
L.N. 227 of 2009**BANKING ACT
(CAP. 371)****Depositor Compensation Scheme (Amendment) Regulations,
2009**

IN exercise of the powers conferred by articles 3 and 28A of the Banking Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Depositor Compensation Scheme (Amendment) Regulations, 2009 and they shall be read and construed as one with the Depositor Compensation Scheme Regulations, 2003, hereinafter referred to as “the principal regulations”. Citation and scope.
L.N. 369 of 2003.

(2) The objective of these regulations is to implement Directive 2009/14/EC of the European Parliament and of the Council of the 11 March 2009 amending Directive 94/19/EC on deposit guarantee schemes as regards the coverage level and the payout delay.

2. In regulation 1A of the principal regulations, for the words “on deposit guarantee schemes,”, there shall be substituted the words, “on deposit guarantee schemes, as amended by Directive 2009/14/EC of the European Parliament and of the Council of the 11 March 2009, hereinafter in these regulations referred to as the Directive,”. Amends regulation 1A of the principal regulations.

3. In regulation 2 of the principal regulations, immediately after the definition “depositor”, there shall be added the following new definition: Amends regulation 2 of the principal regulations.

“ “Depositor Guarantee Scheme Reserve” shall have the meaning assigned to it in paragraph 5 of the Second Schedule of the principal regulations;”.

4. Regulation 6 of the principal regulations shall be amended as follows: Amends regulation 6 of the principal regulations.

(a) in sub-regulation (3) thereof, for the words “under any terms it may consider appropriate, provided that borrowings do not exceed 30 per cent of the net asset value of the Scheme.”, there shall be substituted the words “under any terms it may consider appropriate.”;

(b) sub-regulation (5) thereof shall be re-numbered as sub-regulation (6); and

(c) immediately after sub-regulation (4) thereof, there shall be inserted the following new sub-regulation:

“(5) The Management Committee shall ensure that the Scheme performs regular tests of its internal systems.”.

Amends regulation 8 of the principal regulations.

5. Sub-regulation (2) of regulation 8 of the principal regulations shall be amended as follows:

(a) for the words “on the operation of the Scheme within three months from the financial year end of the Scheme.”, there shall be substituted the words “on the operation of the Scheme within five months from the financial year end of the Scheme.”;

(b) in paragraph (a) thereof, for the words “financial year; and”, there shall be substituted the words “financial year;”;

(c) paragraph (b) thereof shall be re-numbered as paragraph (c); and

(d) immediately after paragraph (a) thereof, there shall be inserted the following new paragraph:

“(b) a statement showing the results of regular tests of internal systems undertaken by the Scheme; and”.

Amends regulation 11 of the principal regulations.

6. Regulation 11 of the principal regulations shall be amended as follows:

(a) in sub-regulation (4) thereof, for the words “the Management Committee shall determine all the relative obligations and conditions of the new participant as set out in the Third Schedule.”, there shall be substituted the words “it

shall pay contributions and establish a Reserve in the manner established in the Second Schedule of these regulations.”; and

(b) immediately after sub-regulation (4) thereof there shall be inserted the following new sub-regulation :

“(5) In the cases referred to in subregulations (1) to (4) of this regulation, the Scheme shall cooperate with similar schemes set up in any other country.”.

Amends regulation 13 of the principal regulations.

7. In sub-regulation (1) of regulation 13 of the principal regulations, for the words “within twenty one days of the occurrence of such circumstances.”, there shall be substituted the words “as soon as possible and in any event no later than five working days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable.”.

8. Regulation 14 of the principal regulations shall be amended as follows:

Amends regulation 14 of the principal regulations.

(a) for sub-regulation (4) thereof, there shall be substituted the following:

“(4) The Management Committee shall proceed to pay compensation for verified claims within twenty working days of the date of the determination given in terms of regulation 13(1). This time limit includes the collection and transmission of the accurate data on depositors and deposits, which are necessary for the verification of claims:

Provided that the Management Committee may, in wholly exceptional circumstances and in special cases, apply to the competent authority for an extension of this period by a further period not exceeding ten working days.”; and

(b) immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulation :

“(5) Credit institutions shall ensure that they have electronic information systems in place to the satisfaction of the Scheme to enable the Scheme to process claims for compensation by depositors and this

at all times, whether or not a determination has been made under regulation 13(1) of these regulations.”.

Amends regulation 16 of the principal regulations.

9. For regulation 16 of the principal regulations, there shall be substituted the following:

“16. Whenever it appears to the Management Committee that the funds for the time being held by the Scheme are inadequate for the Management Committee to exercise its functions, the Management Committee may require a Special Contribution to be paid to the Scheme by participants. The Management Committee may direct that such Special Contribution be paid in whole or in part out of funds reserved for this purpose by the participant in the Depositor Compensation Scheme Reserve in accordance with the Second Schedule. Such Special Contribution shall be paid to the Scheme within ten working days of its being requested.”.

Amends regulation 17 of the principal regulations.

