

SUBSIDIARY LEGISLATION 371.09**DEPOSITOR COMPENSATION SCHEME
REGULATIONS**

21st November, 2003

LEGAL NOTICE 369 of 2003, as amended by Legal Notices 35 of 2006, 425 of 2007, 227 of 2009 and 109 of 2010.

1. The title of these regulations is the Depositor Compensation Scheme Regulations. Citation.

1A. The objective of these regulations is to implement the relevant provisions of Directive 94/19/EC of the European Parliament and of the Council of 30th May 1994 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", and these regulations shall be interpreted and applied accordingly. Scope.
Added by:
L.N. 35 of 2006.
Amended by:
L.N. 227 of 2009.

2. In these regulations, unless the context otherwise requires

"Act" means the Banking Act;

"branch" shall have the meaning assigned to the word in article 2 of the Act and, for the purposes of these regulations, includes a place of business which forms a legally dependent part of a credit institution and from which some or all of the activities for which the credit institution has been authorised are conducted. All the places of business set up in any one country by a credit institution whose head office is in Malta or in another country shall be regarded as a single branch;

"business of banking" shall have the meaning assigned to the words in article 2 of the Act;

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;

"competent authority" means the competent authority under the Act;

"credit institution" shall have the meaning assigned to the words in article 2 of the Act;

"deposit" shall have the meaning assigned to the word in article 2 of the Act;

"depositor" means any person who has entrusted a deposit to a credit institution, to the exclusion of persons listed in the First Schedule;

"Depositor Guarantee Scheme Reserve" shall have the meaning assigned to it in paragraph 5 of the Second Schedule;

"designated currency" means the currency of any EEA State;

"EEA state" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the

Interpretation.
Amended by:
L.N. 35 of 2006;
L.N. 227 of 2009.
Cap. 371.

Cap. 204.

2nd May 1992, as amended by the protocol signed at Brussels on 17th March 1993, and as amended from time to time;

"eligible deposit" shall have the meaning assigned to it by regulation 18;

Cap. 330.

"Financial Services Tribunal" means the tribunal established in terms of the Malta Financial Services Authority Act;

S.L. 370.09

"Management Committee" means the Compensation Schemes Management Committee established under regulation 3 and 5 of the Investor Compensation Scheme Regulations;

"participant" means a credit institution participating in the Scheme in terms of regulation 11;

"the Scheme" means the Depositor Compensation Scheme established under regulation 3;

and the words and expressions which are also used in the Act shall have the same meaning as in the Act.

Establishment of the Depositor Compensation Scheme.
Amended by:
L.N. 35 of 2006.

3. (1) There shall be established a Depositor Compensation Scheme.

(2) The Scheme shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Act and of these regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purposes of its functions, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing or being sued and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions.

(3) The Scheme shall be managed and administered by and be under the general control of the Management Committee.

(4) The legal and judicial representation of the Scheme shall vest in the chairperson of the Management Committee:

Provided that, and without prejudice to the foregoing, the Management Committee may vest any one or more of its members or of the officers or agents of the Scheme with legal or judicial representation.

(5) For the purpose of enabling the Scheme and the competent authority to carry out their respective functions, the Scheme and the competent authority may share and exchange information, and shall otherwise consult and collaborate with one another.

Functions of the Scheme.
Amended by:
L.N. 35 of 2006.

4. (1) Without prejudice to any other power or function conferred on it by these regulations or by any other law, it shall be the function of the Scheme:

(a) to maintain a fund or funds out of which payments shall be made to depositors and to meet such other payments or expenses as may be paid out of the fund or funds in accordance with these regulations;

(b) to establish and maintain, after consultations with the competent authority, arrangements for the making of

payments to depositors in accordance with these regulations;

- (c) to process claims for compensation by depositors as expeditiously as possible and to ensure that compensation is paid out without undue delay; and
- (d) to advise the competent authority on matters relating to compensation of depositors.

(2) The objective of the Scheme is to provide a means of protection for depositors within the framework of these regulations. All the members of the Management Committee shall work in the best interest of the Scheme and shall pursue and promote its objective.

