

# MFSA

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MALTA FINANCIAL SERVICES AUTHORITY

## **Circular to the investment services industry regarding the proposed transposition of requirements of the Fourth Capital Requirements Directive (CRD)**

**4<sup>th</sup> November 2013**

### **Explanatory Note**

The documents circulated by the MFSA for the purpose of this circular are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following the necessary review and vetting by the Minister of Finance, to whom the MFSA is required by law to provide advice on financial services matters and in the case of the Bill amending the Investment Services Act by Parliament.

### **1. Background**

On 27<sup>th</sup> June 2013 the final text of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/E, also known as the fourth Capital Requirements Directive (“CRD”) was published in the Official Journal of the European Union. The CRD sets out the legal framework for the prudential regulation and supervision of credit institutions and investment firms. By 31<sup>st</sup> December, 2013 Member states are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the CRD. Furthermore, the final text of the Capital Requirements Regulation (CRR) was simultaneously published and will also have direct application from 1<sup>st</sup> January 2014. This circular does not deal with the provisions of the CRR. The Authority will issue a separate circular on the implementation of the CRR in due course.

The Authority has to date published the following Circulars on CRD:

- 23/02/2010 Circular addressed to the investment services industry regarding the recent developments relating to the Capital Requirements Directive (CRD);
- 02/03/2010 Circular addressed to the investment services industry regarding the CRD IV;
- 10/01/2013 Circular to the investment services industry regarding the Fourth Capital Requirements (CRD IV) and the Capital Requirements Regulation (CRR) known together as the CRD IV Package;
- 27/06/2013 Circular to the financial services industry regarding the CRD IV Package.

28/10/2013 Circular regarding the implementation of the common reporting framework (COREP) under the Capital Requirements Regulation (CRR)

## 2. Application of the CRD to Investment Services Licence Holders

Licence Holders should pay particular attention to the following new definition of “**Investment Firm**” (emphasis added) introduced by CRD which is set out in Article 4 point (2) of the CRR. This definition sets out the investment firms to which the provisions of the CRD and the CRR apply:

'investment firm' means a person as defined in point (1) of Article 4(1) of Directive 2004/39/EC, which is subject to the requirements imposed by that Directive, *excluding* the following:

(a) credit institutions;

(b) local firms;<sup>1</sup>

(c) firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC<sup>2</sup>, *which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;*

Therefore in Malta:

**All Category 1 Licence Holders** are exempt from the provisions of these Regulations as they come within the exclusion in Article 4 (2) (c) of CRD.

**Category 2 Licence Holders** –which may provide execution of orders on behalf of clients, portfolio management and which may also provide reception and transmission of orders in relation to one or more financial instruments, or investment advice and are authorised to hold and control money or securities belonging to their clients are subject to these Regulations.

**Category 3 Licence Holders - MiFID Firms** which may provide the more complex MiFID activities of dealing on own account or underwriting or placing of securities are subject to these Regulations.

## 3. Proposed new requirements to transpose certain articles of the CRD into Maltese law

After having carried out a detailed analysis of the provisions of the CRD the Authority is proposing certain amendments to the Investment Services Act and the adoption of the following regulations:

Investment Services Act (Supervisory Review) Regulations, 2013

Supervisory Consolidation Regulations, 2013

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<sup>1</sup> 'local firm' is defined in point (3) of Article 4 but as such is not relevant to Malta.

<sup>2</sup> Investment firms in Malta cannot be so licensed under the implementing Mifid regulations.

The transposition of the CRD will also require significant changes to the Investment Services Rules for Investment Services Providers. The Authority is planning to issue the proposed revised Investment Services Rules for consultation in the near future.

### **3.1 *A Bill to amend the Investment Services Act***

The purpose of the amendments to the Investment Services Act is to align the Act where applicable with the requirements of the CRD and to transpose the requirements of articles 3( in part), 4(1),50 (in part), 53(2)(3), 56 (b)(c) (d) and penultimate paragraph, 57, 58 (1) (3), 59(1) in part , 59(2), 60, 61, 62, 63(2) and 118.

The principal provisions include:

- The designation of the Authority as the competent authority for the purposes of the CRD and the CRR.
- The provision for the Minister acting on the advice of the Authority to make regulations to implement the technical standards pursuant to the CRD and the CRR in relation to financial resources requirements for licence holders.
- The inclusion of entities with whom the Authority may share and exchange information for the purposes of the CRD and the CRR, subject to certain conditions, including, EBA, EIOPA, ESMA, ESRB, and bodies charged with responsibility for maintaining financial stability in Member States through the use of macro – prudential regulation or re organisation bodies or authorities aimed at preserving financial stability, contractual or institutional protection schemes, bodies responsible for detection and investigation of breaches of company law, other Member States departments of central government with responsibility for supervision of institutions, and, stipulated oversight bodies.
- The duty of an auditor to report certain information simultaneously to the Licence Holder’s Management Body and to the Authority, in the absence of compelling reasons not to do so.

### **3.2 *Investment Services Act (Supervisory Review) Regulations***

The purpose of these regulations is to transpose and implement 3 (in part) 4(1), 6, 7, 50, 52, 74 (4), 75(1) (3), 77(2), 78 (2) (3) (4) (5),86(3), 91(6) (11) 97, 98, 99, 100 to 105 inclusive, 107, 110, 143, 144, 151, 157, 159 of the CRD and to repeal the Investment Services Act (Capital Adequacy) Regulations as amended.

The new Regulations define “investment firm” as a person who holds an investment services licence issued by the competent authority under the Act (which is the MFSA) *and which is subject to the requirements of the CRD*”

### ***Principal provisions***

These Regulations incorporate the supervisory aspects (Pillar 2 and Pillar 3) of CRD and designate the Authority as the competent authority for the purpose of implementing the CRD and exercising the functions and powers pursuant to this Directive. These regulations also stipulate in part, the relevant obligations of the Authority for the purpose of the CRD.

The Regulations provide for increased cooperation by the Authority in exercising its' supervisory duties within the European System of Financial Supervision and the Authority shall be required to consider the potential impact of its decisions on the stability of the financial system in other Member States particularly in emergency situations. The Regulations amplify the provisions of the Act in relation to cooperation and exchange of information and on the spot checking and inspection of branches.

The Regulations provide for the Authority to ensure that Licence Holders have recovery and resolution plans in place to provide for situations where there is a significant deterioration of their financial situation, and after consultation with the Central Bank of Malta to reduce the extent of these plans on a proportionate basis, based on an assessment of the impact the failure of the firm would have on the financial markets, other institutions or funding conditions.

The Regulations provide for oversight of remuneration policies and collection of data and benchmarking of internal approaches by the Authority. The Authority shall be required to review Licence Holders at least every 3 years to check their compliance with the requirements for approaches for calculation of own funds that require permission from the Authority.

The Regulations contain detailed provisions on the supervisory review and evaluation of Licence Holders by the Authority with reference to the requirements of the CRD and CRR, the frequency of which shall be determined by the size, systemic importance, nature, scale and complexity of the activities of the Licence Holders concerned, but at least annually for the Licence Holders subject to the supervisory examination programme. Details of the technical criteria for the supervisory review and evaluation are contained in Schedule I to the regulations.

In addition the Authority will be required to carry out stress tests at least annually to facilitate the review and evaluation process. Specific liquidity requirements may be applied on the basis of the supervisory examination and evaluation carried out by the Authority.

The Authority will be required to adopt an annual supervisory examination programme of certain Licence Holders which is detailed in Schedule II to the regulations.

### ***3.3 Supervisory Consolidation Regulations***

The purpose of these regulations is to implement Articles 3 (partly), 49, 51, 65(2), 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123(1), 124, 125, 126, 127, 151, 155, 156 and 158 of the CRD, and to replace and repeal the Investment Services Act (Financial Capital Adequacy Consolidation) Regulations 2011 as amended.

Licence holders should note that these regulations have been issued under both the Banking Act and the Investment Services Act given that the MFSA is the single regulator responsible for the supervision of both credit institutions and investment firms.

