

Banking Rule BR/30

Establishing an Intermediate EU Parent
Undertaking

CONTENTS

Introduction	4
Scope and Application	4
Definitions	5
Specifications as to the calculation and monitoring of the threshold.....	5
Information exchange between institutions and branches of a TCG, and the Authority	6
Regulatory Reporting of the IPU monitoring threshold	7
Application for two IPUs.....	8

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	June 2023	Implementation of the EBA Guidelines (EBA/GL/2021/08)

Introduction

1. In terms of article 4(7) of the Banking Act (Chapter 371 of the Laws of Malta) (“the Act”), the competent authority (the “Authority”) as appointed under Article 3(1) of the Malta Financial Services Act (Chapter 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. The Rules must not be construed to be solely a substitute for a reading of the Act itself and shall be read in conjunction with the Act. The responsibility for observing the law rests entirely with the credit institution and the relevant individual persons concerned.

Scope and Application

3. Banking Rule BR/30 (the “Rule”) applies to credit institutions licensed under the Act and belonging to third-country groups (“TCG”) as defined in Article 3(1)(64) of Directive 2013/36/EU as amended by Directive (EU) 2019/878 (the “CRD”) and in Article 2(1) of the Act, and to third-country branches (“TCBs”) as referred to in Article 21b(5)(a)(ii) of the CRD and in Article 11C(5)(a)(ii) of the Act. Such entities are collectively referred to as “in-scope institutions” for the purpose of this Rule and shall ensure compliance with the provisions of this Rule.
4. This Rule is being drafted on the basis of the EBA Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings, [EBA/GL/2021/08](#) (the “EBA Guidelines”) issued by the European Banking Authority (the “EBA”) on 28 July 2021 and the Opinion of the EBA on the set-up and operationalisation of intermediate EU parent undertaking(s) under Article 21b CRD, [EBA/Op/2022/12](#) (the “EBA Opinion”), issued by the EBA on 27 October 2022.
5. Article 21b of the CRD as transposed in Article 11C of the Act requires that two or more credit institutions licensed in Malta and in other Member States which are part of the same TCG, shall have an intermediate EU parent undertaking (“IPU”) when the combined total assets in the European Union (“EU” or the “Union”) is equal to or greater than EUR 40 billion (hereafter, the “IPU Threshold”). This Rule lays down the method to calculate and monitor the IPU Threshold for the obligation to establish an IPU and specifies certain procedural aspects on the establishment of an IPU.

Definitions

6. Unless otherwise specified, terms used and defined in the Act and the EBA Guidelines shall have the same meaning in the Rule.

Specifications as to the calculation and monitoring of the threshold

7. The total value of assets in the Union of a TCG shall be calculated in accordance with article 11C(5) of the Act as the sum of the assets of the EU parent institutions of that group consolidated in accordance with article 18 of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (the "CRR") at the highest level of consolidation in the Union plus the individual assets of institutions that are not part of a group subject to consolidated supervision pursuant to the Supervisory Consolidation (Credit Institutions) Regulation (LN 494 of 2021 and S.L. 371.22), referred to as "stand-alone institutions" plus the assets of TCBs of that group.
8. The calculation of total assets shall be carried out using financial information available on a quarterly basis in accordance with Part Seven A of the CRR or interim financial information used for supervisory reporting.
9. The threshold shall be deemed to be reached when the average of the total value of assets in the Union of a TCG over the previous four quarters equals or exceeds EUR 40 billion. By way of derogation, for TCGs operating through more than one institution within the Union, the IPU threshold shall be deemed to be reached and the obligation of having an IPU shall be deemed applicable when both the following conditions are met:
 - a) The total value of assets in the Union of a TCG as at 27 June 2019 equals or exceeds EUR 40 billion, and;
 - b) On 30 December 2023, the average of the total value of assets in the Union of the TCG as set out in this paragraph, equals or exceeds EUR 40 billion.

For the purpose of point (a), where the total value of assets in the Union as at 27 June 2019 is not available, this value shall be approximated by taking the total value of assets as at 30 June 2019.

10. The IPU Threshold shall be deemed no longer exceeded when the total value of assets in the Union of a TCG remains below EUR 40 billion for twelve (12) consecutive quarters and there are no reasonable expectations that it will exceed EUR 40 billion again.
11. EU Parent institutions and stand-alone institutions that are part of a TCG shall calculate at least on a quarterly basis (hereafter, the "Quarterly Assessments") in accordance with the preceding paragraphs in this section (paragraphs 7 to 10). Upon its establishment, these calculations and Quarterly Assessments shall be conducted by the IPU.
12. Until the establishment of the IPU, EU parent institutions and stand-alone institutions forming part of a TCG shall monitor on a forward-looking basis and at least annually the threshold assessed in accordance with this section, against any strategic planning and the forecast of assets for the time horizon of at least three (3) years for the group in its entirety (hereafter, "Forward-looking Monitoring").