5. The Management Committee shall be composed and regulated by the provisions of regulations 3 and 5 of the Investor Compensation Scheme Regulations.

Composition of the Management Committee.
S.L. 370.09

6. (1) The Management Committee shall have the power to enter into such reasonable administrative and other expenses as may be necessary to enable it to fulfil its functions under these regulations.

Powers and duties of the Management Committee.
Amended by:
L.N. 227 of 2009.

(2) The Management Committee may place contributions made by participants in terms of regulation 12 and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(3) The Management Committee may take out insurance policies, borrow or otherwise incur indebtedness on behalf of the Scheme for the purposes of the Scheme's functions, in any way and under any terms it may consider appropriate.

(4) The Management Committee shall cause proper books of account to be kept so that the financial position of the Scheme can be ascertained with reasonable accuracy at any time.

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

(6) In exercising its powers and duties, the Management Committee shall be bound to safeguard and take into account the general interests of depositors entitled to claim under these regulations.

7. Without prejudice to regulation 6(1) the Management Committee shall enter into such investment management and administrative support agreements as may be approved by the competent authority.

Investment management and administrative support agreements.

8. (1) The Management Committee shall prepare annual forecast statements of the expected costs and revenues of the Scheme, and shall make available such forecast statements to all participants upon request.

Publication of financial statements.
Amended by:
L.N. 35 of 2006;
L.N. 227 of 2009.

(2) The Management Committee shall submit to the competent authority an annual report on the discharge of its functions and on the operation of the Scheme within five months from the financial year end of the Scheme. Such annual report shall include, *inter*

alia:

- (a) a statement showing the payments in and payments out of the Scheme during its immediate previous financial year;
- (b) a statement showing the results of regular tests of internal systems undertaken by the Scheme; and
- (c) annual audited financial statements prepared in accordance with International Accounting Standards.

(3) The annual report shall be made available on the websites of the competent authority and the Scheme.

(4) The books of accounts shall be kept at such place as the Management Committee thinks fit.

Meetings of the
Committee.
S.L. 370.09

9. The meetings of the Management Committee shall be convened and held in accordance with regulation 9 of the Investor Compensation Scheme Regulations.

Source and
application of
funds.

10. (1) In terms of regulation 4, the Scheme shall establish and maintain a fund or a number of funds out of which payments shall be made in accordance with these regulations.

(2) The sources of funding shall include:

- (a) contributions levied from participants of the Scheme by the Management Committee;
- (b) money paid as administrative fees by all participants, as may be prescribed;
- (c) money received as income from the investment of the assets of the fund;
- (d) money borrowed by the Management Committee for the purposes of the Scheme;
- (e) money received by the Management Committee on any insurance policy it takes out; and
- (f) any other money required to be paid in to the fund or funds, received or recovered by the Management Committee for the purposes of the Scheme.

(3) There shall be paid out of the fund or funds:

- (a) money determined by the Management Committee as compensation for depositors;
- (b) money required for the repayment of (or interest on or charges in connection with) any money borrowed or for the payment of premia on any insurance policies taken out, for the purposes of the Scheme;
- (c) the costs incurred in administering and managing the Scheme; and
- (d) any other money paid out by the Management Committee for the purposes of the Scheme.

(4) The Management Committee shall hold, manage and apply the fund or funds in accordance with these regulations.

11. (1) Every credit institution which is licensed in Malta under the Act to accept deposits from depositors held in any designated currency shall participate in and contribute to the Scheme, including a branch of a credit institution operating in another state:

Participants.
Amended by:
L.N. 35 of 2006;
L.N. 227 of 2009;
L.N. 109 of 2010.

Provided that a branch of a credit institution operating in Malta which is licensed in a non-EEA state shall participate in and contribute to the Scheme, unless the Scheme has in force an agreement with the authority responsible for the management and administration of the scheme in that other state stipulating, *inter alia*, that the level or scope of cover provided for depositors in that state is equal or exceeds the level or scope of cover in Malta:

Provided further that a branch of a credit institution operating in Malta which is licensed in an EEA state may, at its own option, participate in and contribute to the Scheme only where the level or scope of the Scheme in Malta exceeds the level or scope of cover provided in the EEA state in which it is licensed.

