

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

BANKING SUPERVISION UNIT

FINANCIAL INSTITUTIONS RULES

*APPLICATION PROCEDURES AND REQUIREMENTS FOR
AUTHORISATION OF LICENCES UNDER THE
FINANCIAL INSTITUTIONS ACT 1994*

Ref: FIR/01/2011

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INTRODUCTION

1. In terms of Article 13(2) of the Financial Institutions Act 1994 ('the Act'), the competent authority ('the authority') as appointed under Article 12(1) of the Act may make Financial Institutions Rules as may be required to carry into effect any of the provisions of the Act. The Financial Institutions Rules and any amendment or revocation thereof shall be officially communicated to Financial Institutions and the authority shall make copies thereof available to the public, also through publication on the authority's website.
2. Article 13(4) of the Act empowers the authority to provide for different regulatory requirements through these Rules to be applicable to different classes of financial institutions licensed under the Act to ensure that business is conducted in a prudent and orderly manner. These requirements are set out in the Rule on Supervisory and Regulatory Requirements of Institutions authorised under the Financial Institutions Act 1994 (FIR/02).
3. The Rule on Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act 1994 (the Rule) is being made pursuant to Article 4 of the Act which requires the authority to publish its requirements for an application for a licence under the Act.
4. The Rule provides applicants with the procedures and requirements of the authority for the processing of applications. It also sets out a summary of the authority's interpretation of certain provisions of the Act most relevant to applicants.
5. In terms of Article 5(4) of the Act the authority may subject a licence issued under the Act to any regulatory requirements set out in the Rule on Supervisory and Regulatory Requirements of Institutions authorised under the Financial Institutions Act 1994 (FIR/02) or to any other such ancillary conditions as it may deem appropriate taking into consideration the activities listed in the Schedules to the Act as authorised in the licence.
6. It should be emphasised that the Rule must not be construed to be a substitute for a reading of the Act itself. The responsibility for observing the law rests entirely with the applicant(s) concerned. Potential applicants should therefore refer to the Act, read and understand its implications thoroughly and are also encouraged to seek legal advice to achieve this aim.

SCOPE AND APPLICATION

7. The Rule applies to all companies as defined in Article 2 of the Act desirous of carrying out any of the activities listed in the Schedules to the Act in or from Malta

and is based in part on the requisites of the EU Directive 2007/64/EC on payment services in the EU internal market and EU Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

8. A licence to carry out the business of a financial institution is subject to an annual fee as the authority may determine from time to time in accordance with Appendix I of the Rule.

DEFINITION OF BUSINESS OF FINANCIAL INSTITUTIONS

9. The definition of a financial institution as included in Article 2 of the Act establishes the business of a financial institution as the regular or habitual acquisition of holdings or the carrying out of any activity listed in the First Schedule to the Act for the account and at the risk of the person carrying out the activity.
10. Because some of these activities may be similar to those carried out by credit institutions authorised under the Banking Act 1994, the Act specifically makes a distinction on the method by which a financial institution funds its activities. A financial institution cannot fund its activities through the taking of deposits or other repayable funds from the public as defined in the Banking Act 1994. In this respect the authority recommends prospective applicants to read the Banking Rule 'Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994' (BR/01).
11. Various activities listed in the First Schedule to the Act might be more appropriately regulated under the Investment Services Act 1994 and would consequently require a licence under that Act.
12. The authority therefore recommends that prior to seeking a licence under the Act, prospective applicants should first consult the authority to establish whether their potential activities would seem to require a licence and whether such licence should be sought under the Act, the Banking Act 1994 or the Investment Services Act 1994.
13. Therefore, for the reasons defined in paragraph 10 above, a financial institution is an entity which may raise its funds, for instance, on the interbank market from credit or other financial institutions or from other professional market parties such as institutional investors and insurance companies. Accordingly, financial institutions, whether acting as payment service providers within the meaning of the Second Schedule to the Act (payment institutions) or issuing electronic money¹ within the meaning of the Third Schedule to the Act (electronic money institutions) or undertaking other activities licensable under the First Schedule to the Act, shall not be involved in deposit-taking. Payment institutions shall not issue electronic money unlike electronic money institutions which may engage in the provision of payment services². Financial institutions shall be permitted to grant loans, although it is explicitly prohibited to use customers' money to fund

¹ FIR/03 deals specifically with financial institutions issuing electronic money.

these loans. Apart from the activities mentioned, payment institutions would also be entitled to perform all operational and ancillary services necessary for the performance of payment services. These activities may include foreign exchange services, safekeeping activities, storing and processing data on behalf of undertakings or public institutions, and the operation of payment systems.