These regulations provide for:

- The supervision by the Authority on a consolidated basis of certain Licence holders as set out in regulation 3, and where this would be inappropriate, for the consolidated supervision to be carried out by common agreement by another EU regulatory authority.
- The functions and powers of the Authority as consolidating supervisor include:
  - The co-ordination and dissemination of information and the planning and co-ordination of supervisory activities in cooperation with relevant EU regulatory authorities and ESCB Central Banks where necessary in emergency situations.
  - The duty to notify the EBA, the Central Bank of Malta and other ESCB central banks, and the ESRB where provided, in cases of emergency or when adverse developments in the markets occur which may affect any of the Member States where entities of a group have been authorised or where significant branches are operating.
  - The establishment of written co – ordination and co-operation agreements with EU regulatory authorities concerning consolidated supervision.
  - The establishment by the Authority of Colleges of Supervisors to assist with the implementation of consolidated supervision when the Authority is the supervising consolidator or where the Authority is supervising an investment firm with significant branches in other Member states. It sets out the terms of reference, eligible participants and procedures governing the college of supervisors applicable in each situation.
  - Provisions relating to joint agreements on specific prudential requirements with EU regulatory authorities in relation to consolidated supervision.
  - Provisions relating to co-operation with European regulatory authorities and the EBA and in particular with regard to exchange of essential information which could materially influence the assessment of the financial soundness of an investment firm, credit institution, or a financial institution in another Member State.
- Provisions on the establishment of significant branches.
- Provisions on Third Country consolidated supervision.

## **Contacts**

Any queries or requests for clarifications in respect of the CRD and the CRR should be addressed to: Ms. Mellyora Grech, Securities and Markets Supervision Unit Tel: 2548 5193 [mgrech@mfsa.com.mt](mailto:mgrech@mfsa.com.mt) and Ms Monica Nally Hennessy, Securities and Markets Supervision Unit Tel: 25485233 or [mnallyhennessy@mfsa.com.mt](mailto:mnallyhennessy@mfsa.com.mt)

**Communications Unit**  
**Malta Financial Services Authority**  
**4<sup>th</sup> November 2013**

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**Prime Minister**

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**Chairman,  
Malta Financial Services Authority**

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**Minister of Finance**

**L.N. of 2013**

**INVESTMENT SERVICES ACT  
(CAP. 370)**

**Investment Services Act (Supervisory Review) Regulations, 2013**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title, Commencement  
and Scope.

**1.** (1) The title of these regulations is the Investment Services Act (Supervisory Review) Regulations, 2013.

(2) The purpose of these regulations is to implement articles 3 (in part) 4(1), 6, 7, 50, 52, 74 (4), 75(1) (3), 77(2), 78 (2) (3) (4) (5), 86(3), 91(6) (11) 97, 98, 99, 100 to 105 inclusive, 107, 110, 143, 144, 151, 157, 159 of the CRD.

Interpretation.

**2.** (1) In these regulations, unless the context otherwise requires:

“credit institution” means a person licensed in terms of the Banking Act, whose head office is in Malta or an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, authorised by a European Regulatory Authority in terms of the CRD or authorised by a European regulatory authority in an EEA Member State;

“EBA” means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of the 24 November 2010;

“European investment firm” means a firm as defined in article 4(1)(2) of the CRR, authorised by its European regulatory authority within the meaning of Article 5 of the MiFID Directive, or authorised by a European regulatory authority in an EEA State;

“ESFS” means European System of Financial Supervision

“home member state” means

(i) in the case of an investment firm, within the meaning of these regulations, Malta;

(ii) in the case of a “European investment firm”, within the meaning of these regulations, the Member State where such European investment Firm is authorised by its European regulatory authority.

“host member state” means a Member State or an EEA State where an investment firm has established a branch or provides services on a cross border basis in terms of the European Passport Rights for Investment Firms Regulations, 2007.

“investment firm” means a person who holds an investment services licence issued by the competent authority under the Act, and which is subject to the requirements of the CRD;

“the Act” means the Investment Services Act;

“ the CRD” means 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“ the CRR” means 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 and amending Regulation ( EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”.

“third country” means a country which is not a Member State or an EEA State.

(2) Words and expressions used in these regulations which are also used in the Act shall have the same meaning assigned to them as in the Act.

Designation and powers  
of the competent  
authority.

**3.** (1) The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the CRD and the CRR and any reference in these regulations to the competent authority shall be read and construed accordingly.

(2) The competent authority shall exercise all the functions, obligations and powers pursuant to the CRD and the CRR and shall satisfy all the requirements imposed on competent authorities by the CRD and the CRR.

Co-operation within the European system of financial supervision.

**4.** In the exercise of its duties, the competent authority shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the CRD and the CRR. For that purpose, the competent authority:

(a) as party to the ESFS shall cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between the other parties to the ESFS in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;

(b) shall participate in the activities of EBA and, as appropriate, in the colleges of supervisors;

(c) shall make every effort to comply with those guidelines and recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010;

(d) shall cooperate closely with the ESRB;

(e) shall not be inhibited by other national legislative provisions in the performance of its duties as member of EBA and ESRB, or its duties under the CRD and the CRR.

Union dimension of supervision.

**5.** The competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in the other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Collaboration concerning supervision.

**6.** (1) The competent authority shall collaborate closely with European regulatory authorities in order to supervise the activities of investment firms and operating in particular through a branch, in one or more Member States other than Malta. The competent authority shall supply all information concerning the management and ownership of such investment firms to the relevant European regulatory authorities in the Member States concerned, that is likely to facilitate their supervision and the examination of the conditions for their licensing, and all information likely to facilitate the monitoring of investment firms, in particular with regard to liquidity, solvency, the limiting of large exposures, other factors that may influence the systemic risk posed by the investment firm, administrative and

accounting procedures and internal control mechanisms.

(2) The competent authority shall provide the European regulatory authorities of the host Member State immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of the CRR and LN XX 2013 (Consolidated Supervision) Regulations, of the activities performed by an investment firm through its branches, to the extent that such information and findings are relevant to the protection of investors in the host Member State.

(3) The competent authority shall inform the European regulatory authorities of all the investment firms' host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervisory measures taken in that context.

(4) (i) Where Malta is the home member state of the investment firm, the competent authority shall communicate and explain upon request to the European regulatory authorities of the host Member State of that investment firms' branch, how information and findings provided by the latter have been taken into account.

(ii) Where the competent authority disagrees with the measures to be taken by the European regulatory authority of the host Member State in relation to the information and findings referred to in the above sub-paragraph, the competent authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(iii) Where Malta is the host member state of a branch belonging to a European investment firm and the competent authority, following communication by the European regulatory authority of the said European investment firm, of information and findings relating to the said European investment firm, maintains that no appropriate measures have been taken by the said European regulatory authority, the competent authority may after, informing the European regulatory authority concerned and EBA, take appropriate measures to prevent further breaches in order to protect the interests of investors and others to whom services are provided or to protect the stability of the financial system.

(5) The competent authority may refer to EBA situations where a request for collaboration to a European regulatory authority, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

(6) Sub paragraphs 2 to 5 above shall not apply until the date on which the liquidity coverage requirement becomes applicable in accordance with article 151 of the CRD.

On the spot checks and inspection of branches in another Member State.

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Recovery and resolution plans.

**7.** (1) Where a European investment firm carries out its activities through a branch in Malta, the competent authority may permit the European regulatory authority of the home Member State concerned, after it has notified the competent authority, to carry out, itself or through an intermediary appointed for that purpose, on-the-spot checks of the information referred to in regulation 6 of these regulations and inspections of such branches.

(2) For the purposes of sub-regulation (1), the European regulatory authority may request the competent authority to carry out the on the spot checks referred to in the said sub regulation on its behalf, in accordance with the procedures set out in regulation 12 of the LN XX of 2013(Consolidated Supervision) Regulations.

(3) The competent authority may carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of European investment firms in Malta and require information from a branch about its activities and for supervisory purposes, where it considers it relevant for reasons of stability of the financial system in Malta. Before carrying out such checks and inspections, the competent authority shall consult the European regulatory authority of the home Member State concerned.

(4) On-the-spot checks and inspections of branches when carried out in Malta shall be conducted in accordance with the law of Malta.

(5) After the checks and inspections referred to in sub-regulation (4), the competent authority shall communicate to the European regulatory authority of the home Member State, the information obtained and findings that are relevant for the risk assessment of the investment firm or the stability of the financial system in Malta.

(6) When determining the supervisory examination programme referred to in regulation 13 hereof, the competent authority shall duly take into account the information and findings provided by the European regulatory authority of a host Member State pursuant to its on-the-spot checks and inspections of the activities carried out by branches of investment firms, and shall also have regard to the stability of the financial system in the host Member State concerned.

Provided that the European regulatory competent authority may also, for the purposes of the inspection of branches have recourse to one of the other procedures set out in regulation 12 of LN XX 2013 (Consolidated Supervision) Regulations.

**8.** (1) The competent authority shall ensure that an investment firm has in place an appropriate recovery plan for the restoration of that firm's financial situation following a significant deterioration, and that such restoration plans are put into place, as well as the relevant resolution plans.

(2) The requirements for an investment firm to draw up, maintain and

update recovery plans and for the resolution authority to prepare resolution plans after consultation with the European regulatory authorities concerned may be reduced if, after consultation with the Central Bank of Malta, the competent authority considers that the failure of a specific investment firm due, inter alia, to its size, to its business model, to its interconnectedness to other institutions, or to the financial system in general, will not have a negative effect on the financial markets, or on other investment firms or on funding conditions.