Information exchange between institutions and branches of a TCG, and the Authority

13. EU parent institutions, including the IPU when established, stand-alone institutions and TCBs, shall exchange all the information required between themselves in a timely manner for the Quarterly Assessments and the Forward-looking Monitoring referred to in the previous section (paragraphs 11 and 12). In the case of TCBs they shall submit to the EU parent institutions and to the stand-alone institutions all the necessary information in accordance with paragraphs 7 and 8 for the calculation of total assets in a timely manner. Upon its establishment, TCBs shall only provide the required information to the IPU and no longer to the stand-alone institutions of the TCG.
14. Where the Authority is determined to be the consolidating supervisor in terms of the Supervisory Consolidation (Credit Institutions) Regulation (S.L. 371.22), EU parent institutions and stand-alone institutions of a TCG shall coordinate to alert the Authority, providing all relevant information and without undue delay where they expect that their TCG will reach the threshold within the next (3) three years based on the Forward-looking Monitoring referred to in paragraph 12.
15. EU parent institutions of a TCG, including the IPU once established, shall provide in a timely manner and without undue delay to their subsidiaries their Quarterly Assessments and Forward-looking Monitoring along with relevant accompanying information.

16. Where the Forward-looking Monitoring indicates that the threshold will be reached, the EU parent institutions and stand-alone institutions of a TCG group shall pre-emptively apply all sufficient supervisory procedures and take all necessary steps and legal requirements for the IPU to be immediately operational once the threshold is reached.

Regulatory Reporting of the IPU Monitoring Threshold

17. This section of the Rule specifies the reporting requirements to the Authority for the in-scope institutions as specified in paragraph 3 of this Rule. The reporting requirements apply to all in-scope institutions, regardless of whether an IPU requirement is established in line with paragraph 5 of the Rule.
18. EU Parent Institutions, stand-alone institutions and TCBs belonging to TCGs are required to provide the Authority with information regarding the TCG that owns the EU entity, information concerning the supervised entity and information on the threshold assessment carried out as prescribed above in paragraph 11, as applicable. Upon the establishment of an IPU, such information shall be submitted by the IPU to the Authority where it is the consolidating supervisor and by TCBs.
19. In-scope institutions shall report the data set out in paragraph 18, and pursuant to the instructions within the template set out in Annex I, annexed to this Rule, on an annual basis as follows:
 - a) **Reference date:** Information shall be compiled using 31 December and the year, as a reference date
 - b) **Remittance date:** The information must be submitted by the 26 May of every year
20. In-scope institutions shall submit the data by close of business of the remittance periods as set out in paragraph 19. Where the remittance day (26 May) falls on a weekend or a public holiday in Malta, the data shall be submitted on the following working day, unless otherwise directed by the Authority.
21. In-scope institutions shall submit the information referred to in this Rule in the data exchange formats as provided by the Authority from time to time. Furthermore, such institutions shall employ practices that safeguard the confidentiality of the said information

and its transmission. In-scope institutions shall also respect the data point definitions included in Annex I of this Rule and undertake rigorous internal controls and quality checks of the data prior to the submission to ensure accurate information is provided to the Authority.

22. Following the submission, the Authority may contact in-scope institutions on a bi-lateral basis for any clarifications or resubmission required in case of any capturing of data quality issue/s within the reporting.
23. Any corrections to the submitted data shall be submitted to the Authority without undue delay.
24. In addition to the annual submission of this template, EU parent institutions and stand-alone institutions belonging to TCGs are also requested to immediately notify the Authority in case of a material change identified through the Quarterly Assessments. A material change shall refer to a change that would alter the final outcome as submitted to the Authority through the dedicated template, such as, a change that would bring the total value of assets of the TCG entities in the Union to exceed the €40 billion threshold in that quarter.

Application for two IPUs

25. In specific circumstances, the Authority may approve the establishment of two (2) IPUs as provided in article 11C(2) of the Act.
26. Firstly, it must be determined whether the TCG will have one or two IPU(s). The set-up of two IPUs is considered to be an exception to the single IPU requirement since it substantially affects the prudential consolidation of the EU activities of the TCG.
27. The approval of two IPUs must be appropriately assessed and therefore, all credit institutions in the Union belonging to a TCG (the "Applicants") must jointly apply to the consolidated supervisor. The consolidating supervisor will inform the Authority of each applicant of the application received.
28. Where the Authority is the consolidated supervisor, the Applicants shall explain and demonstrate, in their application, that the conditions of article 11C(2) (a) and (b) of the Act have been satisfied.

29. In the case of an application based on the mandatory requirement of separation of activities, the Applicants shall provide the following:

- a) a detailed description of the applicable third country regime;
- b) the operational structure;
- c) the envisaged allocation of the activities; and
- d) sufficient evidence to demonstrate that one single IPU would be incompatible with third country laws, regulation, and supervisory practices.

30. Amongst the relevant information and documents to support the application¹, the Applicants shall include:

- a) reliable evidence on segregation of activities;
- b) the current structure of the respective group; and
- c) the location and types of undertakings envisaged as IPUs.

31. Where the Authority is the consolidated supervisor, it shall review and assess the application in coordination with the competent authorities supervising any of the Applicants.

Date of Application

32. All requirements emanating from this Rule are applicable with immediate effect.

¹ See Section 3.2 of the EBA Opinion [EBA/Op/2022/12](#)

Malta Financial Services Authority

Triq L-Imdina, Zone 1

Central Business District, Birkirkara, CBD 1010, Malta

communications@mfsa.mt

www.mfsa.mt