14. Article 3(2) of the Act defines activities which would not require a licence under the Act. The authority, however, recommends that any person carrying out or who intends to carry out similar activities is encouraged to seek proper legal advice and should consult the authority for it to establish, in terms of Article 3(3) of the Act, whether or not a licence is required for the intended activities.

14A. Consequent to the above, the activities listed below, are not licensable in terms of the Act as they are not deemed as being payment services licensable in terms of the Second Schedule to the Act:

(a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;

(b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;

(f) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;

(g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:

(i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(ii) paper cheques similar to those referred to in point (i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

- (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
- (iv) paper-based drafts similar to those referred to in point (iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
- (v) paper-based vouchers;
- (vi) paper-based traveller's cheques; or
- (vii) paper-based postal money orders as defined by the Universal Postal Union;
- (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to the Central Bank of Malta's oversight and regulation, of domestic payment systems in terms of the Central Bank of Malta Act (Cap. 04);
- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
- (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services;
- (k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- (l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;

(n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group; or

(o) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed in the Second Schedule to the Act.

15. Further to paragraph 9 above and without prejudice to Article 5(6) of the Act and paragraph 15A below, financial institutions shall not undertake unsolicited additional business activities that are not included in the Schedules to the Act, whether undertaken directly or indirectly. However, the Act permits financial institutions carrying out payment services and issuing electronic money respectively to engage in the provision of additional activities as laid down in the Second and Third Schedules.

15A. In view of paragraph 15 above, the authority expects financial institutions that are proposing to undertake any additional activities when these activities are either of a financial nature or deemed as being complementary to the activities included in the Schedules to the Act, to seek the authority's prior written authorisation. Such authorisation would be without prejudice to the financial institution obtaining any other appropriate authorisation that it may require under any other law of Malta. Furthermore, the authority may, in terms of Article 5(6) of the Act require the financial institution to carry out such additional activities through a subsidiary.

STATUTORY MINIMUM CRITERIA FOR AUTHORISATION

16. The statutory minimum criteria for authorisation, which the authority must be satisfied are fulfilled with respect to an applicant before granting a licence, are set under Article 5(1) of the Act.

17. A licence shall not be granted unless the initial share capital is in accordance with the principles established in paragraph 25 below. Furthermore, according to Article 5(1)(b) of the Act, at least two individuals must effectively direct the business of the financial institution in Malta (the "four-eyes" principle).

18. In order to be able to grant a licence under the Act, the authority must be satisfied that all qualifying shareholders, controllers and all persons who will effectively direct the business of the institution are suitable, fit and proper persons. These criteria go beyond questions of the suitability of particular individuals but entail the observance by the institution as a whole of the highest professional, ethical and business standards in conducting its activities in a prudent manner. In this respect, the authority draws the attention of prospective applicants to Article 24 of the Act.

19. In view of the above, for the authority's requirements to be satisfied, the applicant institution and other relevant parties are required to provide such information and documents which the authority requires to be submitted in connection with the application.
20. In exercising its discretion to grant a licence, the authority shall also consider the possibility of receiving adequate flows of information from the institution and relevant connected parties in terms of Article 14 of the Act in order to monitor the fulfilment of prudential criteria and to identify and assess any threats to the financial system in Malta.
21. In assessing the requirements of paragraph 20 above, the authority requires to be satisfied that the institution and the group to which it may belong could be subject to consolidated supervision. The authority will take account of any factor(s) which might inhibit such effective supervision.
22. Furthermore, the institution must have sound and prudent management, robust governance arrangements and adequate internal control mechanisms as is laid down in Article 5(1)(d) of the Act.
23. Article 5(1)(e) of the Act provides that the authority has to be satisfied that, where there are close links between the financial institutions and another person or persons, such links do not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of the institution itself under the provisions of the Act, other relevant legislation or any other Financial Institutions Rule.
24. The Act defines "close links" as follows:
- "close links" means a situation in which two or more persons are linked in any of the following ways:*
- (a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate;*
 - (b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in Article 2(2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or*
 - (c) permanently to one and the same third person by a control relationship;"*