(4) The competent authority shall inform EBA in advance of the meetings relating to the development and coordination of recovery and resolution plans so as to enable EBA to fully participate in and contribute to the development and coordination of effective and consistent recovery and resolution plans. The competent authority shall inform EBA of the main issues to be discussed during the meetings and of the activities to be considered.

Oversight of remuneration.

**9.** (1) The competent authority shall collect the information disclosed publicly by investment firms in relation to points (g), (h) and (i) of Article 450 (1) of the CRR and shall use it to benchmark remuneration trends and practices and shall provide this information to the EBA.

(2) The competent authority shall collect information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of €1 million, including data on their work responsibilities, the business area involved and the main elements of their salary, including bonuses, long-service awards and pension contributions, and shall forward this information to the EBA.

Supervisory benchmarking of internal approaches.

**10.** (1) Where the competent authority chooses to develop specific portfolios of internal approaches permitted to be used by investment firms, it shall do so in consultation with the EBA and shall ensure that investment firms report the results of the calculations for these specific portfolios separately from the results of the calculations for the benchmark portfolios required under article 78 of the CRD

(2) The competent authority shall, on the basis of the information submitted by investment firms, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those investment firms. The competent authority shall make an assessment at least annually of the quality of those approaches paying particular attention to:

- (a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

- (b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic under- estimation of own funds requirements.

(3) Where particular investment firms diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the competent authority shall investigate the reasons therefor and, if it can be clearly identified that an investment firm's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, the competent authority shall take corrective action.

(4) The competent authority shall ensure that its decisions on the appropriateness of corrective actions as referred to in the above sub-regulation comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

- (a) lead to standardisation or preferred methods;
- (b) create wrong incentives; or
- (c) cause herd behaviour.

Supervisory review and evaluation.

**11.** (1) The competent authority shall, taking into account the technical criteria set out in Schedule I to these regulations, review the arrangements, strategies, processes and mechanisms implemented by investment firms to comply with the CRR, the Act, regulations or Investment Services Rules issued thereunder and evaluate:

- (a) risks to which investment firms are or might be exposed;
- (b) risks that an investment firm poses to the financial system taking into account EBA's technical criteria for the identification and measurement of systemic risk (in terms of Article 23 of Regulation (EU) No 1093/2010), or recommendations of the ESRB, where appropriate; and
- (c) risks revealed by stress testing taking into account the nature, scale and complexity of an investment firm's activities.

(2) The scope of the review and evaluation referred to in sub-regulation (1) shall cover all requirements of the CRR, the Act, regulations or Investment Services Rules issued thereunder.

(3) On the basis of the review and evaluation referred to in sub-regulation (1), the competent authority shall determine whether the arrangements, strategies, processes and mechanisms implemented by investment firms and the own funds and liquidity held by them ensure

a sound management and coverage of their risks.

(4) The competent authority shall establish the frequency and intensity of the review and evaluation referred to in sub-regulation 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the investment firm concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for investment firms covered by the supervisory examination programme referred to in regulation 13 below.

(5) Where a review shows that an investment firm may pose systemic risk in accordance with EBA's technical criteria for the identification and measurement of systemic risk (established in terms of Article 23 of Regulation (EU) No 1093/2010), the competent authority shall inform EBA without delay about the results of the review.

Criteria for supervisory review and evaluation.

**12.** In carrying out its supervisory review and evaluation the competent authority shall apply the technical and other criteria set out in Schedule I hereof.

Supervisory examination programme.

**13.** The competent authority shall adopt an annual supervisory examination programme for the investment firms it supervises. Such programme shall take into account the supervisory review and evaluation process referred to in regulation 11, and shall contain the elements set out in Schedule II hereof.

Supervisory stress testing.

**14.** The competent authority shall carry out as appropriate but at least annually, supervisory stress tests on investment firms it supervises, to facilitate the review and evaluation process under regulation 11 hereof.

Ongoing review of permission to use internal approaches.

**15.** (1) The competent authority shall review on a regular basis, and at least every 3 years, investment firms' compliance with the requirements regarding approaches that require permission by the competent authority for the calculation of own funds requirements in accordance with Part Three of the CRR. In this regard it shall take cognizance of changes in an investment firm's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an investment firm's internal approach, the competent authority shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(2) The competent authority shall in particular review and assess whether the investment firm uses well developed and up-to-date techniques and practices for those approaches.

(3) If for an internal market risk model numerous overshootings as referred to in Article 366 of the CRR indicate that the model is not

or is no longer sufficiently accurate, the competent authority shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(4) If an investment firm has received permission from the competent authority to apply an approach for the calculation of own funds requirements in accordance with Part Three of the CRR but no longer meets the requirements for applying that approach, the competent authority shall require the investment firm to either demonstrate to the satisfaction of the competent authority that the effect of non-compliance is immaterial, where applicable in accordance with the requirements of the CRR, or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authority shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the investment firm is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline. The competent authority shall take into account the guidelines issued by EBA in this regard in terms of Article 101(5) of the CRD.

(5) The competent authority shall take into account the analysis carried out by the EBA in terms of Article 101(5) of the CRD and the guidelines containing benchmarks on the basis of that analysis issued by the EBA, for the review of the permissions it grants to investment firms to use internal approaches for the calculations of own funds requirements.

Supervisory measures.

**16.** (1) The competent authority shall require an investment firm to take the necessary measures at an early stage to address relevant problems in circumstances where:

- (a) the investment firm does not meet the requirements of the Act, regulations or Investment Services Rules issued thereunder, transposing the requirements of the CRD or of the CRR;
- (b) the competent authority has evidence that the investment firm is likely to breach the Act, regulations or Investment Services Rules issued thereunder, or the provisions of the CRR, within the following 12 months.

(2) For the purposes of paragraph 1, the powers of the competent authority shall include those contained in Schedule III hereof.

Application of supervisory measures to institutions with similar risk profiles.

**17.** (1) Where the competent authority determines that investment firms with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar

risks or pose similar risks to the financial system or cause or contribute to systemic risk, it may apply the supervisory review and evaluation process referred to in regulation 11 hereof, to those investment firms in a similar or identical manner and the competent authority shall notify the EBA accordingly.

(2) For this purpose, the competent authority shall have the necessary legal power to impose the requirements under the CRD and under the CRR on the investment firms referred to in sub article (1) of this regulation in a similar or identical manner, including in particular the exercise of supervisory powers contained in Schedule III to these regulations, regulation 18 and Investment Services Rules transposing the requirements of Article 106 of the CRD.

(3) The type of investment firms referred to in sub-regulation (1) may be determined in accordance with the criteria referred to in paragraph (1) (j) of Schedule I.

Specific Liquidity requirements.

**18.** (1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an investment firm is or might be exposed, taking into account the following:

- (a) the particular business model of the investment firm;
- (b) the investment firm's arrangements, processes and mechanisms in relation to liquidity risk as referred to in the Investment services Rules and these regulations;
- (c) the outcome of the review and evaluation carried out in accordance with regulation 11 hereof;
- (d) systemic liquidity risk that threatens the integrity of the financial markets in Malta.

In particular, without prejudice to the provisions of the Act, the regulations and the Investment Services Rules transposing the requirements of Article 67 of the CRD, the competent authority will consider the need to apply administrative penalties or other administrative measures, including prudential charges, proportionate to the disparity between the actual liquidity position of an investment firm and any liquidity and stable funding requirements established by the competent authority or at European Union level.

(2) The competent authority shall monitor developments in relation to liquidity risk profiles, for example, product design and volumes, risk management, funding policies and funding concentrations.

(3) The competent authority shall take effective action where developments referred to in sub regulation (2) may lead to systemic instability or instability of the investment firm itself.

(4) The competent authority shall inform EBA about any actions carried out pursuant to sub regulation (3) above.

Notification to EBA by the competent authority.

**19.** The competent authority shall inform EBA of:

- (a) the functioning of its review and evaluation process referred to in regulation 11 hereof;
- (b) the methodology used to reach decisions in relation to the technical criteria for supervisory review contained in Schedule I, the supervisory stress testing in regulation 14, the review of internal approaches in regulation 15, the supervisory measures in regulation 16, the supervisory powers contained in Schedule III and the specific liquidity requirements in regulation 18, when engaging in this process.

Review and evaluation and application of supervisory measures.

**20.** (1) The competent authority shall apply the review and evaluation process and the supervisory measures referred to in these regulations in accordance with the level of application of the requirements of Part One, Title II of the CRR.

(2) Where the competent authority waives the application of own funds requirements on a consolidated basis as provided for in Article 15 of the CRR, the requirements of regulation 11 shall apply to the supervision of investment firms on an individual basis.