(2) The Scheme may enter into a bilateral agreement with any authority responsible for the management and administration of a scheme set up in any other country stipulating, *inter alia*, the level or scope of cover as well as the rules and procedures to be followed for the payment of compensation to depositors, and in any such case, the guiding principles set out in Annex II of Directive 94/19/EC of the European Parliament and of the Council of 30th May 1994 on deposit guarantee schemes shall, where appropriate, apply.

(3) Participation in the Scheme does not exclude the possibility that particular credit institutions may have to participate also in another compensation or similar schemes set up under a different law and governed by another competent authority or other body, in Malta or abroad.

(4) When a credit institution becomes a participant in the Scheme after the coming into force of these regulations, it shall pay contributions and establish a Reserve in the manner established in the Second Schedule.

(5) The funds constituting the Reserve shall become payable to the Scheme upon the happening of any of the following events:

- (a) where the competent authority makes a determination in terms of regulation 13(1);
- (b) where a participant ceases to be licensed under the Act for any reason whatsoever;
- (c) whenever the Management Committee directs that all or part of the funds constituting the Reserve be paid to the Scheme in terms of regulation 16.

(6) In the cases referred to in sub-regulations (1) to (4), the Scheme shall co-operate with similar schemes set up in any other country.

12. (1) Participants shall pay such contributions to the Scheme as prescribed in the Second Schedule, and these contributions shall not be refundable.

Contributions to the Scheme.
Amended by:
L.N. 35 of 2006.

(2) Participants may be requested to pay to the Scheme such reasonable administrative fees as may from time to time be prescribed by the Management Committee.

Determination.
Amended by:
L.N. 227 of 2009.

13. (1) Where -

- (a) it appears to the competent authority that a participant is unable, for the time being, for reasons which are directly related to its financial circumstances to meet its obligations arising from claims by its depositors and to have no early or foreseeable prospect of being able to do so, or has otherwise suspended payment; or
- (b) in respect of a credit institution which has its head office in Malta an order has been made by the Courts of Malta for its winding-up or liquidation under the laws of Malta;

whichever is the earlier, the competent authority shall make a determination to that effect 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.

(2) The competent authority may, by way of banking directives, establish those circumstances or criteria which it may consider in arriving at a decision as to whether it will make a determination in terms of subregulation (1).

(3) As soon as practicable after a determination is made, the competent authority shall inform the Management Committee in writing of such determination. The Management Committee may take additional measures it deems necessary or appropriate within its powers under these regulations.

(4) The competent authority shall, as soon as possible, inform any other compensation scheme relating to financial services activities, as may be established under any other law and regulated by other competent authority or other body, which it believes may be effected by such determination.

(5) In making a determination in accordance with subregulation (1), the competent authority shall have regard to any report of officers or agents authorised by it on the state of affairs of the credit institution, and any other information in its possession.

Application for
compensation.
Amended by:
L.N. 227 of 2009.

14. (1) On being informed by the competent authority that a determination has been made under regulation 13(1), the Management Committee shall publish a notice in at least two local newspapers, informing depositors of the credit institution concerned of such determination and of the manner in which claims supported by documentary evidence are to be submitted.

(2) The right of a depositor for compensation shall not be forfeited if the depositor is able to prove that he was unable to assert his right to compensation within any prescribed time-limits as may be provided by the Management Committee.

(3) The Management Committee may, following an application

for compensation being made to it by a depositor, accept or refuse to provide compensation in accordance with these regulations.

(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.

(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).

15. (1) The Management Committee shall make its own administrative arrangements for verifying claims. These arrangements shall include:

Verification of claims.

- (a) providing an application form for claimants both in English and in Maltese;
- (b) providing for the exercise of the Management Committee's right of subrogation under regulation 22; and
- (c) requiring claimants to give:
 - (i) their identity and address;
 - (ii) the capacity in which they claim;
 - (iii) evidence of the eligible deposits as defined in regulation 18; and
 - (iv) any other information as may be required by the Management Committee.

(2) The Management Committee may refuse to make a payment for compensation until the claimant informs the Management Committee as to the capacity in which he is the beneficial owner of the deposit and provides satisfactory documentary evidence and information to allow the Management Committee to determine the amount of compensation payable.