INITIAL CAPITAL REQUIREMENTS

25. (1) The Act defines "initial capital" as:

“paid up capital and reserves as defined in a Financial Institutions Rule”.

Accordingly, for the purposes of this Rule, initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of BR/03.

(2) With respect to financial institutions licensed to carry out the activities found under the First Schedule to the Act (with the exception of activities 4 and 10), neither the Rule nor the Act establish a minimum or a set level of initial capital requirements in view of the fact that the risk profiles of the different types of financial institutions that can be licensed under this Act may result in considerable variation in the level of capital required to be held against such risk(s). Therefore, the initial capital of an applicant institution will be set by the authority on a case-by-case basis and will be commensurate with the level of risk pertaining to the number and type of activities proposed to be undertaken and as laid out in the business plan submitted by the prospective applicants.

(3) With respect to financial institutions licensed to carry out the activities found under the Second Schedule to the Act (i.e. those institutions carrying out solely activity 4 under the First Schedule to the Act), the authority shall require these types of financial institutions to hold, at the time of authorisation, initial capital as follows:

- (a) where the institution provides only the payment service listed in paragraph 2(f) of the Second Schedule to the Act, its capital shall at no time be less than €20,000;
- (b) where the institution provides the payment service listed in paragraph 2(g) of the Second Schedule to the Act, its capital shall at no time be less than €50,000; and
- (c) where the institution provides any of the payment services listed in paragraphs 2(a) – (e) of the Second Schedule to the Act, its capital shall at no time be less than €125,000.

(4) With respect to financial institutions licensed to carry out the activities found under the Third Schedule to the Act (i.e. those institutions carrying out solely activity 10 under the First Schedule to the Act), as indicated in paragraphs 18 and 28 of FIR/03, as may be applicable.

(5) With respect to financial institutions licensed to carry out the activities found under both the First Schedule to the Act and the Second or Third Schedule to the Act, the authority will, with respect to those activities found under the First Schedule to the Act (excluding activities 4 and 10), set a level of initial capital as it may require which will take into consideration the requirements of paragraph 25(2) above, while at the same time with respect to those activities found under the Second or Third Schedule to the Act, ensure that the institution complies with the requirements emanating from paragraphs 25(3) or 25(4) above.

26. The authority moreover draws the attention of applicants to the ongoing own funds requirements applicable to institutions carrying out activities falling under the Second and Third Schedule to the Act and which are required to be calculated in line with the requisite provisions found under Financial Institutions

Rules FIR/02 and FIR/03 respectively.

APPLICATION FOR AUTHORISATION

27. Article 4(1) of the Act requires that any company desirous of establishing the business of a financial institution operating in or from Malta shall, before commencing such business, apply in writing to the authority for a licence.

The application for a licence may be withdrawn by written notice to the authority at any time before it has been granted or refused.

28. Pursuant to Article 4(2) of the Act, the authority requires that all applications for a licence shall be filed in accordance with its official application forms as applicable, and shall be accompanied by:

- (a) a programme of operations, setting out in particular the type of activities envisaged to be undertaken;
- (b) a copy of the Memorandum and Articles of Association of the proposed institution;
- (c) proposed level of initial capital (subject to paragraph 25 above);
- (d) a business plan including the structure, organisation, management systems, governance arrangements and internal control systems of the institution which demonstrates that these arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate; and a forecast budget calculation (financial projections) for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly. The plan shall incorporate all relative financial information required by the authority to enable it to establish the initial capital requirement, in terms of paragraph 25 above. Moreover, the business plan should also include a description of the measures to be taken to safeguard payment service users' funds in line with conditions laid down in paragraph 56;
- (e) a description of the internal control mechanisms which the applicant will establish in order to comply with obligations in relation to money laundering and terrorist financing under the Money Laundering and Terrorist Financing under the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations;
- (f) a description of the structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of participation in a national or international payment system. For the purposes of this sub-paragraph and (d) above, the applicant shall provide a description of its audit arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users

and to ensure continuity and reliability in the performance of payment services;