Publication.

**21.** The competent authority shall publish the following information in accordance with the Commission technical standards adopted:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta in the field of prudential regulation;
- (b) the general criteria and methodologies it uses in the review and evaluation pursuant to regulation 11 hereof;
- (c) the manner of exercise of the options and discretions available in European Union law;
- (d) without prejudice to the confidentiality provisions of the Act, aggregate statistical data on key aspects of the implementation of the prudential framework in Malta, including the number and nature of supervisory measures taken and of administrative penalties imposed in terms of the Act.

Publication of information relating to

**22.** For the purpose of Part Five of the CRR relating to exposures to

exposures to transferred credit risks.

transferred credit risks, the competent authority shall publish the information set out in Schedule IV hereof.

### **Miscellaneous**

Reliance on credit ratings for the purposes of assessing creditworthiness of an entity or financial instrument.

**23.** In encouraging certain investment firms to develop internal credit risk assessment capacity and to increase use of internal ratings based approach for calculating own funds requirements, the competent authority shall monitor, taking into account the nature, scale and complexity of the investment firms' activities, that such investment firms do not solely or mechanically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

Notification to EBA.

**24.** The competent authority shall inform the EBA of any authorisations it issues to the members of an investment firm's management body to hold one additional non-executive directorships in terms of Article 91 of the CRD.

Benchmarking of diversity practices by the competent authority.

**25.** The competent authority shall collect the information disclosed in accordance with Article 435 (2) (c) of the CRR and shall use it to benchmark diversity practices. The competent authority shall provide that information to the EBA.

### **Transitory Provision**

**26.** The provisions of regulation 7, shall not apply until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted by the European Commission pursuant to Article 460 of the CRR in accordance with Article 151 of the CRD.

Provided that until the date referred to in this regulation, the provisions of regulation 7 shall be substituted with the following:

“(1) Where a European investment firm carries out its activities through a branch in Malta, the competent authority may permit the European regulatory authority of the home Member State concerned, after it has notified the competent authority, to carry out, itself or through an intermediary, on-the-spot checks of the information referred to in regulation 6 of these regulations.

(2) The European regulatory authority of the European investment firm referred to in regulation (1) may also, for the purposes of the inspection of branches have recourse to one of the other procedures set out in regulation 12 of LN XX 2013 (Supervisory Consolidation) Regulations.

(3) The provisions of sub-regulations (1) and (2) shall not affect the right of the competent authority to carry out in the discharge of its responsibilities under the CRD, on-the-spot checks of branches established in Malta.

### **Repeal**

Repeal

**27.** The Investment Services Act (Capital Adequacy Regulations) 2008 as amended is hereby being repealed.

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## SCHEDULE I SUPERVISORY REVIEW AND EVALUATION

(1) In addition to credit, market and operational risks, the review and evaluation performed by the competent authority pursuant to regulation 11 shall include at least:

- (a) the results of the stress test carried out in accordance with Article 177 of the CRR by investment firms applying an internal ratings based approach to calculate their credit risk-weighted exposure;
- (b) the exposure to and management of concentration risk by investment firms including their compliance with the Investment Services Rules transposing the requirements of the CRD and the requirements set out in Part Four of the CRR;
- (c) the robustness, suitability and manner of application of the policies and procedures implemented by investment firms for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
- (d) the extent to which the own funds held by an investment firm in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
- (e) the exposure to, measurement and management of liquidity risk by investment firms including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;
- (f) the impact of diversification effects and how such effects are factored into the risk measurement system;
- (g) the results of stress tests carried out by investment firms using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the CRR;
- (h) the geographical location of investment firm's exposures;
- (i) the business model of the investment firm;
- (j) the assessment of systemic risk, in accordance with the criteria set out in regulation 11.

(2) For the purposes of point (e) of paragraph 1 of this schedule, the competent authority shall regularly carry out a comprehensive assessment of the overall liquidity risk management by investment firms and promote the development of sound internal methodologies. In its review, the competent authority shall have regard to the role

played by investment firms in the financial markets. The competent authority shall also duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

(3) The competent authority shall monitor whether an investment firm has provided implicit support to a securitisation. If an investment firm is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(4) For the purposes of the determination to be made under sub-regulation (3) of regulation 11 the competent authority shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the CRR, enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(5) The review and evaluation performed by the competent authority shall include the exposure of investment firms to the interest rate risk arising from non-trading activities. Measures shall be required at least in the case of investment firms whose economic value declines by more than 20 % of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(6) The review and evaluation performed by the competent authority shall include the exposure of investment firms to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of the CRR. In determining the adequacy of the leverage ratio of investment firms and of the arrangements, strategies, processes and mechanisms implemented by investment firms to manage the risk of excessive leverage, the competent authority shall take into account the business model of those investment firms.

(7) The review and evaluation conducted by the competent authority shall include governance arrangements of investment firms, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, the competent authority shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

## SCHEDULE II SUPERVISORY EXAMINATION PROGRAMME

(1) The annual supervisory examination programme referred to in regulation 13, shall contain the following:

- (a) an indication of how competent authority intends to carry out its tasks and allocate its resources;
- (b) an identification of which investment firms are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3 below;
- (c) a plan for inspections at the premises used by an investment firm, including its branches and subsidiaries established in other Member States in accordance with regulation 7 of these regulations and regulations 3, 10, and 16 of LN XX of 2013 on Supervisory Consolidation.

(2) Supervisory examination programmes shall include the following investment firms:

- (a) investment firms for which the results of the stress tests referred to in points (a) and (g) of paragraph (1) of Schedule I and regulation 14 hereof, or the outcome of the supervisory review and evaluation process under regulation 11 hereof, indicate significant risks to their on going financial soundness or indicate breaches of the Act and any regulations and rules issued thereunder transposing the requirements of the CRD regulations and of the CRR;
- (b) investment firms that pose systemic risk to the financial system;
- (c) any other investment firm for which the competent authority deem it to be necessary.

(3) Where appropriate under regulation 11 the following measures shall, in particular, be taken if necessary:

- (a) an increase in the number or frequency of on-site inspections of the investment firm;
- (b) a permanent presence of the competent authority at the investment firm;
- (c) additional or more frequent reporting by the investment firm;
- (d) additional or more frequent review of the operational, strategic or business plans of the investment firm;
- (e) thematic examinations monitoring specific risks that are likely to

materialise.

- (4) Adoption of a supervisory examination programme by a home Member State European regulatory authority with respect to a European Investment Firm which has established a branch in Malta, shall not prevent the competent authority in its capacity as the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of investment firms in Malta in accordance with the Act and these regulations.

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### SCHEDULE III SUPERVISORY POWERS

(1) For the purposes of regulations 11, 16, 17 and paragraph (4) of Schedule I, sub-regulation (4) of regulation 15, and the application of the CRR, the competent authority shall have at least the following powers:

- (a) to require investment firms to hold own funds in excess of the requirements set out in Investment Services Rules transposing the requirements of Chapter 4 of Title VII of the CRD, and in the CRR relating to elements of risks and risks not covered by Article 1 of the CRR;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with the Investment Services Rules transposing the requirements of Articles 73 and 74 of the CRD and regulation 8 of these regulations;
- (c) to require investment firms to present a plan to restore compliance with supervisory requirements pursuant to the Act, regulations or Investment Services Rules issued thereunder, and to the CRR and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require investment firms to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an investment firm;
- (f) to require the reduction of the risk inherent in the activities, products and systems of investment firms;
- (g) to require investment firms to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- (h) to require investment firms to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments within the meaning of the CRR, where the prohibition does not constitute an event of default of the investment firm;
- (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(l) to require additional disclosures.

(2) The additional own funds requirements referred to in paragraph 1(a) of this Schedule, shall be imposed by the competent authority at least where:

(a) an investment firm does not meet the requirement set out in the Investment Services Rules transposing articles 73 and 74 of the CRD and regulation 8 of these regulations or in Article 393 of the CRR;

(b) risks or elements of risks are not covered by the own funds requirements set out in Investment Services Rules transposing the requirements of Chapter 4 of Title VII of the CRD or in the CRR;

(c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;

(d) the review referred to in paragraph (4) of Schedule I and sub-regulation 4 of regulation 15, reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;

(e) the risks are likely to be underestimated despite compliance with the applicable requirements of the Act, regulations or the Investment services Rules issued thereunder, and of the CRR; or

(f) an investment firm reports to the competent authority in accordance with Article 377(5) of the CRR that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an investment firm is or might be exposed, taking into account the following:

(a) the quantitative and qualitative aspects of an institution's assessment process referred to in the Investment services rules;

(b) an institution's arrangements, processes and mechanisms referred to in the Investment Services Rules and regulation 8 of these

regulations;

(c) the outcome of the review and evaluation carried out in accordance with regulations 11 and 15 of these regulations;

(d) the assessment of systemic risk.

