information and, or documentation for the purposes of the approval or exemption process, the Authority shall acknowledge receipt in writing of the application and assess the information and, or documentation accordingly. Where incomplete information and, or documentation is submitted to the Authority, the Authority shall require the (M)FHC in question to submit in writing the necessary information and, or documentation within a specified time period. The information and, or documentation submitted to the Authority shall be deemed to be updated and correct in terms of article 11B of the Act or Article 21a of the CRD, as applicable, unless the (M)FHC in question informs the Authority in writing otherwise.
21. In terms of article 11B(2) of the Act or Article 21a of the CRD, as applicable, the (M)FHCs referred to in paragraphs 5 and 8, and also with respect to the provisions in paragraph 9 above, shall submit in writing to the Authority the documentation and, or information referred to in Annex I to this Rule, together with the Declaration Form, and the requirements referred to in the following paragraphs:
- a) *the structural organisation of the group of which the (M)FHC is part or is going to be part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the subsidiaries and, or parent undertaking within the group*
 - b) *the information regarding the nomination of at least two persons effectively directing or are going to direct the (M)FHC, and the compliance with the requirements set out in article 14(7) of the Act or Article 121 of the CRD, as applicable:*
 - (i) The (M)FHC shall submit, *inter alia*, the information and, or documentation required for the 'Fitness and Properness' assessment of the directors or members of the management body, as applicable, of the (M)FHC in question in terms of article 14(7) of the Act and BR/01 or Article 121 of the CRD, as applicable. The persons who are effectively directing or will effectively direct the (M)FHC are therefore required, as part of the 'Fitness and Properness' assessment, and in line with Annex I, to complete the online Personal Questionnaire for the Authority to conduct a suitability assessment in terms of this requirement and submit it to the Authority accordingly. In this respect, the (M)FHC and the

persons referred to above, shall refer to the Authority's Personal Questionnaire webpage for the submission of such questionnaire and any applicable supporting documentation and, or information.

- (ii) In terms of Appendix 1 to Banking Rule BR/12, and, or any other applicable legislation, the (M)FHC and the persons referred to above, shall be required to abide, *inter alia*, by the 'EBA Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU' dated 2nd July 2021 (EBA/GL/2021/06), as applicable, and any other relevant binding legal instruments that may be applicable from time to time.
- c) *the information regarding compliance with the criteria set out in article 7 of the Act or Article 14 of the CRD concerning shareholders and members or proposed shareholder and members, as applicable*
- (i) The (M)FHC shall submit to the Authority information and, or documentation on the qualifying shareholders or members of the credit institution or the twenty largest shareholders of the credit institution in terms of article 7 of the Act or Article 14 of the CRD, which provisions are made applicable to the (M)FHC subject to the requirements of this Rule. Such information, or documentation shall reflect the compliance of such shareholders or members with the applicable suitability criteria. Compliance with such suitability criteria shall be satisfied where the requirements mentioned in article 14(2) of the Act and the criteria mentioned in article 13A(9) of the Act are duly met. The provisions in article 13(8) and (10) and article 13B of the Act shall also apply to the (M)FHC in question, where applicable.
 - (ii) Where a proposed acquirer is a (M)FHC listed in paragraph 5, the process for the approval or exemption shall be conducted in parallel with the assessment procedure for the acquisition of a holding in terms of articles 13 to 13B of the Act. In such cases, the Authority shall consider whether the submission of certain information and, or documentation in terms of article 11B of the Act and the requirements of this Rule may be waived in order to avoid the duplication of information and, or documentation and shall guide the (M)FHC in question accordingly.

(d) the internal organisation and distribution of tasks within the group

- (i) Apart from the requirements provided in Annex I to this Rule, the (M)FHC shall ensure that any applicable provisions in the BR/24 on Internal Governance are adhered to.

(e) any other information and, or documentation that may also be requested by the Authority as necessary to carry out the assessments of approval or exemption, as applicable

- (i) The Authority shall have the discretion to request from the (M)FHC any other information and, or documentation as required, depending on the case in question, for the assessment of the approval or exemption, as applicable. Such information and, or documentation may also be requested by the Authority as required to cooperate, collaboration and, or share information and, or documentation with any national authority and other relevant overseas regulatory authorities in the assessment of the approval or exemption. The Authority may in particular request from the (M)FHC information and, or documentation and any additional information and, or documentation related thereto which is also being requested by an overseas regulatory authority.

22. For the purpose of submitting the information and, or documentation mentioned above and in Annex I, the Authority may consider whether any applicable information and, documentation is already available to it from previous assessments and may communicate with the (M)FHC accordingly. The (M)FHC in question may still be required to submit the necessary information and, documentation even though the information and, or documentation has already been submitted to the Authority previously.