- (g) Audited Financial Statements for the last three years, if applicable;
 - (h) the identity of all officers and controllers of the institution as defined in Article 2 of the Act;
 - (i) the identity of all shareholders holding directly or indirectly a qualifying shareholding and the size of their holdings and evidence of their suitability, taking into account the need to ensure the sound and prudent management of the institution;
 - (j) the identity of the individuals who will be effectively directing the business of the institution and, where relevant, persons responsible for the management of the activities of the institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience;
 - (k) where applicable, the identity of statutory auditors and audit firms;
 - (l) the applicant's legal status;
 - (m) the address of the applicant's head office; and
 - (n) for applicants for a financial institution's licence for the provision of any of the activities under paragraph 2 of the Second Schedule to the Act, a description of the measures taken for safeguarding payment service users' funds as referred to in paragraph 56 below.
29. The authority reserves the right to demand that prospective applicants for a licence complete as applicable Appendix 1 of Banking Rule BR/01 (Internet and Electronic Banking Questionnaire), in the event that the authority considers this process as necessary in view of the medium through which the proposed business activities would be undertaken.
30. Notwithstanding the submission of the information and documents indicated under paragraph 28 above, the authority may, under Article 4(3) of the Act, require an applicant for a licence to submit additional information as it may deem appropriate to determine an application for a licence.
31. It is expected that an applicant for a licence notifies the authority immediately of any subsequent additions or alterations with respect to any of the documents or information submitted under paragraphs 27, 28, 29 and/or 30 of the Rule.

BRANCHES OF EU/EEA FINANCIAL INSTITUTIONS (OTHER THAN THOSE UNDERTAKING PAYMENT SERVICES) BENEFITING FROM THE RIGHT TO “PASSPORT”

32. The following conditions must be fulfilled for a financial institution licensed outside Malta but within the EEA and which proposes to undertake any of the activities under the First Schedule to the Act, to establish a branch in Malta:
- (a) The parent undertaking or undertakings must be licensed or have an equivalent authorisation as a credit institution in another Member State;
 - (b) The activities in question are actually carried on within the territory of the Member State where the parent undertaking or undertakings is/are licensed/authorised;
 - (c) The parent undertaking or undertakings hold(s) 90% or more of the voting rights attached to shares in the capital of the subsidiary financial institution established in the member state;
 - (d) the parent undertaking or undertakings satisfies/satisfy its home regulatory authority/authorities regarding the prudent management of the subsidiary financial institution and has/have declared, with the consent of the same regulatory authority/authorities, that it/they guarantee(s) the commitments entered into by the said subsidiary; and
 - (e) the subsidiary financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Articles 125 to 143 of Directive 2006/48/EC - Capital Requirements Directive (CRD) - in particular for the calculation of the capital requirements, for the control of large exposures and for the purposes of the limitation of holdings provided for in Articles 120 to 122 of the CRD.

In such situations the financial institution in question is obliged to notify its home authority in writing before establishing a branch in Malta, in terms of Articles 25 to 28 of the CRD. Moreover, such financial institutions shall be required to satisfy the conditions laid down in Legal Notice 88 of 2004, as amended by Legal Notices 66 of 2005, and 57 and 352 of 2008.

EU/EEA FINANCIAL INSTITUTIONS (UNDERTAKING PAYMENT SERVICES) BENEFITING FROM THE RIGHT TO “PASSPORT”

33. On the other hand, a financial institution licensed or holding equivalent authorisation in another Member State or EEA State as a payment institution, may provide the activities for which it has been authorised either through the establishment of a branch or the freedom to provide services, including by engaging an agent.