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## SCHEDULE IV DISCLOSURE REQUIREMENTS

(1) The competent authority shall publish the following information pursuant to regulation 22 herein:

- (a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the CRR;
- (b) without prejudice to the confidentiality provisions in the Act, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the CRR identified on an annual basis.

(2) If the competent authority exercises the discretion laid down in Article 7(3) of the CRR it shall publish the following information:

- (a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- (b) the number of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR and the number of those which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for Malta:
  - ) the total amount of own funds on the consolidated basis of the parent investment firm or credit institution in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, which are held in subsidiaries in a third country;
  - ) the percentage of total own funds on the consolidated basis of parent investment firms in Malta which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country;
  - i) the percentage of total own funds required under Article 92 of the CRR on the consolidated basis of parent investment firms or credit institutions in Malta, which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country.

(3) If the competent authority exercises the discretion laid down in Article 9(1) of the CRR it shall publish all the following:

- (a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- (b) the number of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR and the number of such parent investment firms which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for Malta:
  - (i) the total amount of own funds of parent investment firms which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR which are held in subsidiaries in a third country;
  - (ii) the percentage of total own funds of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country;
  - (iii) the percentage of total own funds required under Article 92 of the CRR of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country.

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**Prime Minister**

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**Chairman  
Malta Financial Services Authority**

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**Minister of Finance**

**L.N. of 2013**

**BANKING ACT  
(CAP. 371)  
INVESTMENT SERVICES ACT  
(CAP. 370)**

**Supervisory Consolidation Regulations, 2013**

IN exercise of the powers conferred by article 3 of the Banking Act and article 12 of the Investment Services Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title, commencement and scope.

**1. (1)** The title of these regulations is the Supervisory Consolidation Regulations, 2013.

(2) The purpose of these regulations is to implement Articles 3 (partly), 49, 51, 65(2), 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123(1), 124, 125, 126, 127, 151, 155, 156 and 158 of the CRD.

(3) These regulations shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

Interpretation.

**2. (1)** In these regulations, unless the context otherwise requires -

Cap. 371  
Cap. 370

“the Acts” means the Banking Act and the Investment Services Act;

“ancillary services undertaking” shall have the same meaning as that assigned to it in point (18) of Article 4(1) of the CRR;

“branch” shall have the same meaning as that assigned to it in point (17) of Article 4(1) of the CRR;

“consolidated basis” shall have the same meaning as that assigned to it in point (48) of Article 4(1) of the CRR;

“consolidated situation” shall have the same meaning as that assigned to it in point (47) of Article 4(1) of the CRR;

“the competent authority” means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;  
“consolidating supervisor” shall have the same meaning as that assigned to it in point (41) of Article 4(1) of the CRR;

“credit institution” shall have the same meaning as that assigned to it in point (1) of Article 4(1) of the CRR;

“the CRD” means “the CRD ” means 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“the CRR” means means 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 and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder”;

“EBA” means the European Banking Authority as established by Regulation (EU) No 1093/2010 of The European Parliament and of the Council of 24<sup>th</sup> November 2010 establishing a European Supervisory Authority;

“EEA” means a state which is a contracting party to the agreement on the European Economic area signed at Oporto on the 2<sup>nd</sup> May, 1992 as amended by the protocol signed at Brussels on the 17<sup>th</sup> March, 1993 and as amended by any subsequent acts;

“EIOPA” means the European Insurance and Occupational Pensions Authority as established by Regulation (EU) no 1093/2010 of the European Parliament and of the Council of 24<sup>th</sup> November 2010 establishing a European Supervisory Authority;

“ESCB central banks” shall have the same meaning as that assigned to it in point (45) of Article 4(1) of the CRR;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010;

“EU investment firm” means a firm as defined in Article 4(1)(2) of the CRR, authorised by its European regulatory authority within the meaning of Article 5 of the MiFID Directive or

authorised by a European regulatory authority in an EEA State;

“EU parent financial holding company” shall have the same meaning as that assigned to it in point (31) of Article 4(1) of the CRR;

“EU parent institution” shall have the same meaning as that assigned to it in point (29) of Article 4(1) of the CRR;

“EU parent mixed financial holding company” shall have the same meaning as that assigned to it in point (33) of Article 4(1) of the CRR;

“European regulatory authority” means an authority which in a country or territory outside Malta that is a Member State and is empowered by law or regulation to supervise investment firms or credit institutions;

“financial holding company” shall have the same meaning as that assigned to it in point (20) of Article 4(1) of the CRR;

“financial institution” shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR;

“home Member State” shall have the same meaning as that assigned to it in point (43) of Article 4(1) of the CRR;

“host Member State” shall have the same meaning as that assigned to it in point (44) of Article 4(1) of the CRR;

“institution” shall have the same meaning as that assigned to it in point (3) of Article 4(1) of the CRR;

“insurance undertaking” shall have the same meaning as that assigned to it in point (5) of Article 4(1) of the CRR;

“investment firm” means a person who holds an investment services licence issued by the competent authority under the Investment Services Act and which is subject to the requirements of the CRD and CRR;

“Member State” includes an EU and EEA State;

“mixed activity holding company” shall have the same meaning as that assigned to it in point (22) of Article 4(1) of the CRR;

“mixed financial holding company” shall have the same meaning as that assigned to it in point (21) of Article 4(1) of the CRR;

“parent financial holding company in a Member State” shall have the same meaning as that assigned to it in point (30) of Article 4(1) of the CRR;

“parent institution” means an institution licensed in terms of the Acts which has an institution or a financial institution as a subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution licensed in terms of the Acts, or of a financial holding company or mixed financial holding company established in Malta;

“parent mixed financial holding company in a Member State” shall have the same meaning as that assigned to it in point (32) of Article 4(1) of the CRR;

“parent undertaking” shall have the same meaning as that assigned to it in point (15) of Article 4(1) of the CRR;

“participation” shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR;

“Rules” means Rules for credit institutions and investment firms issued by the competent authority in terms of the Banking Act and Investment Services Act, as applicable;

“sub-consolidation basis” shall have the same meaning as that assigned to it in point (49) of Article 4(1) of the CRR;

“subsidiary” shall have the same meaning as that assigned to it in point (16) of Article 4(1) of the CRR;

“third country” means a country that is not a Member State;

“third country regulatory authority” means an authority which is in a country or territory that is not a Member State and is empowered by law or regulation to supervise investment firms and, or credit institutions;

(2) For the purpose of these regulations, the phrase “institutions licensed in terms of the Acts” means the holder of a licence issued under either of the Acts or the holder of licences issued under both Acts, as the case may be.

(3) Words and expressions which are also used in the Acts shall have the same meaning as in the Acts.

## **Part I – Consolidated Supervision**

Responsibility of the competent authority for consolidated supervision.

3. (1) The competent authority shall exercise supervision on a consolidated basis:

- (a) where the parent undertaking is a parent institution or an EU parent institution, licensed in terms of the Acts;
- (b) where the parent of an institution licensed in terms of the Acts is a parent financial holding company or parent mixed financial holding company in a Member State or an EU parent financial holding company or EU parent mixed financial holding company;
- (c) where institutions authorised in two or more Member States, and one of the institutions is an institution licensed in terms of the Acts, have as their parent the same parent financial holding company, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company established in Malta;
- (d) where institutions authorised in two or more Member States, one of which is Malta, have as their parent more than one financial holding company or mixed financial holding company with head offices in different Member States, one of which is Malta and there is a credit institution in each of these Member States and the credit institution which is licensed in Malta has the largest balance sheet total;

where the parent financial holding company or parent mixed financial holding company is established in a Member State other than Malta and it has more than one institution authorised in the European Union other than the Member State where the financial holding company is set up, one of which is licensed in Malta, and the institution licensed in Malta has the largest balance sheet total. That institution shall be considered to be controlled an EU parent financial holding company or an EU parent mixed financial holding company;

(2) In particular cases, the competent authority may, by common agreement with other European regulatory authorities, waive the criteria referred to in paragraphs (c), (d) and (e) of sub-regulation (1) of this regulation if their application would be inappropriate, taking into account the institutions and the relative importance of their activities in different countries, and appoint a European regulatory authority to exercise supervision on a consolidated basis. In these cases, before taking its decision, the competent authority shall give the EU parent institution, EU parent financial holding company, EU

Functions of the competent authority with respect to supervision on a consolidated basis.

parent mixed financial holding company or the institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision. The competent authority shall notify the Commission and the EBA of any such agreement.

