

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Applicants for a Credit Institution licence in terms of the Banking Act, Cap 371**

In view of the recent crisis in the financial market, Financial Authorities are exercising more caution when accepting and reviewing applications for the setting up of new credit institutions. Consequently, a Policy paper was issued on 13<sup>th</sup> February 2012 regarding the recommendation for newly proposed credit institutions to have a bank of repute in the shareholding structure and/or the management structure.

One of the objectives of the MFSA is to limit the related systemic risk involved in newly proposed set-ups. Without prejudice to any requirements that the MFSA may consider applicable on a case by case basis, the MFSA may therefore require applicants for a credit institution licence to seek modes of acceptable funding which are not covered by the Deposit Compensation Scheme (DCS). Particularly so if the business model does not include the backing of another credit institution in the shareholding structure or a start-up bank.

#### Banking Act Implications

The Banking Act defines a “bank” or “credit institution” as an undertaking the business of which is to “*receive deposits or other repayable funds from the public and to grant credit for its own account*” (Banking Act Article 2; Directive 2006/48/EC Article 4).

In this respect, the Banking Act defines a ‘deposit’ as “*a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it*”. Furthermore, Article 2 (2) of the Banking Act is also relevant to the definition to “deposit”, as follows:

“(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

*Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute*

*acceptance of deposits of money for the purposes of this Act and any regulations or Banking Rules made thereunder.”*

### *Deposit Compensation Scheme Regulations*

Regulation 4(2) states that “the objective of the Scheme is to provide a means of protection for depositors with the framework of these regulations”

Regulation 2 defines a ‘**depositor**’ as “*any person who has entrusted a deposit to a credit institution, to the exclusion of persons listed in the First Schedule*”. The list in the First Schedule includes, inter alia, the government, group entities and other institutions licensed in terms of the Banking Act, Financial Institutions Act, the Insurance Business Act, Insurance Brokers and Other Intermediaries Act and/or the Investment Services Act.

A ‘**deposit**’ is also defined as having the same meaning as assigned to it in Article 2 of the Banking Act (reflected in the section above).

### ***Applicable Policy***

Where an applicant bank proposes a funding structure which does not have an impact on the local DCS, the MFSA may waive the normal requirement for the backing of another credit institution of repute in its shareholding structure. However, the Authority would still retain the right to apply more onerous regulatory requirements, where deemed applicable, after a thorough review of the institution’s proposed operations. Furthermore, any prospective applicants need to abide fully with the EU Capital Requirements legislation as well as any future changes thereto.

The above policy will be applied to all potential credit institutions which are applying to carry out the business of banking in terms of the Banking Act, as well as any of the activities listed in the Schedule to the same Act.

Furthermore, it should be noted that in order to ensure transparency and for consumers to be kept informed the MFSA will disclose on its website any restrictions of an institution’s licence.

*The above approach is without prejudice to the requirements for licensing arising from the Banking Act and/or any regulations and rules issued thereunder.*

**Communications Unit**  
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