THE FINANCIAL SERVICES TRIBUNAL

Pierre Lofaro LL.D. – Chairman
Joseph Azzopardi FCCA, FIA, CPA, MBA (Warwick) – Member
Ivan Sammut Dip. Bus. Law & Acc., Adv. Trib. Eccl (Melit.), M.A. (Fin. Serv), LL D - Member

FST 03/2017

Fimbank plc (C 17003)

Vs.

The Depositor Compensation Scheme and The Malta Financial Services Authority

Today, Monday, the twenty-second (22nd) day of October of the year two thousand and eighteen (2018)

The Tribunal,

Having seen the appeal lodged by Fimbank plc ('the Appellant') on the 23rd of August 2017 wherein it submitted the following:

> "This is an appeal from an assessment of the Compensation Contribution for Year of Assessment 2017 (the "**Assessment**") issued to the Bank by the Depositor Compensation Scheme (the "**Scheme**") in terms of Regulation 27 of the Depositor Compensation Scheme Regulations, S.L.371.09 (the "**Regulations**"). The assessment was originally transmitted to the Bank by email dated 13 July, 2017 attached herewith as **Doc. FIM1**), and following representations made by the Bank was confirmed by means of a decision transmitted to the Bank by means of a second email dated 25 July 2017 (representations and decision attached herewith as **Doc. FIM 2**). The appeal is being filed in terms of regulation 27(10) of the Regulations, in terms of Article 10 of the Banking Act, Cap. 371 of the Laws of Malta, and in terms of Article 21 of the Malta Financial Services Authority Act, Cap. 330 of the Laws of Malta.]
>
> **A. The Assessment**
>
> 1. In its Assessment the Scheme decided that the Appellant was required to pay the amount of €8,490,919 as Compensation Contribution (the "**Assessment Amount**").

2. Regulation 25(3) of the Regulations provides that the Compensation Contribution "*shall be based on the amount of covered deposits (excluding temporary high balances) of each member and the degree risk incurred by each member.*"

3. In terms of the same Regulation, the annual Compensation Contributions shall be determined by the Scheme for each member having regards to:

   – *The applicable percentage of the covered deposits of the Scheme's members as specified in Regulation 23(2)* – this is set at 1.3%

   – *The covered deposits of each Scheme member at the end of the year immediately preceding the relevant financial year:* the Bank's covered deposits amounted to €623,584,782 as at 31 December 2016 as set out in the Assessment

   – *The degree of risk incurred by each Scheme member by reference to an aggregate risk weight in terms of regulation 25(5) for the year immediately preceding the relevant financial year:* the degree of risk incurred by the Bank in accordance with the Scheme's calculations and the Risk Weight Average (RWA) amounted to 83.21% as set out in the Assessment;

   – *An adjustment coefficient in terms of Regulation 25(6):* this was set by the Scheme for all Scheme Members at 1.258767646 as set out in the Assessment.

4. In terms of the Assessment, the Bank was required, amongst others, to pay the Assessment Amount by not later than 30 days from the date of the notification as sent by email, namely, by the 13 August 2017.

5. The said amount was duly paid in order not to incur any regulatory sanction but without prejudice to the rights of the Bank to bring forward this current appeal.

B. Reconsideration of Assessment Procedure

1. The Bank felt aggrieved by the Assessment and it proceeded to request the Scheme to reconsider such Assessment in terms of the following sub-sections of Regulation 27:

   (3) A member which is aggrieved by any such assessment may request the Scheme to reconsider such assessment.

   (4) A request for reconsideration shall be made within thirty days from notification of the assessment and may not be made concurrently with an appeal.

   (5) The request for reconsideration shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended.

   The request for reconsideration was sent to the Scheme by email on the 14 July 2017 (**Doc. FIM 3**).

2. Following an email by the Bank to the Scheme sent on the 19 July 2017 requesting acknowledgment and feedback on the Bank's request for reconsideration, the Bank received an email from the MFSA on the same date acknowledging receipt and informing the Bank that the MFSA was analysing the contents of the email and that it would inform the Bank of the outcome (**Doc. FIM 4**).
3. By email dated 25 July 2017, the Scheme informed the Bank, inter alia, that "*the Scheme does not* agree that it should amend the contribution calculation.*" It also requested the Bank to effect the contributions and to amend the pledge agreements relative to payment commitment by the 13 August 2017 (already attached as **Doc. FIM2**).

   [* "not" was inadvertently omitted from the Scheme's email.]

4. As requested in the Assessment and as required by Regulation 29(2) and (3), the Bank paid the following:

Actual additional Cash Contribution paid (31%)	€2,245,258.11
Payment Commitment (69%)	€4,728,301.00

   In its email to the Scheme dated 8 August 2017 (**Doc. FIM5**), the Bank informed the Scheme that "*whilst the estimated amount is being paid to the DCS by the stipulated deadline, the difference between the requested amount and the amount which would require revision is being paid under protest.*"

5. By an email also dated 8 August 2017, the Bank informed the Scheme that unless further communication is received from the Scheme by close of business of the 9 August 2017, the Bank was assuming that the Scheme's email of the 25 July 2017 is tantamount to a formal refusal by the DCS of the Bank's request for reconsideration and that the Bank has therefore exhausted its rights to reconsideration of such assessment. The Bank added that "*our right to appeal against this assessment in terms of Regulation 27(10) of the Depositor Compensation Scheme Regulations is hereby being reserved.*" (**Doc. FIM6**)

6. In light of the above, the Bank is therefore appealing against the Assessment Amount after having exhausted its right to a reconsideration of the Assessment as required by Regulation 27(9).

BASIS OF THE APPEAL

Article 21 (9) of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta) referred to in Regulation 27(10) of the Regulations reads as follows:

> *(9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –*
>
> *the competent authority has, in its decision wrongly applied any of the provisions of this Act; or*
>
> *the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:*

For the reasons explained below, and as will be explained in further detail during the proceeding before the Tribunal, in reaching the Assessment the Scheme abused its discretion. In addition, the Decision is also manifestly unfair.