**4.** (1) In addition to the obligations imposed by the provisions of the Acts and any regulations or Rules made thereunder transposing the requirements of the CRD, and by the CRR, the competent authority acting as consolidating supervisor, shall carry out the following tasks:

- (a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations; and
- (b) planning and coordination of supervisory activities in going concern situations, including in relation to the activities relating to supervision on a consolidated basis in cooperation with the European regulatory authorities; and
- (c) planning and coordination of supervisory activities in cooperation with the European regulatory authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management. These include exceptional measures referred to in regulation 9(3)(e), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

(2) Where European regulatory authorities do not cooperate with the competent authority, to the extent required in carrying out the tasks in this regulation, the competent authority may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

(3) Where the competent authority does not act as consolidating supervisor and either the consolidating supervisor fails to carry out the tasks referred to in Article 112(1) of the CRD or any European regulatory authority does not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in Article 112(1) of the CRD, it may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

Notifications in emergency situations.

**5.** (1) Where an emergency situation, including a situation as described in article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial

system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in regulation 14 of these regulations are established and where the competent authority is the consolidating supervisor, it shall, subject to confidentiality requirements in the Malta Financial Services Authority Act and the Acts, alert as soon as is practicable:

- (a) EBA, ESCB central banks, when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system, and it shall communicate all information that is essential for the pursuance of their tasks;
- (b) the ESRB where such information is relevant for the exercise of its statutory tasks; and
- (c) departments of government administrations in other Member States responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

(2) To the extent possible, the competent authority shall use existing channels of communication with ESCB central banks.

(3) Where the competent authority is the consolidating supervisor, it shall, when it needs information which has already been given to a European regulatory authority contact this authority, whenever possible, in order to prevent duplication of reporting to the various authorities involved in supervision.

Written co-ordination and co-operation agreements with European regulatory authorities

**6.** (1) Where the competent authority is consolidating supervisor, it shall have written coordination and cooperation arrangements in place with European regulatory authorities responsible for supervising the other members of the group.

(2) Under the arrangements made pursuant to sub-regulation (1) of this regulation, additional tasks may be entrusted to the competent authority as consolidating supervisor and procedures for the decision-making process and for cooperation with other European regulatory authorities may be specified.

(3) Where the competent authority is responsible for the licensing of the subsidiary of a parent undertaking which is an institution, it may, by bilateral agreement in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility for supervision of such subsidiary to the European regulatory authority which authorise and supervise the parent undertaking so that the latter assume responsibility for supervising the subsidiary in accordance

with the CRD. The competent authority shall forward the content of such agreements to the EBA.

7. (1) Where the competent authority is the consolidating supervisor, it shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in regulation 4, sub-regulations (1) and (2) of regulation 5 and regulation 8 of these regulations, and it shall also, subject to the confidentiality requirements of sub-regulation (3) of this regulation and compatibility with Union law, ensure appropriate coordination and cooperation with third country regulatory authorities where appropriate.

(2) When forming part of a college of supervisors, the competent authority shall contribute towards the provision of a framework for the consolidating supervisor, EBA and other European regulatory authorities or third country regulatory authorities forming part of that college, to carry out the following tasks:

(a) exchange information with European regulatory authorities and third country regulatory authorities forming part of that college and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes referred to in Article 99 of the CRD based on a risk assessment of the group in accordance with Article 97 of the CRD;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3) of the CRD;

(e) consistently applying the prudential requirements under the CRD and the CRR across all entities within a group of institutions, without prejudice to the options and discretions available in Union law; and

(f) applying Article 112(1)(c) of the CRD taking into account the work of other fora that may be established in that area..

(3) The competent authority, when forming part of a college of supervisors, shall co-operate closely with EBA and all the European regulatory authorities and third country regulatory authorities forming part of the relevant college of supervisors. The confidentiality requirements under the Malta Financial Services Authority Act and

Acts shall not prevent the competent authority from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authority under the provisions of the Acts, and any regulations or Rules made thereunder transposing the requirements of the CRD, and under the CRR.

(4) Where the competent authority is the consolidating supervisor of these regulations, it shall establish and manage the colleges of supervisors based on written arrangements referred to in regulation 6 of these regulations, determined after consultation with European regulatory authorities and third country regulatory authorities concerned.

(5) The competent authority may form part of a college of supervisors when:

(a) it is responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company; and

(b) Malta is the host Member State where significant branches as referred to in regulation 14 of these regulations are established.

(6) Where the competent authority is the consolidating supervisor, it shall chair the meetings of the college and shall decide which European regulatory authorities and third country regulatory authorities, where relevant, participate in a meeting or in an activity of the college. The decision shall take into account the relevance of the supervisory activity to be planned or coordinated for those authorities, and in particular, the potential impact on the stability of the financial system in the Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time and the obligations referred to in sub-regulations (6) and (7) of regulation 14 of these regulations.

(7) The competent authority as consolidating supervisor, shall keep all members of the college fully informed, in advance, of the organisation of the meetings of the college, about the main issues to be discussed and the activities to be considered and shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(8) The competent authority as consolidating supervisor shall subject to the confidentiality requirements of the Malta Financial Services Authority Act and, the Acts inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for

the purposes of supervisory convergence.

(9) In the case of disagreement between the competent authorities on the functioning of the supervisory colleges, the competent authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(10) Without prejudice to provisions of sub regulation (6) when the competent authority is the consolidating supervisor it may invite the following entities to participate in the college which it shall chair:

(a) the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(b) the European regulatory authorities of a host member state where significant branches, as referred to in Article 51 of the CRD, are established;

(c) ECSB central banks, where appropriate ; and

(d) third-country regulatory authorities where appropriate, subject to confidentiality requirements that are equivalent, in the opinion of the competent authority and all the European regulatory authorities concerned, to the requirements under Chapter 1, Section II of the CRD, and where applicable, Articles 54 and 53 of the MiFID Directive.

Joint decisions on specific prudential requirements.

8. (1) The competent authority whether acting as consolidating supervisor or as a competent authority responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or EU parent mixed financial holding company, within a college of supervisors, shall do everything within its power to reach a joint decision with the other competent authorities forming part of the said college:

(a) on the application of Articles 73 and 97 of the CRD to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104(1)(a) of the CRD to each entity within the group of institutions and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the CRD and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of the CRD

(2) For the purposes of the joint decision referred to in sub-regulations (1) of this regulation, the competent authority as consolidated supervisor shall submit:

- (a) a report containing the risk assessment of the group of institutions in accordance with the Acts, and any regulations or Rules made thereunder transposing the requirements of Articles 73 and 97 and Article 104(1)(a) of the CRD; and
- (b) a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with the Acts, and any regulations or Rules made thereunder transposing the requirements of Articles 86 and 105 of the CRD

to the other relevant European regulatory authorities.

(3) Where the competent authority is the consolidating supervisor, it shall provide the EU parent institution concerned with the joint decision referred to in sub-regulation (1) of this regulation, set out in a document containing full reasons. In the event of disagreement, the competent authority shall at the request of any of the other European regulatory authorities concerned consult the EBA. The competent authority as consolidating supervisor of these regulations may consult EBA on its own initiative.

(4) In the absence of such a joint decision between the competent authorities within the time periods referred to in Article 113(2) of the CRD, a decision on the application of the relevant provisions of the Acts and any regulations or Rules made thereunder transposing the requirements of Articles 73, 86, 97, 104(1)(a) and 105 of the CRD shall be taken on a consolidated basis by the competent authority as consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant European regulatory authorities.

Provided that:

(a) if at the end of the time periods referred to above any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority as consolidated supervisor shall defer its decision and await any decision the EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of the EBA.

(b) where the competent authority is not acting as consolidated supervisor but is responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed financial holding company, it may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. Such referral shall not be made after the end of the time periods referred to above in this regulation or after a joint decision has been reached.

(5) Where the competent authority is responsible for the

supervision of a subsidiary of an EU parent credit institution or an EU parent financial holding company or an EU parent mixed financial holding company and in the absence of a joint decision in terms of this regulation, the competent authority shall decide on the application of the relevant provisions of the Acts, and any regulations or Rules made thereunder transposing the requirements of Articles 73, 86, 97, 104(1)(a) and 105 of the CRD, on an individual or sub-consolidated basis, after duly considering the views and reservations expressed by the consolidating supervisor.

Provided that if at the end of the time periods referred to in this regulation any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer its decision and await any decision that the EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of the EBA.

(6) The competent authority may, in the event of disagreement, refer a dispute to the EBA on its own initiative but prior to a joint decision being made, and provided that no referral shall be made once the specified time periods have expired.

(7) (i) The joint and separate decisions referred to in this regulation shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the competent authority or the European regulatory authorities as applicable, expressed during the time periods referred to therein.

(ii) The competent authority as consolidating supervisor shall provide these documents to the European regulatory authorities concerned and to the EU parent institution. Where the EBA has been consulted the competent authority shall consider its advice and explain any significant deviation therefrom.