10. For sub-regulation (1) of regulation 17 of the principal regulations, there shall be substituted the following:

“(1) The total amount of compensation that may be paid out to a depositor in respect of that depositor’s eligible deposits shall be 100,000 euro or its equivalent in any designated currency.”.

Amends regulation 18 of the principal regulations.

11. In sub-regulation (1) of regulation 18 of the principal regulations, for the words “means the total aggregate liability of the credit institution”, there shall be substituted the words “means the aggregate liability of the credit institution”.

Substitutes the marginal note to regulation 19 of the principal regulations.

12. For the marginal note to regulation 19 of the principal regulations, there shall be substituted the words “Compensation payable.”.

Substitutes regulation 25 of the principal regulations.

13. For regulation 25 of the principal regulations there shall be substituted the following:

“Availability of information and advertisements. 25. (1) Credit institutions shall make available to current or prospective depositors adequate and clear information for the identification of the deposit compensation scheme to which the institution or its branches are members within any EEA State or any alternative arrangement provided for in the second subparagraph of Article 3(1) or in Article 3(4) of the Directive.

(2) Credit institutions shall also inform current or prospective depositors of the provisions of the deposit compensation scheme or any alternative arrangement applicable, including the amount, scope and conditions of the cover offered by the Scheme.

(3) When a deposit is not guaranteed by a deposit compensation scheme, the credit institution shall inform its depositor accordingly.

(4) Upon request, credit institutions shall also make available to current depositors information about the conditions for compensation and the formalities which must be completed to obtain compensation from the Scheme.

(5) All information shall be made available in a readily comprehensible manner.

(6) Credit institutions shall ensure that any information on the protection of depositors provided in advertisements shall be restricted to references to the deposit protection scheme to which the credit institution belongs.

(7) The competent authority may from time to time, and in addition, specify such other information that credit institutions are to provide to depositors regarding the Scheme and its operations, as well as the manner and form in which such information shall be provided.”.

14. Regulation 35 of the principal regulations shall be re-numbered as regulation 37 thereof.

Renumbers regulation 35 of the principal regulations.

15. Immediately after regulation 34 of the principal regulations there shall be inserted the following new regulations 35 and 36:

Adds new regulations 35 and 36 of the principal regulations.

“Exchange of information.

35. (1) The competent authority and the Scheme shall have the power to exchange any information to the extent necessary for the performance of their functions and duties and in furtherance of their respective functions at law and the duties of confidentiality shall apply to such communications.

(2) Where the competent authority detects problems in a credit institution that are likely to give rise to the intervention of the Scheme or similar schemes in any other country, it shall immediately inform such schemes of these problems.

Information to be provided by the Minister. 36. The Minister responsible for finance shall inform the European Commission and the European Banking Committee if it intends to change the scope or level of coverage for deposits and on any difficulty encountered when cooperating with other Member States. The competent authority and the Scheme shall inform the said Minister of any such difficulties.”.

Substitutes the Second Schedule to the principal regulations.

16. For the Second Schedule to the principal regulations there shall be substituted the following:

**“ SECOND SCHEDULE
Contributions in terms of regulation 12**

1. Contributions to the Scheme

All credit institutions participating in the Scheme shall make contributions to the Scheme as follows:

- (a) Initial Contribution;
- (b) Supplementary Contributions;
- (c) Special Contributions.

2. Initial Contribution

(a) An Initial Contribution shall be paid by every participant.

(b) Such contribution shall be paid within 30 calendar days from the date when the credit institution shall become liable to participate in and contribute to the Scheme:

Provided that in regard to participants to which the second proviso to regulation 11 (1) applies, such contribution shall be paid simultaneously with the credit institution’s request to participate in the Scheme.

(c) The amount of the Initial Contribution shall be €23,300 per participant.

(d) The Management Committee may, in consultation with the competent authority, postpone part or all of the payment of the Initial Contribution and determine a time schedule for the payment thereof.

3. Supplementary Contribution

(a) A supplementary contribution shall be paid by every participant.

(b) In every calendar year (hereinafter referred to as “the year of assessment”), the accumulated supplementary contributions for each participant shall be equivalent to the value arrived at by multiplying the amount of the eligible deposits of that participant as at the end of the year immediately preceding the year of assessment with the percentage rate that is applicable to the year of assessment in accordance with the following table:

Year of Assessment	Percentage rate
2009	0.188 %
2010	0.275 %
2011	0.363 %
2012	0.450 %

(c) By not later than 1st March in every year, every participant shall ensure that the aggregate payments made by it to the Scheme on or before such date in respect of the supplementary contribution are equivalent to the amount as determined in paragraph (b).

(d) A participant shall not be eligible for a refund if the aggregate amount of payments to the Scheme in respect of its supplementary contribution amounts to more than the percentage rate.

(e) The Management Committee may authorize the contribution due in any particular year to be paid in two equal instalments; if such authorization is granted, the first instalment shall be paid by not later than 1st March of that year and the second instalment shall be paid by not later than

six months thereafter.

(f) In the case of eligible deposits held in a designated currency other than euro, the Supplementary Contribution shall be calculated on the euro equivalent of such eligible deposits and in all cases shall be paid in euro.