(3) The Management Committee may decide to delay payment to a claimant until determination of any criminal charge brought against the claimant, depositor, or any person entitled to or interested in respect of an eligible deposit under the provisions of the Prevention of Money Laundering Act or a corresponding law of a country outside Malta.

Cap. 373.

(4) Where in the opinion of the Management Committee circumstances so warrant, the Management Committee may effect part payments to claimants eligible for compensation under these regulations.

When funds appear to be inadequate.
Substituted by:
L.N. 227 of 2009.

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.

Limit of compensation.
Amended by:
L.N. 35 of 2006;
L.N. 425 of 2007;
L.N. 227 of 2009.

17. (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.

(2) In calculating the amount of compensation to be paid out in terms of subregulation (1), all computations shall be made in the currency of the depositor's eligible deposit and all payments of compensation shall be made in the same currency as the depositor's eligible deposit.

Eligible deposits.
Amended by:
L.N. 35 of 2006;
L.N. 227 of 2009.

18. (1) For the purposes of these regulations, "eligible deposits", in relation to a depositor with a credit institution, means the aggregate liability of the credit institution to such depositor, including, as the case may be, any interest or premium accrued thereon in an account or accounts held in Malta in any designated currency or in a branch of a licensed credit institution other than in Malta.

(2) For the avoidance of doubt, "eligible deposits" shall not include the following:

- (a) an "interbank deposit", that is a deposit with a credit institution by other credit institutions on its own behalf and on its own account;
- (b) part of the participant's own funds within the meaning of any banking directive issued by the competent authority to regulate own funds; and
- (c) deposits made by the categories of persons indicated in List A of the First Schedule.

(3) In this regulation and in regulation 19, the term "depositor" shall not include the categories of persons indicated in List B of the First Schedule.

Compensation payable.
Amended by:
L.N. 227 of 2009.

19. (1) In calculating the amount of eligible deposit, the Management Committee shall take account of any legal and contractual conditions attached to the respective deposits and shall deduct from the total liability of the credit institution:

- (a) any payments made to the depositor from a depositor compensation scheme elsewhere in respect of such liability;
- (b) any payments made to the depositor under a policy of professional indemnity insurance held by the credit institution in respect of such liability;

- (c) the amount of any liability of the depositor to that credit institution in respect of which a right of set-off against the said deposit existed immediately before the notice of determination issued in terms of regulation 13 or in respect of which such a right would have existed had the said deposit been repayable on demand and such liability fallen due immediately before the issue of such a notice of determination; and
 - (d) any payments made under any other law, whether in Malta or abroad, in respect of such liability.
- (2) Without prejudice to the aforesaid -
- (a) any right of set-off shall only be possible where claims are properly documented, can be settled easily, are not subject to dispute and were established well before the notice of determination issued in terms of regulation 13;
 - (b) any compensation in respect of an eligible deposit shall only be payable as and when the deposit becomes due.

20. (1) Only persons falling within the definition of "depositor" in regulation 2 may make a claim against the Scheme in terms of these regulations. A depositor may only submit one claim in respect of all his deposits taken in aggregate with the credit institution concerned.

Claimants.
Amended by:
L.N. 35 of 2006.

(2) The categories listed in the First Schedule are excluded from claiming under the Scheme.

(3) The Scheme shall provide for the payment of compensation in respect of claims arising out of a participant's inability to repay money owed to or belonging to depositors and held on their behalf in connection with banking business.

(4) A depositor may not claim against more than one scheme in respect of a single claim. Where a claim has been made under two or more compensation schemes, the Management Committee shall conclusively determine under which scheme the claimant is eligible for compensation.

(5) Claims shall be made in such form, and shall be accompanied by such documentation or information, as the Management Committee may determine and make public from time to time.

21. Where the Management Committee is of the opinion that a depositor is not eligible for compensation in whole or in part in terms of these regulations, the Management Committee shall give notice in writing to such depositor of that opinion and the reasons therefor.

Claims.

22. (1) Where the Scheme has made a payment to a claimant, the Scheme shall be subrogated to the rights and remedies of that claimant against the credit institution.