(iii) The joint decision referred to in sub-regulation (1) of this regulation and the decisions taken by the competent authority or European regulatory authorities in terms of sub-regulations (4) and (5) of this regulation shall be recognised as determinative and shall be applied by the competent authority in Malta.

(8) The joint and separate decisions referred to in sub regulation (1) of this regulation shall be updated on an annual basis or in exceptional circumstances, where the competent authority is responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial company or an EU parent mixed financial holding company, it may make a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 104(1)(a) and Article 105 of the CRD. In the

latter case, the update may be addressed on a bilateral basis between the competent authority and the consolidating supervisor. Provided that where the competent authority is the consolidating supervisor, it shall update the decisions at the request of the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial company or an EU parent mixed financial holding company. The competent authority may address the update to the European regulatory authority making the request, on a bilateral basis.

Co-operation with other authorities.

**9.** (1) The competent authority shall cooperate closely with European regulatory authorities. Such cooperation shall include the provision to such authorities of any information which is essential or relevant for the exercise of their respective supervisory tasks under the CRD, and the CRR. The competent authority shall communicate on request all relevant information and shall communicate on its own initiative all essential information.

(2) The competent authority shall cooperate with the EBA for the purposes of the CRD and the CRR in accordance with Regulation (EU) No 1093/2010. Such cooperation shall include the provision to the EBA of all information necessary to carry out its duties under the CRD and the CRR and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

(3) For the purpose of sub-regulation (1) of this regulation information shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or a financial institution in another Member State and shall include, in particular, the following items:

- (a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, and the parent undertakings, in accordance with the relevant provisions of the Acts and any regulations or Rules made thereunder transposing the requirements of Article 14(3), 74(1) and 109(2) of the CRD;
- (b) identification of the European regulatory authorities of the regulated entities in the group, as the case may be;
- (c) procedures for the collection of information from the institutions in a group and the verification of that information;
- (d) adverse developments in institutions or in other entities of a group, which could seriously affect the institutions; and

- (e) significant penalties and exceptional measures taken by the competent authority in accordance with the CRD, including the imposition of a specific own fund requirement under Article 104 of the CRD and the imposition of any limitation on the use of Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of the CRR.

(4) Where the competent authority is acting as consolidating supervisor, it shall provide European regulatory authorities who supervise subsidiaries of parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

(5) Where the competent authority is responsible for the supervision of an institution controlled by an EU parent institution, it shall whenever possible contact the consolidating supervisor when it needs information regarding the implementation of approaches and methodologies set out in the CRD and the CRR that may already be available to that consolidating supervisor.

(6) The competent authority shall consult with European regulatory authorities concerned before taking a decision with respect to points (a) and (b) below, where such a decision is of importance for these European regulatory authorities' supervisory tasks:

- (a) changes in the shareholder, organizational or management structure of credit institutions in a group, which require the approval or authorization of the competent authority; and

- (b) significant penalties or exceptional measures taken by the competent authority, including the imposition of a specific own funds requirement under the Banking Act (Supervisory Review) Regulations 2013, and the Investment Services Act (Supervisory Review) Regulations 2013, and the imposition of any limitation on the use of the advanced measurement approaches for the calculation of the own funds requirements under Article 312(2) of the CRR.

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Provided that the competent authority shall always consult the consolidating supervisor for the purposes of point (b) and may decide not to consult European regulatory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the European regulatory authorities after taking its decision.

(7) The competent authority may refer to the EBA any of the following situations:

- (a) where a European regulatory authority has not communicated essential information;
- (b) where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Exchange of information.

**10.** (1) The competent authority shall ensure that there are no legal impediments preventing the exchange, between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis, of any information which would be relevant for the purposes of supervision in accordance with the relevant provisions of the Acts, and any regulations or Rules made thereunder transposing the requirements of Article 110 and Chapter 3 of the CRD

(2) Where a subsidiary that is an institution licensed in terms of the Acts is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of the CRR, the competent authority may ask the parent undertaking of such institution for information which may facilitate supervision of that subsidiary.

(3) The competent authority as consolidating supervisor, may ask the subsidiaries of an institution, a financial holding company or mixed financial holding company which are not included within the scope of supervision on a consolidated basis for information which would be relevant for the purpose of supervising those subsidiaries. In such a case, the procedures for transmitting and verifying the information set out in regulation 16 of these regulations shall apply.

(4) Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the competent authority shall communicate to the European regulatory authorities concerned all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

(5) The competent authority, as consolidating supervisor, may invite the European regulatory authorities of the parent undertaking to ask the parent undertaking to provide any information which would be relevant for the purposes of supervision on a consolidated basis. Such information shall be transmitted to the competent authority by the European regulatory authority concerned.

(6) Where a parent undertaking is situated in Malta and the competent authority does not itself exercise supervision on a consolidated basis in terms of regulation 3 of these regulations, it

shall, upon request by the European regulatory authority responsible for exercising such supervision, require the parent undertaking to provide any information relevant for the purposes of supervision on a consolidated basis and the competent authority shall transmit such information to the European regulatory authority making the request.

(7) The competent authority shall exchange the information referred to in sub-regulation (4) of this regulation with other European regulatory authorities, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the competent authority is required to play a supervisory role in relation to those institutions or undertakings standing alone.

(8) The competent authority shall exchange the information referred to in regulation 16 of these regulations with the European regulatory authorities concerned, on the understanding that the collection or possession of information does not imply that the competent authority plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis.

Co-operation with European regulatory authorities and the Commission.

**11.** (1) The competent authority shall cooperate closely with European regulatory authorities where the investment firm, financial holding company, mixed financial holding company or mixed-activity holding company which is situated in Malta controls one or more subsidiaries authorised in a country outside Malta which are insurance companies or other undertakings providing investment services. Without prejudice to its responsibilities, the competent authority shall provide European regulatory authorities with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

(2) Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between the competent authority and European regulatory authorities which is provided for in the CRD, shall be subject to professional secrecy requirements at least equivalent to those pursuant to the Malta Financial Services Authority Act and the Acts.

(3) The competent authority as consolidating supervisor shall establish a list of the financial holding companies or mixed financial holding companies referred to in Article 11 of the CRR. Such a list shall be communicated to the European regulatory authorities, to EBA and to the Commission.

Request for verification of information.

**12** (1) The competent authority, in applying the provisions of the Acts, and of any regulations or Rules made thereunder transposing

the requirements of the CRD, and the CRR, may, in specific cases, request a European regulatory authority to verify information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary which is an insurance company or other undertaking providing investment services which is subject to authorisation, or a subsidiary of an institution, a financial holding company or mixed financial holding company which is not included within the scope of supervision on a consolidated basis, situated in another Member State. The competent authority may carry out the verification itself, or if it so wishes participate in the verification.

(2) Where the competent authority receives a request from a European regulatory authority to verify information referred to in sub-regulation (1) of this regulation, it shall, within the framework of its competence, act upon it by either carrying out the verification itself, by allowing the European regulatory authority making the request to carry out such verification or by allowing an auditor or expert to carry out such verification. The European regulatory authority making the request may participate in the verification where it does not carry out the verification itself.

Third country consolidated supervision.

**13.** (1) Where an institution licensed in terms of the Acts, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is established in a third country, is not subject to consolidated supervision, the competent authority shall assess whether the institution is subject to consolidated supervision by a third country regulatory authority which is equivalent to that governed by the principles laid down in this regulation and the requirements of Part One, Title II, Chapter 2 of the CRR.

(2) The competent authority as consolidating supervisor, if sub-regulation (4) of this regulation were to apply, shall carry out the assessment at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. The competent authority shall consult the other European regulatory authorities.

(3) In carrying out the assessment referred to in sub-regulation (1) of this regulation, the competent authority shall take into account any guidance issued by the European Banking Committee as to whether the consolidated supervision arrangements of third country regulatory authorities are likely to achieve the objectives of consolidated supervision as defined in this regulation, in relation to institutions licensed in terms of the Acts, the parent undertaking of which has its head office in a third country. For this purpose, the competent authority shall consult EBA before making a decision.

(4) In the absence of such equivalent supervision, the competent authority shall apply the provisions of the Acts, and of any regulations or Rules made thereunder transposing the requirements of the CRD, and the CRR to the institution *mutatis mutandis* or apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions. Such supervisory techniques shall be agreed upon by the competent authority, as consolidating supervisor, after consultation with other European regulatory authorities involved. The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this regulation and shall be notified to other European regulatory authorities involved, the EBA and the Commission.

(5) The competent authority may in particular require the establishment of a financial holding company or mixed financial holding company with its head office in the Union, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or the consolidated position of the institutions of that mixed financial holding company.

## Part II – Establishment of Significant Branches

Establishment of significant branches (Host Authority).