23. Where the (M)FHC referred to in paragraphs 5 and 8 above is already in existence within the banking group, the submitted information and, or documentation shall confirm the current compliance with the applicable criteria in article 11B or Article 21a of the CRD, and any subsequent updates to such information and, or documentation shall be communicated in writing to the Authority immediately.

24. Where the (M)FHC in question will be newly approved within the banking group or the (M)FHC is introduced within the banking group alongside a new shareholder of the group or as a new shareholder, the information and, or documentation submitted by the (M)FHC shall also include how the criteria listed in article 11B of the Act or Article 21a of the CRD will be met due to the introduction of the (M)FHC into the said banking group. For the purpose of this requirement, the (M)FHC may request the guidance of the Authority for such parallel procedures.

25. For the purposes of any submission of information and, or documentation as referred to above, all submitted information and, or documentation shall be presumed to be accurate, complete and final.

THE ASSESSMENT AND THE CONDITIONS FOR THE APPROVAL

26. In order to be able to grant an approval in terms of the Act and this Rule, the Authority shall be satisfied that all conditions for the approval as stipulated in sub-article (4) of article 11B of the Act and in this Rule are fulfilled.

27. In terms of sub-article (4) of article 11B of the Act, an approval may be granted by the Authority to the (M)FHC referred to in paragraphs 5 and 8 above only when all the following conditions are met cumulatively:

- a) *the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by the Act and any regulations made and Banking Rules issued thereunder transposing the CRD, by any binding legal instruments issued under the CRD and by the CRR, on a consolidated or sub-consolidated basis and, in particular, are effective to:*
 - i) *coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;*
 - ii) *prevent or manage intra-group conflicts; and*
 - iii) *enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group.*

For the purpose of the assessment of this condition, the Authority may take into consideration, *inter alia*, the following:

- whether there is a clear distribution of responsibilities and tasks within the group;
- whether there is any disparity in decision-making powers across group entities and any possible lack of accountability;
- whether there is coordination and oversight of subsidiaries from the top level of the group;
- whether there is central steering and enforcement of group-wide policies and strategy; and
- whether there are any complex and opaque group structures or shareholder structures either due to conglomerates or for tax purposes.

The Authority may also assess whether the (M)FHC is able to play an effective role in the management of the group, such as defining strategy and ensuring capital adequacy in terms of the applicable legislation, as well as in the coordination of group-wide projects and activities.

(b) the structural organisation of the group of which the (M)FHC is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions in accordance with the individual, the consolidated and, where appropriate, the sub-consolidated obligations to which they are subject:

Provided that the assessment of this criterion shall take into account, in particular:

- (i) the position of the (M)FHC as the case may be, in a multi-layered group;*
- (ii) the shareholding structure; and*
- (iii) the role of the (M)FHC, as the case may be, within the group;*

For the purposes of this condition, the Authority may assess, *inter alia*, the following:

- whether the overall organisation of the group is transparent;
- whether the overall organisation of the group is unnecessarily complex; and

- whether the organisation of the group has a clear economic rationale and business purpose.

Furthermore, in relation to this criterion, the (M)FHC shall have the following responsibilities:

- to ensure transparency and proper management of any conflict of interest that may arise;
- to ensure that it has in place proper governance arrangements throughout the overall organisation and;
- to ensure that there is the adequate collection of data and reporting channels are in place.

(c) the criteria set out in article 7(1)(c), (d) and (e) of the Act, and the requirements laid down in article 14(7) of the Act are complied with

In terms of article 14(7) of the Act, the (M)FHC shall ensure that, where applicable, the requirements listed in article 14(1) to (6) of the Act, or Article 91(1) of the CRD, as applicable, are met in the assessment of the suitability in question. In ensuring adherence to these requirements, reference shall be made to BR/24 on Internal Governance, as applicable. Furthermore, the Authority shall be satisfied of the suitability of the shareholders, individuals who effectively direct the business and the controllers, as applicable, where the criteria set out in article 13A(9) of the Act are met. Furthermore, article 13A(8) and (10) shall apply where the (M)FHC in question will be deemed to be a proposed acquirer in terms of articles 13 and 13A, as applicable.

The Authority shall be satisfied that where there are close links between the (M)FHC and other person/s, such links shall not, through any law, regulation, administrative provision or in any other manner, prevent it from exercising effective supervision of the (M)FHC, once such (M)FHC is in possession of an approval in terms of article 11B of the Act and this Rule or Article 21a of the CRD. The Authority shall not grant its approval where one or more persons with which the (M)FHC has close links or difficulties in the enforcement of those laws, regulations and administrative provisions, where it prevents the Authority from the effective exercise of its supervisory functions.