Abuse of Discretion and a Manifestly Unfair Decision [Article 21 (9) (b) of the MFSA Act]

The use of administrative discretion by Government and public regulators under Administrative law has been is one of the key guarantees for the protection of the rights every individual citizen or in this case regulated entity. The judicial review (by quasi-judicial tribunals like the Financial Services Tribunal and/or the Courts of Law) of administrative actions is the best expression of Constitutional checks and balances in the preservation of the rights of individual regulated entities.

"Abuse of Discretion" under Article 21(9)(b) of the MFSA Act does not only include the evident cases of direct violation of the law or performance of acts which the Scheme was not at law authorised to perform but also decisions reached on the basis of wrong or irrelevant considerations. There is substantial Maltese and English Public law case-law on the interpretation and definition of abuse of discretion which will be submitted to the consideration of the Tribunal in these proceedings.

In this particular case, an analysis on whether the decision taken by the Scheme and communicated to the Bank constituted an "abuse of discretion" requires a thorough review of the facts, including a detailed analysis of the Bank's total deposits on the relevant date, the historical data in the Scheme's possession as well as in the possession of the MFSA and an analysis of whether on the basis of that data it was reasonable for the Scheme to take the appealed decision.

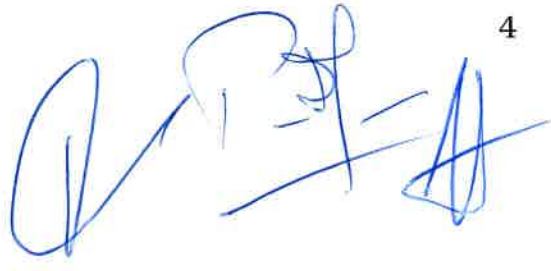
Entities governed by public law are answerable not only for the ultimate effect of their decisions but also for the methodology and reasoning applied in reaching such decisions.

The Appellant humbly submits that these are the facts that ought to have been considered by the Scheme in arriving at the appealed decision:

1. The balance of the covered deposits held by the Bank as at 31 December 2016 was the result of a deposit-raising effort undertaken during 2016 to increase retail deposits from the German market. Indeed, between 31 December 2015 and 31 December 2016, the covered deposits increased from €99,010,233 as at 31 December 2015 to €623,584,782 as at 31 December 2016, primarily as a result of this effort.

2. During the first half of 2017, the Bank has taken a decision to reduce its deposits, also spurred by discussions held with the MFSA, during which the MFSA expressed concern in correspondence with the Bank "*with regard to the significant growth in household deposits from other EU countries*". The MFSA commented that "*while it is acknowledged that this financing strategy enables the bank to materially lower its cost of funding, improve liquidity ratios and de-risk ... , such a strategy may constitute a threat from a macro-prudential perspective in view of pressures on the local Depositor Compensation Scheme.*" The Bank was urged by the MFSA to take any necessary action to start ameliorating its CET 1 capital ratio, with a view to reaching a level indicated by the MFSA as being more commensurate with the Bank's risk profile.

3. As a matter of fact, during the first 6 months of 2017 leading to 30 June 2017, the balance of covered deposits gradually and consistently reduced by €141 million (23%) to €482,115,416 (at 30 June 2017). As indicated to the MFSA in a letter dated 7 July 2017, the Bank expects this balance to reduce even further as it aims to reduce reliance on this deposit source and shift funding to other sources. The level of covered deposits at 31 December 2016 was therefore transitory and will not reach those levels again in the foreseeable future.



4. Whilst Directive 2014/94/EU on deposit guarantee schemes (the "**Directive**") provides that contributions to a deposit guarantee scheme should be based, amongst others, on the amount of covered deposits, neither the Directive nor the EBA Guidelines on methods for calculating contributions to the Deposit Guarantee Scheme (the "**Guidelines**") specify a reference point in time as at which covered deposits are to be calculated. This has therefore left to the discretion of the local regulators. Indeed, regulators have treated this differently – some regulators, like the MFSA opted for calculation by reference to the end of the preceding year whilst others refer to an average level of covered deposits derived from the average of the end-quarter figures for that year. The Bank acknowledges that the Regulations base the contribution on the balance of the covered deposits at the preceding end-of financial year. But this is exactly where the exercise of administrative discretion is reviewed by the Tribunal and/or a Court of Law. Given the Regulations, the guidelines, the data in the possession of the Scheme, the extensive knowledge which the Scheme and the MFSA have of the Appellant Bank's liquidity and regulatory situations, was it reasonable to arrive at the decision which is being appealed? The Appellant Bank humbly submits that the answer is in the negative.

5. The Appellant submits that this calculation on the balance of covered deposits as at end December 2016 is penalising the Bank twice and thus creating an unfair situation for the following reasons:

(i) The balance as at 31 December 2016 was transitory and was actually reduced significantly primarily also to mitigate against macro-prudential risks as noted above – the payment on the basis of the Assessment was therefore based on a significant amount of deposits which are no longer held by the Bank;

(ii) The payment on the basis of the Assessment covered a level of deposits which will not be reached in the foreseeable future – this is therefore an unnecessary financial cost on the Bank as the latter cannot derive income from a significant amount of deposits which have already been repaid to the deposit holders.

6. The Appellant humbly submits that these two facts were **known** to the Scheme and the MFSA and should have formed the basis upon which the appealed decision had to be taken. Failure to consider these two crucial factors would render the decision completely detached from the "relevant considerations" which should inform every public body in the exercise of its administrative discretion and would vitiate any such decision rendering it an "abuse" of administrative discretion in classic judicial review case-law.

7. To the contrary, in its reply to the Bank's request for reconsideration of the Assessment, the Scheme commented that "*if the institution's covered deposits do decrease by December 2017, then in the next year's contribution Fimbank would not be required to top-up the contribution besides the fact that the institution would also be eligible to refund some of its Payment Commitment amount. In fact, if covered deposits remain at the €482 million level as at the end of 2017 and 2018, the excess contributions made in 2017 will almost be rectified in 2018, and will disappear in 2019.*"

8. In response to this, the Appellant submits that:

(i) Indeed, the intention of the Bank is to reduce the deposits, [and these have to-date already reduced as indicated above], and it acknowledges that it will not be required to top-up the contribution: in the meantime, the financial cost has already been incurred by the Bank with no corresponding income having been derived;

(ii) Reference to the Payment Commitment is not per se relevant in the context of this issue – as set out in the table included in Regulation 25(8), the proportion between contribution "in cash" and Payment Commitment is automatically determined by the law. By way of example, the maximum Payment Commitment of 74.5% in 2016 automatically reduces to 69.00% and to 63.5% in 2017 and 2018 respectively, while the contribution "in cash" increases accordingly to 31% and 37.5% in 2017 and 2018 (and so on until 2024);

(iii) Saying that the excess contributions are "rectified" by 2018 or 2019 is not, in the Appellant's view neither correct nor fair – when the Bank was asked to make the payment, such payment was in 2017 and it was not intended, nor do the Regulations require it to be intended to cover the situation of deposits in 2018 and 2019. In other words, arguing that this is similar to "payment in advance" is tantamount to penalising the Bank.