**14.** (1) Where an institution, other than a EU investment firm subject to Article 95 of the CRR, authorised in another Member State has established a branch in Malta, the competent authority may make a request to the European regulatory authority which is the consolidating supervisor, where Article 112(1) applies, or to the European regulatory authority of the home Member State of such institution, for that branch to be considered as significant.

(2) The request referred to in sub-regulation (1) of this regulation shall provide reasons for considering the branch to be significant with particular regard to the following:

- (a) whether the market share of the branch in terms of deposits exceeds 2 % in Malta;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in Malta; and
- (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Malta.

(3) The competent authority shall do everything within its power to reach a joint decision with the European regulatory authority of the home Member State and, where Article 112(1) applies, the European regulatory authority which is the consolidating supervisor, on the

designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authority shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the competent authority shall take into account any views and reservations of the European regulatory authority which is the consolidating supervisor or the European regulatory authority of the home Member State.

(5) The decisions referred to in sub-regulations (3) and (4) shall be set out in a document containing full reasons and shall be transmitted to the European regulatory authorities concerned. It shall be recognised as determinative and applied by the European regulatory authorities in the Member States concerned.

(6) Where the European regulatory authority of the home Member State does not consult the competent authority, or where, following such consultation, the competent authority maintains that operational steps required by the Acts and any regulations or rules made thereunder transposing the requirements of Article 86(11) of the CRD, are not adequate, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Establishment of significant branches (Home Authority).

**15.** (1) Where the competent authority is responsible for the supervision of an institution licensed in terms of the Acts or, other than an investment firm subject to Article 95 of the CRR, which has established a branch in another Member State or is the consolidating supervisor, it may receive a request from the European regulatory authority of the host Member State where the branch is established, for such branch to be considered as significant. This request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch in terms of deposit exceeds 2 % in the host Member State;

(b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment and clearing and settlement systems in the host Member State; and

(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

(2) The competent authority shall do everything within its power to reach a joint decision on the designation of a branch as significant, with the European regulatory authority of the host Member State where the branch is established and, where Article 112(1) of the CRD

applies, the European regulatory authority which is the consolidating supervisor.

(3) The competent authority shall communicate to the European regulatory authority of the host Member State, where a significant branch is established, the following information referred to in paragraphs (d) and (e) of sub-regulation (2) of this regulation and carry out the tasks referred to in regulation 4(1)(c) in cooperation with the European regulatory authority of the host Member State.

(4) Where the competent authority becomes aware of an emergency situation as referred to in sub-regulation (1) of regulation 5 of these regulations, it shall alert as soon as practicable:

(a) ESCB central banks, when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system, and it shall communicate all information that is essential for the pursuance of their tasks;

(b) the ESRB where such information is relevant for the exercise of its statutory tasks; and

(d) departments of government administrations in other Member States responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.)

(5) The competent authority shall communicate to the European regulatory authority of the host Member State where the significant branch is established, the results of the risk assessment carried out in terms of the Banking Act (Supervisory Review) Regulations 2013, and the Investment Services Act (Supervisory Review) Regulations 2013 with respect to the institution licensed in Malta with such a branch and, where applicable, joint decisions on institution specific prudential requirements taken pursuant to the provisions of the Acts and any regulations or rules made thereunder transposing the requirements of Article 113(2) of the CRD. The competent authority shall also communicate decisions required by the Acts and any regulations or rules made thereunder transposing the requirements of Articles 104 and 105 of the CRD in so far as those assessments and decisions are relevant to the branch.

(6) The competent authority shall consult the European regulatory authority of the host Member State where the significant branch is established about operational steps required by the Acts and any regulations or rules made thereunder transposing the requirements of Article 86(11) of the CRD, where relevant for liquidity risks in the host Member State's currency.

**16.** The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authority under the Acts, and any regulations or rules made thereunder transposing the

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requirements of the CRD.

**17.** (1) Where regulation 7 of these regulations does not apply and the competent authority supervises an institution licensed in Malta with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate the cooperation in terms of sub-regulations (3) to (6) of regulation 15 of these regulations and in terms of the Acts and any regulations or rules made thereunder transposing the requirements of Article 50 of the CRD. The establishment and functioning of the college shall be based on written arrangements determined after consulting the European regulatory authorities concerned by the competent authority. The competent authority shall decide which European regulatory authorities participate in a meeting or in an activity of the college.

(2) In its decision the competent authority shall take account of the relevance of the supervisory activity to be planned or coordinated for those European regulatory authorities, in particular, the potential impact on the stability of the financial system in the Member States concerned, and, in particular, in emergency situations based on the information available at the relevant time and the obligations referred to in sub-regulations (3) to (5) of regulation 15 of these regulations.

(3) The competent authority shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

**18.** (1) The prudential supervision of an institution, including that of the activities it carries out in accordance with the European Passporting Rights for Credit Institutions Regulations and the European Passporting Rights for Investment Firms shall be the responsibility of the competent authority when such an institution is licensed in Malta, without prejudice to those provisions of the CRD and MiFID which give responsibility to the European regulatory authorities of the host Member State.

(2) Sub-regulation (1) of this regulation shall not prevent supervision on a consolidated basis in terms of regulation 3 of these regulations.

Where the branch of an institution authorised in a Member State other than Malta, is established in Malta, any measures taken by the competent authority with respect to such branch shall not allow discriminatory or restrictive treatment on the basis that the institution to which the branch belongs is authorised in another Member State.

**Part III – Supervision of Mixed Activity Holding Companies and their subsidiaries and of Mixed Financial Holding Companies**

Supervision of mixed activity holding companies and their subsidiaries.

**19.** (1) Where the parent undertaking of one or more institutions licensed in in terms of either of the Acts is a mixed-activity holding company, the competent authority shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

(2) The competent authority may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in regulation 11 of these regulations may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than Malta but is the parent undertaking of an institution licensed in terms of the Acts, on-the-spot verifications of information shall be carried out in accordance with the procedure set out in regulation 12 of these regulations.

(3) Without prejudice to Part Four of the CRR, where the parent undertaking of one or more institutions licensed in terms of the Acts is a mixed-activity holding company, the competent authority shall exercise general supervision over transactions between the institutions and the mixed-activity holding company and its subsidiaries.

Supervision of mixed financial holding companies.

**20.** (1) Where a mixed financial holding company is subject to equivalent provisions under the Acts and any regulations or Rules made thereunder transposing the requirements of the CRD, and under Directive 2002/87/EC, of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerates, in particular in terms of risk-based supervision, the competent authority, as consolidating supervisor, after consulting the other European regulatory authorities responsible for the supervision of subsidiaries, apply only the latter Directive to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under the Acts and any regulations or Rules made thereunder transposing the requirements of the CRD, and under Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), in particular in terms of risk-based supervision, the competent authority as consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions under the Acts, and any regulations or Rules made thereunder transposing the requirements of the CRD relating to the

most significant financial sector as defined in regulation 3 of the Financial Conglomerates Regulations 2013.

(3) The competent authority, as consolidating supervisor, shall inform the EBA and the EIOPA of the decisions taken under sub-regulations (1) and (2) of this regulation.

#### **Part IV - Transitional Provisions**

**21.** The provisions of sub-regulation (6) of regulation 14, of sub-regulations (5) and (6) of regulation 15, sub-regulation (1) of regulation 17 and sub-regulation (3) of regulation 18 shall not apply until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted by the European Commission pursuant to Article 460 of the CRR in accordance with Article 151 of the CRD.

Provided that until the date referred to in this regulation, sub-regulation (1) of regulation 17 shall be replaced by the following:

“Where regulation 7 of these regulations does not apply and the competent authority supervises an institution licensed in Malta with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant in terms of sub-regulation (2) of regulation 15 of these regulations and the exchange of information in terms of the Acts, and any regulations or rules made thereunder transposing the requirements of Article 60 of the CRD. The establishment and functioning of the college shall be based on written arrangements determined after consulting the European regulatory authorities concerned by the competent authority. The competent authority shall decide which European regulatory authorities participate in a meeting or in an activity of the college.”

Provided further that until the date referred to in this regulation, sub-regulation (3) of regulation 18 shall be replaced by the following:

“The competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decision on the stability of the financial system on other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.”

Provided further that until the date referred to in this regulation the following sub-regulation shall be added to regulation 18:

“(4) Where the branch of a credit institution, authorised in a Member State other than Malta, is established in Malta, the competent authority shall, pending further coordination, retain responsibility in cooperation with the European regulatory authorities of the home Member State for the supervision of the liquidity of the said branch.”

## **Part V - Repeal**

Repeal of L.N. 63 of 2011

23. The Investment Services Act (Financial Capital Adequacy Consolidation) Regulations 2011, is hereby repealed.

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