Subrogation.

(2) Prior to payment, depositors shall confirm in writing to the Management Committee that:

- (a) they have not received any payment from any other scheme or from the credit institution concerned in respect of the same loss;
- (b) they will provide any assistance the Management Committee may require to enable the Management Committee to exercise its rights and remedies against the credit institution; and
- (c) their rights and remedies against the credit institution in respect of the claims paid shall be subrogated in favour of the Management Committee.

Joint ownership.

23. (1) Where two or more persons are jointly entitled to an eligible deposit, each of these persons shall be treated as having a separate deposit of an amount produced by dividing the amount of the deposit to which such persons are jointly entitled by the number of persons so entitled, unless there exists specific evidence or special contractual provisions determining the particular entitlements of such persons in which case such evidence shall be taken into account in determining their entitlements.

(2) Where a person is acting as trustee or nominee for one or more persons under a deed of trust or other similar agreement, the eligible deposit comprising the claim shall be deemed to belong to the beneficial owners equally, unless there exists specific evidence or special contractual provisions determining the beneficial interests of such persons in which case such evidence shall be taken into account in determining their entitlements, and provided in any event that ownership is proved to the entire satisfaction of the Management Committee.

Consumer information.

24. The Management Committee shall ensure that the general public is adequately informed about the operation of the Scheme arrangements.

Availability of information and advertisements.
*Substituted by:
L.N. 227 of 2009.*

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.

26. (1) The Management Committee may request participants, either directly or through the competent authority, to provide such information which the Management Committee may consider relevant for the proper administration of the Scheme, within a period of time as may be established by the Management Committee. The request may be addressed to the participant or to any of its directors or officials who are in possession of such information.

Power of the Management Committee to obtain information.
Amended by:
L.N. 425 of 2007.

(2) Without prejudice to any other provision of these regulations, a participant or any director or official thereof, who fails to comply with the Management Committee's request for information within the period of time established by the Management Committee in terms of subregulation (1), or who knowingly or recklessly furnishes information, or makes a statement which is inaccurate, false or misleading in any material respect, shall be liable to an administrative penalty not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) as may be imposed by the competent authority by means of a notice in writing and without recourse to a court hearing.

(3) Where an administrative penalty has been imposed by the competent authority in terms of subregulation (2), an appeal shall lie to the Financial Services Tribunal in accordance with articles 10 and 35A of the Act.

27. (1) Members of the Management Committee and persons appointed under regulation 6(1) shall be subject to the provisions of the Professional Secrecy Act and shall keep confidential any information obtained by them in the course of performing their duties under these regulations, and shall not reveal any information to any person, credit institution, association or entity except as may be allowed by these regulations or any other law or by Court order.

Confidentiality.
Cap. 377.

(2) The duty of confidentiality shall not be contravened in the case of:

- (a) exchange of information between the Management Committee and competent authorities in other countries, or the competent authorities for the management and administration of corresponding schemes in other countries, provided that the relevant information is necessary for the discharge of their duties under these regulations; and
- (b) any use or disclosure as may be required to enable the

Management Committee and its officers or agents to perform their duties and carry out their functions under these regulations.

Failure to comply with obligations.

28. (1) Where a credit institution fails to comply with its obligations under these regulations, the Management Committee shall notify and consult with the competent authority and shall agree on the appropriate measures to be taken by the competent authority, including the imposition of penalties, to ensure that the credit institution complies with such obligations.

(2) If these measures fail to secure compliance on the part of the credit institution, the Management Committee shall report the matter to the competent authority for any further measures to be taken at law, including the possible restriction or withdrawal of the credit institution's licence.

(3) After the restriction or withdrawal of a licence, cover shall continue to be provided in respect of eligible deposits effected up to the date of restriction or withdrawal.

Procedures to investigate complaints.

29. The Management Committee shall establish and maintain adequate internal procedures to investigate complaints against it by credit institutions and by depositors.

Power to issue directives.

30. (1) The competent authority may issue banking directives to credit institutions for the purposes of these regulations.

(2) Such banking directives may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purpose of these regulations.

Exemption from liability for damages.