28. The deadlines laid out in article 11B of the Act and Article 21a of the CRD, as the case may be, shall be applicable in relation to the assessment of the approval of the (M)FHC of the Authority.

EXEMPTION FROM APPROVAL

29. As part of the assessment procedure, the Authority shall assess whether the (M)FHC referred to in paragraph 5 and 8 above is to be exempted from the approval in terms of article 11B(5) of the Act. The (M)FHC shall only be exempted when the conditions identified in sub-article (5) of article 11B of the Act and this Rule are met cumulatively.

30. In terms of article 11B(5) of the Act, for a (M)FHC referred to in paragraph 5 and 8 above to be granted an exemption from approval, the following conditions shall be fulfilled by the (M)FHC cumulatively:

a) *the (M)FHC's principal activity is to acquire holdings in subsidiaries;*

The (M)FHC shall provide all applicable information and, or documentation to the Authority in order to demonstrate that the principal activity of the (M)FHC in question is the acquisition of holdings in subsidiaries.

b) *the (M)FHC has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to Directive 2014/59/EU¹;*

c) *a subsidiary credit institution is designated as responsible to effectively ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;*

For the purposes of this condition, the (M)FHC shall provide information and, or documentation evidencing that the subsidiary credit institution is responsible for ensuring compliance with all applicable prudential requirements, *inter alia*, in terms of the Act, subsidiary legislation and Rules issued thereunder, the CRR and other European Union legislation that may be applicable. Where the subsidiary credit institution is established in another Member State, the (M)FHC shall provide information and, or documentation showing that the credit institution is responsible for the prudential requirements on a consolidated basis in terms of the applicable law in such other Member State.

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

- d) *the (M)FHC does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;*

Although it is recognised that a (M)FHC may take decisions in the ordinary course of its business, it should not take the decisions referred to in this condition where such (M)FHC is seeking exemption from approval. In assessing compliance with this condition, the Authority may consider the relevant requirements under the applicable corporate law to which the (M)FHC may be subject.

- e) *there is no impediment to the effective supervision of the group on a consolidated basis;*

The (M)FHC seeking exemption from the Authority shall ensure that there is no impediment to the effective supervision of the group on a consolidated basis considering, *inter alia*, the applicable legislative framework, the organisational structure of the group, the adequate flows and exchange of information and, or documentation with the Authority and the relevant overseas regulatory authorities, as applicable. The Authority may also consider the position of the (M)FHC within the group in question in order to ensure that there is no impediment at organisational or structural level that may impede any effective supervision from its part, and the collaboration and/or cooperation required with the relevant overseas regulatory authorities.

31. In relation to the above-listed conditions, the (M)FHC shall submit all the information and, or documentation referred to in article 11B (2) of the Act, Annex I to this Rule and the above paragraphs and further provide a detailed and adequate explanation and description as to why the (M)FHC is to be exempted from approval in relation to the applicable exemption conditions.
32. The Authority shall have the power to direct the exempted (M)FHC to apply for an approval in terms of article 11B of the Act or Article 21a of the CRD, as applicable, where the Authority determines that the (M)FHC does not satisfy the applicable conditions for exemption.
33. In the event that the exemption conditions are not met cumulatively at any given point in time, the (M)FHC shall apply immediately and without undue delay for the required approval in terms of article 11B of the Act or Article 21a of the CRD, as applicable.

ONGOING COMPLIANCE AND SUPERVISORY MEASURES

34. The (M)FHC referred to in paragraphs 5 and 8 above shall continuously comply with the approval or the exemption conditions referred in article 11B of the Act or Article 21a of the CRD, as applicable, on an on-going basis.
35. Where the Authority is the consolidating supervisor, the Authority shall monitor as necessary the compliance with the approval or exemption conditions referred to in article 11B of the Act.
36. Without prejudice to paragraphs 34 and 35 above, the (M)FHC shall submit to the Authority the 'Annual Compliance Declaration Form' in Annex II to this Rule by the end of every calendar year commencing from the subsequent year in which the (M)FHC in question has been approved or exempted, as applicable.
37. The (M)FHC shall also inform immediately in writing to the Authority as necessary and required when the (M)FHC becomes aware of any situation which would trigger a non-compliance with the conditions for exemption and the necessary information and, or documentation, as applicable, shall be submitted to the Authority in terms of Annex I to this Rule
38. The Authority may, in terms of article 29AA of the Act, impose supervisory measures in order to, *inter alia*, restore the continuity and integrity of consolidated supervision and also ensure compliance with the requirements of the Act, regulations and rules issued thereunder transposing the CRD and applicable provisions of the CRR.

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