

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Applicants for authorisation as Credit Institutions and Insurance Companies

1.1 The Malta Financial Services Authority has reviewed certain criteria regarding the licensing of credit institutions and insurance companies. Recent global financial crises have brought increasing demands on regulatory authorities to maintain financial stability, with increased focus on credit institutions as well as insurance companies. The widening of the grounds for recourse under the bank depositor compensation scheme and the insurance guarantee scheme have also required a further tightening of the licensing criteria to reduce exposure risks related to these schemes.

1.2 In the case of applicants seeking a licence for a credit institution – the current requirements as per Paragraphs 24D – G in Banking Rule /01 (Appendix 1) continue to apply and are also amplified with the following condition:

-“Where the applicant for business is from countries outside the EU intending to set up a branch or subsidiary, the MFSA will not entertain applications from institutions except from countries who are signatories to the Basle Concordat”.

1.3 In the case of applicants seeking authorisation as an insurer the policy as currently applicable for credit institutions (Appendix 1 refers) is also being adopted with some modifications / adjustments.

Accordingly in the case of applicants seeking authorisation as an insurer /reinsurer:

-Where the applicant for business is not authorised as a re/ insurer either in Malta or in its own country of origin, and is therefore not subject to supervision, in considering whether to grant authorisation, the MFSA may require an active participation by way of shareholding interest by a re/insurer or credit institution of repute or by any other entity involved in the provision of financial services regulated activities and which is regulated to a level satisfactory to the MFSA and whose activities are relevant in the context of the application in question.

This condition does not apply to applicants seeking authorisation to conduct business as an affiliated re/insurance company.

In the case of re/insurance companies which are not managed by an authorised insurance management company, the MFSA may also require an active participation by way of management from the required shareholding interest as per above¹. The level of participation is a matter at the discretion of the MFSA. In the case of participation by an insurance principal or re-insurer or credit institution or any other entity as described above, the MFSA would need to be satisfied that the latter are supervised by a home country competent authority that would capably perform consolidated supervision and is also able to exchange information on a timely basis.

Where, in any case, the re/insurer or other shareholding entity described above is not the ultimate parent but an intermediate entity/shareholder, the MFSA reserves the right to deal with both the applicant shareholder and its parent, as well as with their respective supervisory authorities.

Where the applicant for business is from countries outside the EU intending to set up a branch or subsidiary, the MFSA will not consider applications from institutions except from countries where the regulator of insurance business is a member of the International Association of Insurance Supervisors².

In the case of re/insurance companies, any participation by way of shareholding, from a number of insurance intermediaries regulated to a standard equivalent to the requirements set out under the Insurance Mediation Directive, rather than from re / insurance companies or credit institutions, will only be considered on a case by case basis.

1.4 Applicants for a credit institution licence should assume that the participation by another regulated entity by way of shareholding and/or active participation in the management of the proposed entity is applicable at the outset and may be waived by the MFSA on a case by case basis depending on the assessment carried out of the perceived risks involved in the proposal under consideration.

¹ Explanatory Note: Ordinarily shareholders involvement in the management of a regulated entity is not encouraged. However in terms of the above policy, the reference to 'participation by way of management from the required shareholding interest as per above' should be interpreted to mean participation in the management structure by the (i) *re/insurer* or (ii) *credit institution of repute* or (iii) *any other entity involved in the provision of financial services regulated activities and which is regulated to a level satisfactory to the MFSA and whose activities are relevant in the context of the application in question* – which the MFSA has required to participate in the shareholding structure after taking into account the factors outlined in paragraph 1.5.

² To note that any applicant will always have to go through the authorisation process and satisfy the applicable authorisation requirements, irrespective of the home regulator's membership of the IAIS.

The following factors will be taken into account by the MFSA in considering the waiver or otherwise of the participation referred to in Section 1.2 for the start-up of any credit institution:

- Shareholding structure
- Quality and track record of the management team - promoters ideally should demonstrate several years of competence with reputable institutions to the satisfaction of the MFSA
- The target market
- Due diligence investigations
- Capital structure being proposed
- Level and nature of business risk involved
- Impact on deposit compensation scheme

1.5 In the case of applicants for an re/insurance company licence, the participation by another regulated entity by way of shareholding and (in the case of insurance companies which are not managed) by active participation in the management of the proposed entity is applicable at the discretion of the MFSA, on a case by case basis, depending on the assessment carried out of the perceived risks involved in the proposal under consideration. The following factors will be taken into account by the MFSA in considering the waiving or otherwise of the participation referred to in Section 1.3 for start-up of insurance institutions:

- Shareholding structure
- Quality and track record of the management team - promoters ideally should demonstrate several years of competence/experience to be able to carry out their duties in an effective manner (with reputable institutions) to the satisfaction of the MFSA
- The target market
- Due diligence investigations
- Capital structure being proposed
- Level and nature of the business risk involved

1.6 The factors listed in 1.4 and 1.5 above should not be interpreted as an exhaustive list of aspects which may be taken into account by the MFSA when assessing the risk presented by a proposal. The MFSA reserves the right to impose any condition as may be deemed necessary. Each application is assessed on its own merits.

1.7 The level of participation by way of shareholding and / or management required remains the prerogative of the MFSA where this is considered necessary.

1.8 The MFSA may request any applicant to submit audited accounts prepared by one of the major audit firms in respect of any corporate shareholders in the proposed shareholding structure.

The above approach remains in force unless notified otherwise by the MFSA.

This approach is without prejudice to the requirements for licensing arising from the Banking Act and the Insurance Business Act and any regulations and rules issued thereunder.

Appendix 1

Banking Sector

The current Banking Rule 01:

-Paragraph 24D states that “where the applicant for business is not authorised as a credit institution, either in Malta or in its own country, and is therefore not subject to supervision, in considering whether to grant authorisation, the Authority may require an active participation both by way of shareholding interest and/or by way of management by an authorised credit institution of repute. The level of participation is a matter at the discretion of the Authority. In the case of participation by a foreign credit institution, the Authority will also apply the criteria established in paragraph 24B to that institution [i.e. the Authority would need to be satisfied that the credit institution is supervised by a home country authority that capably performs consolidated supervision and is able to exchange information on a timely basis]”.

-Paragraph 24E states that “ Where, in any case, the applicant credit institution is not the ultimate parent but an intermediate institution, the Authority reserves the right to deal with both the applicant institution and its parent, as well as with their respective banking supervisory authorities”.

-Paragraph 24F states that “Where either the parent or the intermediate institution is not itself a credit institution, the Authority will apply the minimum criteria as it deems appropriate to the relative case.

-Paragraph 24G states that: If the Authority establishes that these minimum criteria are not being met it could impose restrictive measures or outrightly refuse applications for a licence.

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