The Appellant also wishes to clarify that the amount paid in excess by the Bank does not in any manner impinge on the Bank's liquidity or otherwise on the Bank's operations. The Appellant's request for reconsideration of the Assessment as well as this Appeal has been spurred by considerations of a fair and equitable treatment towards the Bank - on the one hand the Bank has been reducing its deposits, also in line with guidance and recommendations by the Regulator, on the other hand, the Bank is being requested to effect a contribution on the basis of deposits which are no longer with the Bank, thus making the Bank incur a financial cost which is not even being covered by the income from these deposits.

C. Request

For all the above reasons, and for other reasons that may be brought in accordance with law in this appeal, the Appellant respectfully submits that the Scheme should be requested:

i) to review the Assessment, such that the Bank's of covered deposits for YOA 2017 reflect the level of deposits at 30 June 2017 and the contribution would accordingly be based on covered deposits of €482,115,416 (at 30 June 2017) instead of €623,584,782 (at 31 December 2016).

ii) to reduce the Assessment Amount to €6,564,628 (which amount is made up of both Cash Contribution and Payment Commitment);

iii) Consequently to refund the Appellant, in terms of Regulation 29(3) of the Regulations, the amount of €1,926,289 (split between Cash Contribution and Payment Commitment) which is the amount paid in excess by the Appellant

and this without prejudice to any other measures and remedies that the Appellant may wish to pursue in terms of the law"

Having seen the reply of the Depositor Compensation Scheme ('the Scheme') whereby it rebutted the Appellant's appeal as follows:

"That the appeal lodged by the appellant FIMBANK plc from the assessment of the Compensation Contribution for Year of Assessment 2017 (the "Assessment") issued by the Depositor Compensation Scheme (the "Scheme") is unfounded in fact and at law and is to be rejected by this Honourable Tribunal.

That the said assessment was issued and calculated strictly in accordance with the provisions of the Depositor Compensation Scheme Regulations - Subsidiary Legislation 371.09 (the "DCS Regulations) and the arguments brought by the appellant to reduce the assessment amount are totally incorrect and would amount to a blatant breach of the said Regulations.

That before responding in detail to the ground of appeal brought forward by the appellant it is to be noted that the objective of the DCS Regulations is to implement **Directive 2014/49/EU** of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes which, in its preamble, notes *inter alia* as follows:

(14) ***The key task of a DGS is to protect depositors against the consequences of the insolvency of a credit institution.*** *DGSs should be able to provide that protection in various ways. DGSs should primarily be used to repay depositors pursuant to this Directive (the 'paybox' function).*

That in order to ensure that depositors are adequately protected as required by the Directive, the DCS Regulations clearly lay down the financial means which should be maintained by the Scheme (Regulation 23), the compensation contribution which is to be paid by credit institutions (Regulation 25), and the Regulations also empower the Scheme to require members to pay the said contribution. Applying the criteria laid down in Regulation 25, the appellant is required to pay the sum stated in the Scheme's assessment as compensation contribution for the Year of Assessment 2017.

The appellant does not contest the legality or applicability of the criteria applied by the Scheme to determine the compensation contribution, and in fact there is no suggestion to this effect in the appeal. However, in its appeal application the appellant bank argues that the Scheme has abused its discretion and has made a manifestly unfair decision, this being in fact the legal basis of the appeal.

That in this connection it suffices to note that the appeal cannot be entertained since in the present case the Scheme enjoys no discretion and there can therefore be no abuse of discretion. Indeed the amount of compensation contribution is fixed by the criteria set out in the DCS Regulations and the Scheme does not enjoy any discretion to vary or change the criteria to determine the compensation due by members as set out by law. From a juridical perspective, therefore, the decision of the Scheme can never be considered to be a case of abuse of discretion or a manifestly unfair decision since it is the law (i.e. the DCS Regulations) that sets out the criteria and relevant date to be applied in order to determine the compensation contribution due by members of the Scheme. Public law case-law on abuse of discretion finds no application here, and indeed the appellant has not cited any jurisprudence to demonstrate how a decision taken strictly according to law could somehow constitute an abuse of discretion. If appellant considers the criteria set out in the DCS Regulations to be abusive and unfair then it should have challenged the Regulations themselves but appellant certainly cannot, in the circumstances, request the review of an assessment made according to law on grounds of abuse of discretion or manifest unfairness by the Scheme.

That the DCS Regulations clearly stipulate that the calculation of the compensation contribution depends on the preceding financial year (2016) and not on the value of the covered deposits of the current year (2017). In fact, Regulation 25(3)(b) states that *"the annual compensation contributions shall be determined by the Scheme for each member having regard to: ... (b) the covered deposits of each member at the end of the year immediately preceding the relevant financial year."* Thus, for the purposes of determining the compensation contribution payable to the Scheme this year, the values of covered deposits in 2017 is juridically irrelevant and the Scheme was correct to apply the figure of

Euro 623,584,782 being the appellant's covered deposits as at 31st December 2016. Indeed Regulation 25(1) of the DCS Regulations provides that *"the Scheme may require members to pay a Compensation Contribution at least once in every financial year, commencing from the financial year ending 31 December 2016"* and Regulation 27(1) provides that "*The Scheme shall assess at least once in every financial year the Compensation Contribution for each member in respect of the relevant financial year in accordance with the Compensation Contribution method."* For the purposes of these provisions and the DCS Regulations generally, financial year means *"the financial year of the Scheme which shall be an accounting period of twelve months ending on the thirty first day of December of each year"* (Regulation 2). This is also reflected in Regulation 22(3) of the DCS Regulations which states that *"a member shall by notice to the Scheme by the end of January of each year provide a statement of its total covered deposits (excluding temporary high balances),* ***at the end of the preceding financial year*** *for the purpose of determining the member's contribution for the relevant financial year."*