4. Special Contribution

(a) The Management Committee may at any time levy special contributions from participants in order to meet the commitments of the Scheme.

(b) The Management Committee may refund part or all of such special contributions not utilised, or not expected to be utilised for the following twelve months, to participants. No interest shall be payable on Special Contributions refunded to participants.

(c) A request for payment of special contributions shall be in writing, and shall specify the amount due and by when.

5. Setting up of a “Depositor Compensation Scheme Reserve”

(a) Every participant shall establish a Depositor Compensation Scheme Reserve (hereinafter referred to as “the Reserve”) for the payment of its Special Contribution in accordance with regulation 16.

(b) In every year of assessment, the Reserve of each participant shall consist of funds, the accumulated value of which shall be not less than the value arrived at by multiplying the amount of the eligible deposits of that participant as at the end of the year immediately preceding the year of assessment with the percentage rate that is applicable to the year of assessment in accordance with the following table:

Year of Assessment	Percentage rate
2009	0.20 %
2010	0.24 %
2011	0.28 %
2012	0.32 %

(c) Funds in the Reserve shall be held by the participant at all times in admissible assets, and shall be pledged in favour of the Depositor Compensation Scheme in guarantee of the participant's liabilities under regulation 16 at no cost to, and to the full satisfaction of, the Scheme.

(d) Assets shall be admissible within the meaning of regulation 12 on condition that:

(i) at least 60% thereof are denominated in euro, and not more than 40% thereof are denominated in Great Britain pounds and/or US dollars; and

(ii) at least 25% thereof have a maximum maturity period of not more than thirty days; and

(iii) in the case of securities, they are listed on a recognised investment exchange established in the EEA;

(iv) where at the start of any calendar year the total value of the Reserve of a participant is more than €100,000, then at least 60% of the admissible assets shall consist of debt securities issued by national or international institutions, governments or central bank authorities that are established in the EEA, and which have a long term credit rating of not less than A; and

(v) where at the start of any calendar year the total value of the Reserve of a participant:-

(I) is more than €100,000, then not more than 40% of the admissible assets may consist of any one or more of the following:

(a) deposits held with a bank established in the EEA having a long term credit rating of not less than A, which deposits shall have a maximum maturity period of not more than thirty days;

(b) debt securities issued by a corporate entity established in the EEA which security has a long term credit rating of not less than AA;

(c) such other assets as may be determined by the Competent Authority in consultation with the Management Committee.

(II) is equal to or less than €100,000, then such admissible assets shall consist of any one or more of the following:

(a) debt securities issued by national or international institutions, governments or central bank authorities that are established in the EEA, and which have a long term credit rating of not less than A;

(b) deposits held with a bank established in the EEA having a long term credit rating of not less than A, which deposits shall have a maximum maturity period of not more than thirty days;

(c) debt securities issued by a corporate entity established in the EEA which security has a long term credit rating of not less than AA;

(d) such other assets as may be determined by the Competent Authority in consultation with the Management Committee.

(e) Assets shall not be admissible within the meaning of regulation 12 if:

(i) such assets are hypothecated, pledged or otherwise charged in any manner to a third party, or their alienation is otherwise restricted; or

(ii) in the case of assets comprising bank deposits or debt securities, such assets are effected with the participant or a related party of the participant. For the purposes of these Regulations, a related party shall be interpreted in accordance with International

Accounting Standard 24 issued by the International Accounting Standards Board and any amendment, modification or substitution of such Standard, or in accordance with such Guidelines as are issued by the Competent Authority upon consultation with the Management Committee; or

(iii) such assets do not comply with such conditions as may be determined by the Competent Authority in consultation with the Management Committee.

(f) The value of assets in the Reserve shall be the market value of such assets, determined in accordance with such discounting rules (hereinafter referred to as “Valuation Haircuts”) as shall be established by the Competent Authority in consultation with the Management Committee.

(g) At the start of every calendar year, each participant shall ensure that the current value of the assets in the Reserve is at least equal to the value as determined in paragraphs (b) and (f). If this requirement is not satisfied, the participant shall take immediate steps to increase the amount of its pledged investments by 1st March of that same year.

(h) A participant may not switch from one asset comprised in the Reserve to another asset, without the written consent of the Management Committee.

(i) A participant may deposit the entire amount of the Reserve directly with the Scheme, in which case such deposit shall be on account of the participant’s liabilities under regulation 16, and the provisions of this Schedule shall where applicable also be applicable to such deposit. No interest shall be payable by the Scheme to the participant in regard to such deposit.

6. Other conditions

(a) A credit institution which has ceased to be a participant of the Scheme shall not be entitled to a refund of any contributions paid to the Scheme.

(b) A participant shall submit to the Management Committee by not later than 1 April of each year a detailed statement regarding its contributions and Reserve. Such statement shall be signed by the authorized representative of the participant and certified by the participant's appointed auditors. In respect of the Reserve, the statement shall also include the nominal and market value of the Reserve assets, their composition, as well as a maturity and liquidity date schedule according to the type of each asset.”.

Deletes the Third Schedule to the principal regulations.

17. The Third Schedule to the principal regulations shall be deleted.

