

BANKING RULE BR/28

**BANKING RULE ON LOAN ORIGINATION
AND MONITORING BY CREDIT
INSTITUTIONS LICENSED UNDER THE
BANKING ACT**

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	June 2023	Implementation of the EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06).

BANKING RULE ON LOAN ORIGINATION AND MONITORING OF CREDIT INSTITUTIONS LICENSED 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 (the 'Rules') as may be required for the carrying into effect of any of the provisions of the Act. The Authority may also amend or revoke such Rules. The 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. In accordance with Article 4(7) of the Act, the Authority may make, amend or revoke Banking Rules as may be required for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the European Banking Authority (the 'EBA').

SCOPE AND APPLICATION

3. The Rule applies to all credit institutions licensed under the Act and credit institutions shall ensure compliance with the provisions of this Rule.
4. The scope of this Rule is to implement the [EBA Guidelines on loan origination and monitoring](#) issued on 29 May 2020 (EBA/GL/2020/06) (the 'EBA Guidelines').
5. This Rule, however, shall not be treated as a substitute to the EBA Guidelines referred to under paragraph 4, and credit institutions shall also abide with the requirements set out in the EBA Guidelines, as well as any reviews and/or updates that may be undertaken to such Guidelines from time to time.
6. All requirements emanating from the EBA Guidelines shall apply from 1st July 2024. An exception to this is provided in paragraph 13 which refers to the provisions laid out in Section 8 of the EBA Guidelines, for which credit institutions have until 1st January 2025 to collect the missing data.
7. This Rule shall not substitute any other law, unless otherwise specified, by which credit institutions subject to this Rule shall abide more specifically with the applicable provisions

in the Act, any other European and national legislation and the Regulations. Particularly, the relevant provisions of the Act, Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 as transposed locally in *inter alia* S.L. 378.10 – [Credit Agreements For Consumers To Residential Immovable Property Regulations](#), and the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC as transposed locally in *inter alia* S.L. 378.12 - [Consumer Credit Regulations](#), apply to credit institutions accordingly.

DEFINITIONS

8. Unless otherwise specified under paragraphs 14 and 15 of Section 2 of the EBA Guidelines, terms used and defined in the Act and regulations issued thereunder shall have the same meaning in this Rule.

CREDIT INSTITUTIONS' LOAN ORIGINATION AND MONITORING

9. The EBA Guidelines aim to improve credit institutions' practices and associated governance arrangements, processes and mechanisms in relation to credit granting, by ensuring credit institutions have in place robust and prudent standards for credit risk taking, management and monitoring. Moreover, credit institutions' practices in this area shall be aligned with consumer protection rules and respect the fair treatment of consumers. Additionally, the EBA Guidelines introduce requirements for assessing the borrowers' creditworthiness, together with the handling of information and data for the purposes of such assessments.
10. Besides the provisions set out in the EBA Guidelines on internal governance (EBA/GL/2017/11) subsequently amended by the EBA Guidelines on internal governance under Directive 2013/36/EU (EBA/GL/2021/05), which collectively have been transposed under the Authority's Banking Rule BR/24 Internal Governance of Credit Institutions licensed under the Banking Act, credit institutions shall apply further conditions in relation to credit granting and monitoring. In this respect, the EBA Guidelines capture the following elements:
 - a. credit risk governance and culture, also explaining the specific roles of the board of directors;
 - b. credit risk appetite, strategy and credit risk limits, explaining how these concepts fit into the credit institutions' overall risk appetite framework ('RAF') and strategy;
 - c. credit risk policies and procedures, setting out general and specific criteria to be considered in these policies, which amongst others involve leveraged transactions,

AML/CFT requirements, technology enabled innovation, use of automated models, ESG factors and sustainable lending, and data infrastructure;

- d. the credit decision-making process, highlighting the principle of independence between different (e.g. business and risk) functions in decision-making;
- e. the requirements for robust and effective credit risk management and internal control frameworks, as part of the credit institutions' overall risk management and control frameworks;
- f. the resources, skills, information technology ('IT') and data infrastructure that credit institutions shall have in place for prudent and robust credit decision-making processes; and
- g. the application of general remuneration requirements to credit risk granting, with a view to mitigating excessive risk taking in lending activities.

11. Another area of focus of the EBA Guidelines is the loan origination procedures. Credit institutions shall hold sufficient, accurate and up-to-date information to assess the creditworthiness of the borrower. Within such context, the EBA Guidelines provide dedicated provisions for:

- a. lending to consumers in relation to residential immovable property in addition to the provisions of Article 18(1) and 20(1) of the Mortgage Credit Directive as transposed locally in *inter alia* S.L. 378.10 – [Credit Agreements For Consumers To Residential Immovable Property Regulations](#);
- b. other secured lending to consumers other than those under (a) above, amongst others, including factors to be considered if the property is still being constructed;
- c. unsecured lending to consumers;
- d. lending to micro and small enterprises as well as those to medium-sized and large enterprises (incl. analysis of the borrower's financial position, model and strategy, assessment of guarantees and collateral, and sensitivity analysis);
- e. the assessment of borrowers in case of commercial real estate lending and lending for real estate development;
- f. the assessment in cases of leveraged transactions;
- g. the assessment in cases of shipping finance; and
- h. the assessment in cases of project finance.

Ultimately, the actual credit decision and loan agreement are discussed, detailing the procedure for the decision to be taken after carrying out the necessary creditworthiness assessment.

12. The EBA Guidelines list the elements that credit institutions shall consider and reflect upon when pricing newly originated loans. In addition, credit institutions shall have in place

appropriate policies and procedures regarding the valuation of immovable and movable property. Dedicated provisions contained within the EBA Guidelines also tackle the expectations for the valuer engaged and the required monitoring and revaluation of collateral. The use of advanced statistical models for valuation, revaluation and monitoring of the values of collateral is also discussed.

13. It is essential that credit institutions adopt a consistent monitoring framework to manage and monitor their credit risk exposures. In this respect, these EBA Guidelines set out expectations, for management information systems to be used for appropriate monitoring, and a related framework for early warning indicators/watch lists. Such processes shall enable institutions to monitor and manage their credit risk exposures in line with their established policies and procedures, credit risk appetite and strategy. To this end, if credit institutions do not have all the relevant information and data to be used for the monitoring of existing borrowers or credit facilities granted before the application date, such institutions are to collect missing information and data until 1 January 2025.
14. The implementation of these EBA Guidelines is subject to the principle of proportionality. In relation to requirements related to internal governance, risk management and control; elements like the size, nature and complexity shall be considered. Moreover, when implementing the requirements for the creditworthiness assessment, collateral valuation and credit risk monitoring, credit institutions shall consider the type, size and complexity of the credit facilities being originated or monitored. The underlying proportionate application of these EBA Guidelines shall not result in any impairment of consumer protection.
15. Loans and advances to credit institutions, investment firms, financial institutions, insurance and reinsurance undertakings, central banks and sovereigns, including central governments, regional and local authorities, and public sector entities, are excluded from the scope of application of Sections 5 (Loan origination procedures) and 6 (Pricing) of the EBA Guidelines.

Malta Financial Services Authority

Triq L-Imdina, Zone 1

Central Business District, Birkirkara, CBD 1010, Malta

communications@mfsa.mt

www.mfsa.mt