That it is important to point out at this juncture that the term *"temporary high balances"* used in Regulation 22(3) does not mean temporary high deposits which a bank may decide to raise for reasons of its own choosing, but has a specific meaning assigned to it by Regulations 2 and 11 of the DCS Regulations. Indeed, according to Regulation 2, the term *"temporary high balance"* means *"in relation to a depositor who is an individual, that part of an eligible deposit in excess of EUR 100,000 which meets the additional criteria set out in regulation 11."* Hence, the argument made by the appellant bank that it had a high balance of deposits as at 31 December 2016 which was only temporary is completely misleading and unfounded at law. Indeed, the argument of the appellant that *"the balance of the covered deposits held by the Bank as at 31 December 2016 was the result of a deposit-raising effort undertaken during 2016 to increase retail deposits from the German market"* and that *"the bank has taken a decision to reduce its deposits, also spurred by discussions held with the MFSA"* (see page 5 of the appeal) has no juridical relevance here since what is relevant to determine the compensation contribution to the Scheme is whether the deposits were *covered deposits* and not whether the bank intended to hold the covered deposits it raised temporarily or indefinitely. The temporary nature of the deposit is only relevant from the point of view of the depositor who is an individual, and must fall within the definition of Regulation 11 which is not the case here. Once the deposits were covered deposits and are not within the scope of Regulation 11, then a compensation contribution to the Scheme as per the DCS Regulations on the balance as at the end of December 2016 is due and payable to the Scheme in 2017 and it is not possible to avoid payment thereon by saying that the bank has taken a decision to reduce or has reduced deposits during 2017. If covered deposits do decrease by the end of December 2017, then Regulation 28 of the DCS Regulations ensures that the calculation of the contributions for the following year should take into account previous contributions, where contributions raised prove either more or less than the amount actually due in accordance with the DCS Regulations.

That it is humbly submitted further that the compensation contribution cannot be recalculated using a different value of covered deposits than the one as at the end December 2016 since the available financial means of the Scheme must amount to 1.3% of the covered deposits of its members as at December 2016 (see Regulation 25 and Regulation 23 of the DCS Regulations). It is therefore not possible to change the value of the covered deposits of appellant bank to the amount of deposits in 2017 as argued by the appellant since this would in turn change the total target fund needed for the year, which in turn also effects the contribution of all the other members of the Scheme.

That furthermore it is to be noted that, in accordance with the Regulations 23(6) of the DCS Regulations, the Scheme has already informed the European Banking Authority on

31st March 2017 of the amount of covered deposits of all its members in Malta as at 31st December 2016.

That finally, as admitted by the appellant itself, Directive 2014/94/EU on deposit guarantee schemes in no way prevents the setting of a reference point in time as at which covered deposits are to be calculated. The DCS Regulations base the contribution on the balance of the covered deposits at the end of preceding financial year and since the Regulations are valid for all purposes of law, so much so that appellant never challenged them, it follows that the Scheme was obliged by law to apply the Regulations and that the compensation contribution must be calculated in accordance with the said legislation. It is not applying the DCS Regulations which would have been abusive and illegal on the part of the Scheme, not the opposite.

That, therefore the Scheme considers that no valid grounds have been brought to amend the compensation contribution due by the appellant FIMBANK plc.

Conclusion

That in the light of the foregoing, and while reserving the right to make any further submissions as may be necessary, it is the respondent's humble view that this Honourable Tribunal should reject the appellant's appeal with costs against the appellant FIMBANK plc."

Having seen the reply of the Malta Financial Services Authority ('the Authority') whereby the Authority submitted the following:

"**Preliminary Pleas**

1. By means of this appeal the Appellant is contesting and appealing from the assessment of the Compensation Contribution for the Year of Assessment 2017 (the "**Assessment**") issued to the Bank by the Depositor Compensation Scheme in terms of the Depositor Compensation Scheme Regulations (S.L. 371.09) (the "**Regulations**"). These Regulations were issued by the Minister responsible for Finance. The Bank is a member of the Scheme in terms of regulation 7 of the Regulations.

2. The Bank is licensed by the Authority as a credit institution in terms of article 5 of the Banking Act (Cap. 371) and, in terms of the said Act, it carries out the business of banking. By virtue of this licence, there exists a relationship of a regulatory and supervisory nature between the Bank and the Authority and any involvement by the Authority in the affairs of the Bank stems from and is limited to this relationship – the Authority's involvement does not extend to the making of the Assessment which is the subject-matter of this appeal – as will be explained below, it is the Scheme that makes this Assessment.

3. The Depositor Compensation Scheme, which is established under regulation 4 of the Regulations, is "*a body corporate having a distinct legal personality*" and as such it is an entity which is completely separate and distinct from the MFSA and a separate legal person from the MFSA.

4. According to the appeal application, the Assessment was originally transmitted by the Scheme to the Bank by an email dated 13 July 2017. In its Assessment, the Scheme decided that the Appellant was required to pay the amount of €8,490,919 by way of Compensation Contribution for the Year of Assessment 2017. Following the submission to the Scheme of a request for reconsideration and representations made by the Bank to the Scheme, the said Assessment was confirmed by the Scheme by means of a decision notified to the Bank via email on the 25 July 2017.

5. According to regulation 27 (1) of the Regulations, the Scheme shall assess at least once in every financial year the Compensation Contribution for each member participating in the Scheme (thus including the appellant Bank) in respect of the relevant financial year in accordance with the Compensation Contribution method. It is therefore amply clear that it is the Scheme that makes the Assessment, not the Authority. Therefore, what the Appellant is appealing from is a decision/assessment of the Scheme and not of the Authority. The decision/assessment that is being appealed from was clearly not taken by the Authority – consequently in this case there exists no decision of the Authority that could constitute an abuse of discretion or that could be manifestly unfair.