In situations where the payment institution wishes to provide payment services in Malta, it is to communicate the following information to its home regulatory authority:

- (a) the name and head office address of the payment institution;
- (b) the kind of payment services it intends to provide;

and, additionally, in the case of establishment:

- (a) the address of the proposed branch;
- (b) the names of those responsible for the management of the proposed branch;
and
- (c) the organisational structure of the proposed branch.

If a payment institution wishes to provide payment services in Malta by engaging an agent, the home regulatory authority is bound to provide:

- (a) the name and head office address of the payment institution;
- (b) the name and address of the proposed agent in Malta;
- (c) the kind of payment services the proposed agent intends to provide in Malta on behalf of the payment institution,

and, additionally in the case of engaging a legal person established in Malta as an agent in Malta:

- (a) the names of those responsible for the management of the proposed agent;
and
- (b) the organisational structure of the proposed agent.

In the event that the authority has reasonable grounds to suspect that, through such proposed branch or agent, money laundering or terrorist financing, within the meaning of Council Directive 2005/60/EC or the Prevention of Money Laundering Act (Cap 373) and the Prevention of Money Laundering and Funding of Terrorism Regulations, has been committed or will be attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing, or in the event that the authority holds adverse information relating to the suitability, fitness and properness of the proposed branch or agent, it shall advise the home regulatory authority who may refuse to register the branch or agent, or may withdraw the registration of the branch or agent.

ESTABLISHMENT OF BRANCHES OF INSTITUTIONS NOT BENEFITING FROM THE RIGHT TO PASSPORT

34. A branch is an integral part of the institution to which it belongs. A licence issued to an institution incorporated outside Malta within the EEA (which does not fall under paragraphs 32 or 33 above) or a third country to operate its business through a branch in Malta is therefore deemed to having been granted to that institution as a whole. There is therefore no requirement for a branch to

have its own funds requirement.

35. Thus, in the case of those institutions whose principal place of business is in a country outside Malta (vide paragraph 34 above), the authority may, at its discretion, regard itself as satisfied that the minimum criteria for authorisation under paragraphs 18 - 21 above are fulfilled if:
- (a) the regulatory authority in that country informs the authority that it is satisfied with respect to the prudential management and overall financial soundness of the applicant; and
 - (b) the authority is satisfied as to the nature and scope of the supervision exercised by the home regulatory authority.
36. Despite the reliance that the authority may place on the above assurances, it shall make its own judgement on an institution's suitability for authorisation of the proposed branch. In this respect, the authority examines the planned business of the proposed local branch of the applicant, its internal controls, accounting and other records and personnel and management arrangements. If there are any concerns, the authority will discuss them with the applicant and, where and if necessary, with the home regulatory authority.
37. In this respect, information regarding directors, controllers and officers required from overseas institutions operating through branches in Malta may, however, be less detailed than that required from institutions registered in Malta.

AGENCY ARRANGEMENTS

38. (1) Article 8A(1) of the Act determines that financial institutions incorporated in Malta may enter into agency arrangements with third parties and the information which is required to be communicated to the authority in this respect. The Article also lays down the obligations of an agent and other requirements arising from this arrangements.

OUTSOURCING OF OPERATIONAL FUNCTIONS

39. Article 8B of the Act determines that financial institutions may outsource their services as long as the outsourcing service provider is recognised by the authority and the quality of the internal controls and the ability of the authority to monitor the institution's compliance is not impaired. Any outsourcing must be in line with the provisions of Banking Rule BR/14.
- 39A. Furthermore, Article 8B of the Act lays down the conditions the institution is obliged to follow where the services being outsourced are important operational functions. In view of this, financial institutions are advised to seek proper legal advice before and while drawing up draft outsourcing arrangements and related conditions and submit such agreement to the authority for its consideration. Moreover, financial institutions are also urged to verify that such agreements

have been fashioned on the requisites of the Banking Rule BR/14.