31. The Management Committee and officers or agents of the Scheme shall not be liable in damages for anything done or omitted in the discharge of functions under these regulations unless it is shown that the act or omission was in bad faith.

Financial year end of the Scheme.

32. The financial year end of the Scheme shall be an accounting period of twelve months ending on the thirty-first day of December of each year.

Audit.

33. The accounts of the Scheme shall be audited in accordance with International Standards on Auditing by auditors appointed by the Management Committee from among persons who are qualified to be appointed as auditors of a company under the law for the time being in force in Malta.

Cooperation with other authorities.

34. The competent authority and the Management Committee shall consult the relevant competent authorities and the persons responsible for compensation schemes in other countries outside Malta and seek to reach agreement with those authorities and persons about:

- (a) the procedures to be followed if a participant defaults;
- (b) the amounts of compensation payable, after deductions if any, under each scheme; and
- (c) any other aspect which is deemed appropriate for the

proper management and administration of the schemes.

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.

Exchange of information.
Added by:
L.N. 227 of 2009.

(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.

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.

Information to be provided by the Minister.
Added by:
L.N. 227 of 2009.

37. (1) The Management Committee established under regulation 3 of the Investor Compensation Scheme Regulations, and the Management Committee referred to in these regulations are one and the same. The Management Committee referred to in these regulations shall continue in the personality of the Management Committee established immediately before the coming into force of these regulations and accordingly shall succeed to all its rights and obligations.

Transitory provisions.
Re-numbered by:
L.N. 227 of 2009.
S.L. 370.09

(2) All appointments, decisions, contributions, claims, payments or other acts made or taken under the Deposit Guarantee Scheme Regulations, 2003, before the coming into force of these regulations shall continue in force and shall be deemed to have been made or taken under these regulations, and any reference in any law to the Management Committee shall be deemed to be a reference to the Management Committee established under regulation 3 of the Investor Compensation Scheme Regulations.

L.N. 7 of 2003.

S.L. 370.09

*Substituted by:
L.N. 35 of 2006.*

FIRST SCHEDULE
Exclusions
(Regulations 2, 18, 20)

List A

The following are excluded from claiming under the Scheme:

1. Persons carrying on investment services within the meaning of the Investment Services Act, or equivalent or similar foreign legislation;
2. Credit institutions carrying on the business of banking within the meaning of the Act, or equivalent or similar foreign legislation;
3. Financial institutions within the meaning of the Financial Institutions Act, or equivalent or similar foreign legislation;
4. Insurance undertakings carrying on the business of insurance within the meaning of the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act, or under equivalent or similar foreign legislation;
5. Collective investment schemes;
6. Pension and retirement funds;
7. Companies which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to the Companies Act, or under equivalent or similar foreign legislation;
8. Governments and administrative authorities, national and international institutions;
9. Local and municipal councils or authorities;
10. Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes;
11. Persons holding accounts which do not disclose the depositor's identity;
12. Companies and commercial partnerships in the same group as the relevant credit institution;
13. Nominees, trustees or other third parties acting on behalf or in the interest of the persons referred to in this Schedule to the extent of the funds held in such capacity.

List B

The following are depositors who cannot make a claim under the Scheme:

1. Directors and managers of the relevant credit institution and members of the credit institution with personal liability, persons holding five percent or more of the capital of such credit institution, the auditors of the credit institution and persons of the same description with respect to a company forming part of the same group of companies as the credit institution;
2. Close relatives, that is, ascendants, descendants or the spouse of the persons referred to in paragraph 1;
3. Depositors who have any responsibility for or have taken advantage of certain facts relating to a credit institution which gave rise to the credit institution's financial difficulties or contributed to the deterioration of its financial situation;

4. Depositors in respect of transactions in connection with which a criminal conviction has been obtained for money laundering in terms of the Prevention of Money Laundering Act, or under equivalent or similar foreign legislation.

SECOND SCHEDULE
Contributions in terms of regulation 12

Amended by:
L.N. 35 of 2006.
Substituted by:
L.N. 425 of 2007;
L.N. 227 of 2009.
Amended by:
L.N. 109 of 2010.

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 of 0.1%.
- (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 of 0.67%.
- (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.
-