6. The wording of the appeal submitted by the Appellant also reflects that which is stated in the foregoing paragraph – i.e. that the Assessment is determined and decided upon by the Scheme and not by the Authority. In this respect, particular reference is made to the section in the appeal entitled "Basis of the Appeal" whereby the Appellant itself states as follows: "*in reaching the Assessment, the Scheme abused its discretion.*" Other such references to the "decision of the Scheme"[1] can be found throughout the appeal submitted by the Appellant[2]. Furthermore, the requests to the Tribunal made by the Appellant in Section C of their appeal are all related to the Scheme and its Assessment - rightly so because the MFSA can in no way itself review or reduce the Assessment made by the Scheme.

7. Regulation 27(10) of the Regulations in fact clearly provides that an appeal against an assessment of the contribution "*shall be filed against the Scheme and made to the Financial Services Tribunal...*". According to this same provision, it is only in those instances where the appeal is contesting the risk factor established in the determination of the Compensation Contribution that the appeal would also need to be filed against the MFSA.

8. In the present case, the Appellant is not contesting the risk factor established in the determination of the Compensation Contribution. What the Appellant is contesting is the fact that in calculating the Bank's Compensation Contribution, the Scheme had regard to the covered deposits of the Bank as at the end of the year immediately preceding the relevant financial year (something which the Scheme is required to do in terms of regulation 25(3)(b)). This is clearly stated by the Appellant in its appeal: "*The Appellant submits that this calculation on the balance of covered deposits as at end December 2016 is penalising the Bank twice and thus creating an unfair situation...*".

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[1] Appeal, page 4: "*In this particular case, an analysis on whether the decision taken by the Scheme and communicated to the Bank constituted an "abuse of discretion...*".

[2] See Section A, paragraphs 1 and 3; Section B, paragraphs 1 and 3; page 4, last paragraph.

9. Therefore, the Authority respectfully submits that it is clear that the appeal should not have been filed against it in the first place and that it is consequently a non-suited party to this appeal.

10. For the reasons explained above, the Authority respectfully requests the Tribunal to declare the MFSA to be a non-suited party to this appeal and to decide on this preliminary plea before proceeding to hear the appeal on the merits.

Conclusion

11. Accordingly, and for all the reasons explained above, the MFSA respectfully requests this Tribunal to declare that the MFSA is not a suited party to this appeal.

12. Should the Tribunal find that the Authority is a suited party to this appeal:

- the Authority respectfully reiterates that it cannot be held responsible or accept responsibility for a decision/assessment which was taken by the Scheme – nor can the Authority in any way itself review or reduce the Assessment made by the Scheme;
- rejects as completely unfounded the allegations, if any, made in its regard, reserves its right to submit any evidence as may be necessary in the course of proceedings and respectfully requests this Tribunal to reject the Appellant's appeal as made in its regard and all its requests with all legal costs to be borne by the Appellant."

Having seen the minutes of the sittings which were held by the tribunal, the transcripts of the evidence which was tendered before it, the documents which were filed by the parties and all the acts of the proceedings, including the parties' submissions in writing.

Having seen that, at the end of the last sitting, the tribunal adjourned the case for today for its decision.

The tribunal makes the following considerations:

In a nutshell the Appellant is contesting an assessment whereby it was required to pay the sum of €8,490,919 as compensation contribution to the Scheme for the year 2017 on the grounds that the decision establishing the assessment resulted from an abuse of discretion by the assessing authority or that this decision is manifestly unfair.

The Authority is defending itself by submitting that:

(a) *"...the appeal should not have been filed against it ... and that it is consequently a non-suited party to this appeal"*; and

(b) Should the Tribunal find that the Authority is a suited party to this appeal:

- *the Authority respectfully reiterates that it cannot be held responsible or accept responsibility for a decision/assessment which was taken by the Scheme – nor can the Authority in any way itself review or reduce the Assessment made by the Scheme;*

- *rejects as completely unfounded the allegations, if any, made in its regard, reserves its right to submit any evidence as may be necessary in the course of proceedings and respectfully requests this Tribunal to reject the Appellant's appeal as made in its regard and all its requests with all legal costs to be borne by the Appellant."*

The Scheme is pleading that there was no abuse of discretion on its part nor was its decision manifestly unfair, as the rules establishing how an assessment is made do not allow it any latitude in working out the compensation contribution payable to it by a member for a particular year.

The tribunal considers that it would be expedient at this stage to reproduce the salient articles of the law which are relevant to this appeal.

These are found in:

(a) The Depositor Compensation Scheme Regulations (S.L. 371.09) (hereinafter referred to as 'the Regulations') established under the Banking Act, (Cap. 371); and

(b) The Malta Financial Services Authority Act, (Cap. 330).

The aim of the Regulations '*is to implement the relevant provisions of Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes .....*'[3] ('the Directive').

The main aim of the Directive is to protect depositors against the consequences of the insolvency of a credit institiution.

Regulation 4 establishes the Depositor Compensation Scheme as

> "a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Banking Act and of those regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purpose 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] Regulation 1(2)

The Scheme is managed and administered by and is under the general control of a Management Committee[4] composed of the same persons appointed in virtue of Regulations 3 and 5 of the Investor Compensator Scheme Regulations[5]

According to Regulation 7:

> 'A credit institution which is licensed in Malta under the Banking Act, other than a branch established in Malta by a credit institution which has its head office outside the European Union, shall participate in the Scheme'.

Regulation 22(3) imposes the following obligation on a member of the Scheme:

> "A member shall by notice to the Scheme by the end of January of each year provide a statement of its total covered deposits (excluding temporary high balances), at the end of the preceding financial year for the purpose of determining the member's contribution for the relevant financial year".

The phrase 'financial year' is defined in Regulation 2 as meaning '*the financial year of the Scheme which shall be an accounting period of twelve months ending on the thirty-first day of December of each year*'.

Regulation 24 states that:

> "The Scheme may at any time require members to pay the following contributions:
>
> (a) Compensation Contribution;
> (b) Management Expenses Contribution.

Regulation 25 deals with the Compensation Contribution. The relevant parts of this regulation are the following:

> "(1) Subject to regulation 23 (2)[6], the Scheme may require members to pay a Compensation Contribution at least once in every financial year, commencing from the financial year ending 31 December 2016 .....

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[4] Regulation 5(1)

[5] Regulation 5(2)

[6] Regulating 23(2) states:

(2) The available financial means of the Scheme shall amount to 1.3% of the covered deposits of its members, or such higher percentages as may be established by banking rules pursuant to regulation 42:

Provided that:

(a) where the financing capacity falls short of such target level, the payment of contributions shall resume at least until the target level is reached again;

(b) if the available financial means have been reduced to less than two-thirds of such target level, the regular contribution shall be set at a level allowing such target level to be reached within six years;

(3) The Compensation Contribution (including any extraordinary Compensation Contribution) shall be based on the amount of covered deposits (excluding temporary high balances[7]) of each member and the degree of risk incurred by the respective member.

Provided that a member may be required to pay a minimum contribution under a Compensation Contribution irrespective of the amount of its covered deposits or its degree of risk.

For the avoidance of doubt and saving the provisions of these regulations, the annual compensation contributions shall be determined by the Scheme for each member having regard to:

(a) the applicable percentage of the covered deposits of its members as specified under regulation 23(2);

(b) the covered deposits of each member at the end of the year immediately preceding the relevant financial year;

(c) the degree of risk incurred by each member by reference to an aggregate risk weight in terms of regulation 25(5) for the year immediately preceding the relevant financial year; and

(d) an adjustment coefficient in terms of regulation 25(6).

(4) Subject to the provisions of sub-regulation (3), the competent authority shall by banking rules establish:

(a) a method (hereinafter referred to as the "risk-based method") for determining the degree of risk incurred by members;

(b) a method (hereinafter referred to as the "Compensation Contribution method") for determining the amount of Compensation Contribution due by each member in each financial year:

Provided that:

(i) the competent authority may review or amend any risk-based method or Compensation Contribution method, account being taken where appropriate of any guidelines which may be issued by the European Banking Authority;

(c) the regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of these regulations.

[7] Regulation 2 states that: "'temporary high balance' means, in relation to a depositor who is an individual, that part of an eligible deposit in excess of Eur100,000 which meets the additional criteria set out in regulation 11."

(ii) the competent authority shall inform the European Banking Authority about the risk-based method.

(5) The competent authority shall determine at least once in every financial year the Aggregate Risk Weight for each member (ARWi) in accordance with the risk-based method for the purpose of determining the compensation contribution in respect of the relevant financial year.

(6) The competent authority shall determine at least once in every financial year the Adjustment Coefficient (μ) for all members with the aim of reaching the target level whenever the total risk-adjusted contributions would be too high or too low for the purpose of determining the compensation contribution in respect of the relevant financial year.

(7) Every member shall provide to the competent authority the information required for the determination of the Aggregate Risk Weight of that member.

(8) Subject to the provisions of regulation 23(3), the Scheme may provide that a portion of a Compensation Contribution be provided to the Scheme by means of a payment commitment:

Provided that by reference to the financial year shown in the first column, the total portion of payment commitment shall not exceed the percentage shown in the second column:

Financial Year	Payment Commitments (maximum)
2016	74.50%
2017	69.00%
2018	63.50%
2019	58.00%
2020	52.50%
2021	47.00%
2022	41.50%
2023	36.00%
2024	30.00%

(9) The competent authority may issue banking rules in order to review and amend the effective date or percentages indicated in sub-regulation (8).

Regulation 27 regulates, *inter alia*, the manner by which a member may contest the assessment of a compensation contribution. The relevant parts of this regulation to this appeal are the following:

27. (1) The Scheme shall assess at least once in every financial year the Compensation Contribution for each member in respect of the relevant financial year in accordance with the Compensation Contribution method.

(2) The Scheme shall give notice to each member about the amount of its Compensation Contribution, the risk factor established in the determination of that contribution and the amount of its Management Expenses Contribution in respect of any relevant financial year. The obligation of the member towards the Scheme in respect of its Compensation Contribution for any relevant financial year shall be deemed to arise on the date of such notice.

(3) a member which is aggrieved by any such assessment may request the Scheme to reconsider such assessment.

(4) A request for reconsideration shall be made within thirty days from notification of the assessment and may not be made concurrently with an appeal.

(5) The request for reconsideration shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended.

(6) On receipt of a request for reconsideration, the Scheme may require the member making the request to furnish such information as the Scheme may deem necessary.

(7) In the event that the Scheme accedes to the request for reconsideration or otherwise the member agrees with the Scheme as to the amount of the contribution or any relevant risk factors, the assessment shall be amended accordingly, and notice of the amount of contribution payable or the risk factors established shall be notified upon such member.

(8) if no agreement is reached, the Scheme shall assess the amount of the contribution payable and any relevant risk factors in writing, and give notice thereof to the member:

Provided always that in the event of any member who has applied for a reconsideration, failing to agree with the Scheme on such assessment, its right of appeal against the assessment, shall remain unimpaired.

(9) A member may not appeal against an assessment of the contribution or any relevant risk factors unless it has first exhausted its right to a reconsideration of such assessment.

(10) An appeal shall be filed against the Scheme and made to the Financial Services Tribunal in accordance with article 10 of the Banking Act, within thirty days of service of the notice to the member of the notice of the assessment referred to in sub-regulation (8). In those instances where the appeal is contesting the risk factor established in the determination of the contribution, the appeal shall also be filed against the competent authority. The request for an appeal shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended. The Financial Services Tribunal shall have all the powers conferred upon it by article 21 of the Malta Financial Services Authority Act.

(11) An appeal on a question of law only from a decision of the Financial Services Tribunal shall lie to the Court of Appeal in its superior jurisdiction. An appeal shall be made by not later than twenty days from the date of the decision of the Financial Services Tribunal. In the determination of such an appeal, the Court of Appeal shall be constituted in terms of Article 41(6) of the Code of Organisation and Civil Procedure. An appeal from a partial decision of the Financial Services Tribunal may only be filed together with an appeal from the final decision of the Financial Services Tribunal.

Regulation 28(1) (2) and (3) are also relevant to this appeal. They state:

28. (1) The calculation of contributions shall take into account previous contributions, where contributions raised prove either more or less than the amount actually due in accordance with these Regulations.

(2) The Scheme may adjust the calculation of a member's share of any contribution to take proper account of any or all of the following:

(a) any excess or shortfall, not already taken into account, between previous contributions of the same type assessed in relation to previous financial years and the relevant contributions actually due in that financial year;

(b) amounts that the Scheme has not been able to recover from members for any reason whatsoever;

(c) payments deferred under regulation 30;

(d) anything else that the Scheme believes on reasonable grounds should be taken into account.

(3) The Scheme may reduce, remit, or refund any overpaid contributions paid by a member in respect of any particular calendar year, or adjust the calculation of a member's share of any contribution, wherever there is a mistake of law or of fact, unless the reduction, remit, refund or adjustment is in respect of a contribution which is prescribed in accordance with regulation 29(9).

The relevant provision of the Malta Financial Services Authority Act, Cap. 330, is sub-article 21 (9) which states:

The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

Provided further that no appeal shall lie from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) and from any reprimand, warning or other similar disciplinary sanction or measure.

The tribunal will start by considering the preliminary plea raised by the Authority; that is, that this appeal should not have been filed against the Authority and that the Authority is consequently a non-suited party.

The Authority states that:

(1) The Appellant is a credit institution licensed by it and carries on the business of banking. As such the Appellant is a member of the Scheme.

(2) By virtue of the aforementioned licence, there exists a relationship of a regulatory and supervisory nature between the Scheme and the Authority.

(3) However, this regulatory and supervisory relationship does not extend to the making of the assessment, which is the subject matter of this appeal.

(4) The assessment is made by the Scheme which is a body corporate having a distinct legal personality from the Authority and, therefore, the appeal should have been lodged solely against the Scheme.

(5) The Authority backs its stance by stating that:

(i) The assessment was made by the Scheme;

(ii) It was the Scheme which transmitted the assessment to the Appellant;

(iii) The Appellant submitted a request for the reconsideration of the assessment to the Scheme;

(iv) According to regulation 27(1), the Scheme shall assess at least once in every financial year the compensation contribution payable by each member in accordance with the compensation contribution method;

(v) Since the assessment is not made by the Authority, the Authority cannot be accused of having abused its discretion or that it made a manifestly unfair decision;

(vi) The Authority does not have the power to review or reduce an assessment made by the Scheme; and

(vii) Regulation 27(10) provides that an appeal against an assessment *"shall be filed against the Scheme and made to the Financial Services Tribunal ..."*. According to this provision, it is only in those instances where an appellant is contesting the risk factor established in the determination of the compensation contribution that the appeal has to be filed against the Authority as well. In the present case, the Appellant is not contesting the risk factor established in the determination of the compensation contribution.

On its part, the Appellant maintains that the Authority is equally and jointly responsible with the Scheme for the issue of the assessment and its subsequent reconfirmation. It supports its stance by submitting the following:

(1) There is communication between the Scheme and the Authority throughout the process which culminates in the issue of the assessment and therefore in practice, the Authority forms an integral part of the decision making body determining the assessment. The evidence produced demonstrated that the Authority received the initial working for 'checking' from the Scheme; the

Authority sent the workings back to the Scheme for the latter to make certain changes; therefore the Scheme sought the Authority's final confirmation of the assessment before it proceeded to issue it to the Appellant.

(2) The Regulations themselves are replete with instances where the two entities act in close cooperation. In this regard the Appellant refers to Regulation 25(1), Regulation 25(5) and 25(6), Regulation 36(1), Regulation 23(1) and Regulation 22(1).

(3) Throughout the process leading up to the issue of the assessment, the Authority was fully cognisant of the extraordinary situation concerning the Appellant's deposit situation which would lead to an unrealistic amount of compensation contribution being requested from the Appellant. The Authority had been in discussions with the Appellant regarding its deposits situation and the Appellant's strategy to seek to significantly reduce its deposits was spurred by the requirements being imposed on it by the Authority.

(4) When rebutting the Authority's argument that an appeal is to be filed against both the Authority and the Scheme only in those cases where an appellant was contesting the risk factor established in the determination of the compensation contribution, the Appellant declared that it is contesting the assessment *in toto* as both the Authority and the Scheme were responsible to exercise the necessary discretion of the situation particular to the Appellant and its deposits as the Authority forms an integral part of the decision making process in the determination of the assessment.

It is the tribunal's opinion that the relevant provision of the law, namely Regulation 27, is very clear on the preliminary plea raised by the Authority.

Assessments are made by the Scheme. They are notified to members by the Scheme. A member aggrieved by an assessment may request the Scheme to reconsider it. If the member is not satisfied by the Scheme's reconsideration the member may lodge an appeal against the Scheme to this tribunal. In those instances where the member is contesting the risk factor established in the determination of the compensation contribution, the appeal has to be filed against the Authority as well.

The determination of the Authority's preliminary plea, therefore, boils down to the answer to the following question: Is the Appellant contesting the risk factor element of the compensation contribution for the Year of Assessment 2017?

The answer to this question lies in the Appellant's request.

Verbatim, the Appellant's request is the following:

For all the above reasons, and for other reasons that may be brought in accordance with law in this appeal, the Appellant respectfully submits that the Scheme should be requested:

(i) to review the Assessment, such that that the Bank's of[8] covered deposits for YOA 2017 reflect the level of deposits at 30 June 2017 and the contribution would accordingly be based on covered deposits of €482,115,416 (at 30 June 2017) instead of €623,584,782 (at 31 December 2016).

(ii) to reduce the Assessment Amount to €6,564,628 (which amount is made up of both Cash Contribution and Payment Commitment);

(iii) Consequently to refund the Appellant, in terms of Regulation 29(3) of the Regulations, the amount of €1,926,289 (split between Cash Contribution and Payment Commitment) which is the amount paid in excess by the Appellant

and this without prejudice to any other measures and remedies that the Appellant may wish to pursue in terms of the law.

Nowhere is the risk factor element mentioned. The Appellant's request is limited solely to the date which is to be taken into account in order to establish the amount of its covered deposits for the purpose of computing the assessment of its compensation contrtibution for the Year of Assessment 2017.

The tribunal, therefore, concludes that the Authority is correct in maintaining that this appeal should not have been filed against it and that it is consequently a non-suited party.

Moving on to the merits of the appeal, limitedly as far as the Scheme is concerned, the Appellant is alleging that the assessment of its compensation contribution for the Year of Assessment 2017 as computed by the Scheme is not correct and that in computing it the Scheme abused its discretion or made a manifestly unfair decision.

On its part, the Scheme is maintaining that in establishing the compensation contribution due to it by the Appellant for the Year of Assessment 2017 (a) it neither abused its discretion, indeed there was no discretion involved as *'the amount of compensation contribution is fixed by the criteria set out in the DCS Regulations and the Scheme does not enjoy any discretion to vary or change the criteria to deternine the compensation due by members as set out by law'*, nor (b) was its decision in establishing the compensation contribution a manifestly unfair one.

After having exhausted its right to a reconsideration by the Scheme, as provided in Regulation 27(3), the Appellant, in pursuance of the right granted to it by Regulation 27(10), lodged this appeal to the tribunal.

Regulation 27(10) states that in determining such an appeal this tribunal '*shall have all the powers conferred upon it by article 21 of the Malta Financial Services Authoirty Act*'.

[8] The wording is defective.

Article 21(9) of the Malta Finacial Sevices Authority Act states:

> The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –
>
> (c) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or
>
> (d) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:
>
> Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:
>
> Provided further that no appeal shall lie from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) and from any reprimand, warning or other similar disciplinary sanction or measure.

Once more, in determining this part of the appeal, the tribunal refers to the precise wording of the Appellant's request, namely:

> For all the above reasons, and for other reasons that may be brought in accordance with law in this appeal, the Appellant respectfully submits that the Scheme should be requested:
>
> i) to review the Assessment, such that that the Bank's of[9] covered deposits for YOA 2017 reflect the level of deposits at 30 June 2017 and the contribution would accordingly be based on covered deposits of €482,115,416 (at 30 June 2017) instead of €623,584,782 (at 31 December 2016).
>
> ii) to reduce the Assessment Amount to €6,564,628 (which amount is made up of both Cash Contribution and Payment Commitment);
>
> iii) Consequently to refund the Appellant, in terms of Regulation 29(3) of the Regulations, the amount of €1,926,289 (split between Cash Contribution and Payment Commitment) which is the amount paid in excess by the Appellant
>
> and this without prejudice to any other measures and remedies that the Appellant may wish to pursue in terms of the law.

Therefore, the issue to be determined by the tribunal is whether the Scheme abused its discretion or reached a manifestly unfair decision when it based its computation of the compensation contribution due to it by the Appellant for the Year of Assessment 2017 on covered deposits of €623,584,782 as these stood on the 31st of December 2016.

[9] See the preceding footnote.

The Appellant and the Scheme agree that the Appellant is a credit institution which is licensed in Malta under the Banking Act and therefore, in accordance with the provisions of Regulation 7, the Appellant is obliged to participate in the Scheme.

Regulation 22(3) imposes on the Appellant, as a member of the Scheme, the obligation to provide by notice to the Scheme by the end of January of each year a statement of its total covered deposits (excluding temporary high balances), at the end of the preceding financial year for the purposes of determining its compensation contribution for that preceding financial year.

There is no contention between the Appellant and the Scheme that the end of a financial year in such matters is the 31st of December.

The financial year which is the subject of this appeal is the one which ended on the 31st of December 2016.

According to Regulation 25(3) the annual compensation contributions shall be determined by the Scheme for each member having regard to, *inter alia*, the covered deposits of each member at the end of the year immediately preceding the relevant financial year.

The Appellant admits that its covered deposits as at 31st December 2016 stood at €623,584,782. However, it is maintaining that the Scheme should have determined its compensation contribution for the Year of Asssesment 2017 on the sum of €482,115,416, that is its covered deposits as these stood on the 30th of June 2017 because:

(a) The balance of covered deposits held by it as at 31st December 2016 was the result of a deposit-raising effort undertaken during 2016 to increase retail deposits from the German market.

(b) **During the first half of 2017**, it took a decision to reduce its deposits, also spurred by discussions and correspondence with MFSA which expressed concern with regard to the high level of covered deposits.

(c) The balance as at 31st December 2016 was therefore 'transitory' and would not be reached again in the foreseeable future as the Scheme and the MFSA were very well aware of.

The tribunal does not concur with the Appellant's reasons.

Regulation 25(3) is clear in stating that the annual compensation contribution shall be determined by the Scheme **having regard to, *inter alia*, the covered deposits of**

each member at the end of the year immediately preceding the relevant financial year.

Subject to what is stated in the penultimate paragraph of this decision, the law is not evisaging any other exceptions nor should the tribunal create them.

It very clear that the legislator intended to establish a specific day on which the amount of covered deposits of members of the Scheme is to be taken into account in order to establish their compensation contribution for a particular year. According to Regulation 25(1) and the meaning given to the phrase 'financial year' in Regulation 2 that day is the 31st of December. In the case before the tribunal it is the 31st of December 2016.

The 31st of December is a day specifically established by law which is applicable to all members of the Scheme and cannot be altered, not even by the Scheme, even more so by a subsequent event such as the Appellant's **decision during the first half of 2017**[10] to reduce its covered deposits. A contrary interpretation, such as the one being suggested by the Appellant, would lead to a situation where an annual compensation contribution for a particular year would not remain an annual compensation contribution for that particular year as envisaged by the law. It would be subject to revisions which take into account subsequent events to the detriment of the stable structure which the law clearly wants in place.

The tribunal, therfore, concludes that the Scheme did not abuse its discretion nor was its decision manifestly unfair when it based its computation of the compensation contribution due to it by the Appellant for the Year of Assessment 2017 on covered deposits of €623,584,782 as these stood on the 31st of December 2016.

Prior to concluding, the tribunal hereby clarifies that when Regulation 22(3) excludes temporary high balances from covered deposits it is not refering to situations similar to the one mentioned by the Appellant in this appeal. The phrase 'temporary high balance' has a specific meaning in the Regulations and refers to particular situations and circumstances which are alien to the issue being determined by the tribunal in this appeal[11].

For the above reasons the tribunal upholds the Authority's preliminary plea that this appeal sould not have been filed against it and that therefore it is a non suited party in these proceedings, upholds the Scheme's plea that in computing the compensation

[10] See page 5 of the appeal application and page 7 of the Appellant's note of submissions.
[11] See the definition of 'temporay high balance' in Regulation 2 which is reproduced in footnote 7.

contribution due to it by the Appellant for the Year of Assessment 2017 it did not abuse its discretion nor was its decision a manifestly unfair one and rejects all the Appellant's requests with costs against the Appellant.