DETERMINATION OF AN APPLICATION FOR A LICENCE

40. Under the terms of Article 5(2) of the Act, the authority must determine an application for a licence within three months of receipt of the application.
41. In the situation where an application is not filed in compliance with Article 4(2) of the Act or if additional information is requested under Article 4(3) of the Act, the authority must determine that application within three months of the actual date of compliance.
42. In any event, the authority is bound to determine an application for a licence within six months of its initial receipt.
43. An application for a licence is deemed to be determined by the authority by:
 - (a) granting a licence without conditions;
 - (b) granting a licence subject to such conditions it may deem appropriate;
 - (c) refusing to grant a licence.

The granting of a licence under the Act does not exempt the institution seeking authorisation from the obligation of obtaining any other licence required under any law and/or regulation.

44. In terms of Article 5(5) of the Act, failure by the authority to determine a licence within the prescribed three month period, or the maximum six month period if applicable, is deemed to constitute a refusal to grant a licence.

RESTRICTION AND REVOCATION OF A LICENCE

45. In certain circumstances the authority may withdraw, revoke or impose restrictions on a licence. The authority's powers to withdraw, revoke or impose restrictions become exercisable if it appears that any one of a number of grounds as specified under Article 6 of the Act is applicable.
46. Article 7 of the Act imposes the obligation on the authority to serve a written notice on the financial institution concerned before revoking or restricting a licence unless the matter is urgent. The authority shall specify a period in which the institution is to make its representations as to why such action should not be taken. Failure to submit such representations within the specified period will automatically empower the authority to revoke or restrict the licence.
47. In any event the institution concerned has the right to lodge an appeal to the Financial Services Tribunal established in terms of Article 21 of the Malta Financial Services Authority Act (Cap 330).

NOTIFICATION REQUIREMENTS UNDER THE ACT

48. Any person, as defined in the Act, who intends to acquire or dispose of shares or any other interest in a licensed financial institution incorporated in Malta is advised to consult carefully the provisions of the Act under Article 9 and, if necessary, to take legal advice.
49. Financial institutions are advised to consult carefully the provisions of Article 9 of the Act prior to taking any action which could affect their composition.
- 49A. Financial institutions are also advised to give full consideration to Article 9(2) of the Act in circumstances involving acquisition of shares in the institution that would render the institution a subsidiary of the purchaser of shares. Prospective purchasers are bound to seek prior consent by the authority. The authority, in line with the provisions of this Article has the discretion to consider such application as an application for a licence in terms of the Act.
50. In terms of Article 9(5) of the Act, the authority expects financial institutions to pre-notify it of any person who is, proposes to become or proposes to cease to be a controller or director of the institution.
51. Article 18 of the Act imposes the obligation on a financial institution to notify the authority upon the appointment or any change in the appointment of its auditors. An auditor of a licensed institution is required to give written notice to the authority if he resigns, decides not to seek reappointment or decides to qualify the audit report.
52. Notwithstanding any investigation provided for in this Act, a financial institution is obliged to notify the authority and the Central Bank should it consider that it is likely to become unable to meet its obligations.

CHANGE IN NAME

53. The authority expects a licensed institution which intends to change any name it uses to give written notice to the authority of such intention. Such notice should set out the proposed new name in full and the reason for the proposed changes. A licensed institution that intends to file such a notice is encouraged to contact the authority prior to notification in order to discuss whether there might be any problems with the proposed change under the Act or otherwise.

RECORD KEEPING

54. The authority requires the licensed institution to keep all appropriate records for the purpose of the Act for at least five years without prejudice to the provisions of the Directive 2005/60/EC, the Prevention of Money Laundering Act (Cap 373) and any Regulations issued thereunder, or any other applicable EU or

national legislation.

INFORMATION REQUIREMENTS

55. Article 14 of the Act lays down the circumstances where the authority may require information from the financial institution. The information required, which is explained in FIR/02 and laid down in, *inter alia*, FIR/03³, is to be submitted on a monthly or quarterly basis as may be applicable.

SAFEGUARDING REQUIREMENTS

56. The authority requires financial institutions providing any of the services listed in the Schedules to the Act, whether or not engaged in any of the other business activities referred to in paragraph 3 of the Second Schedule to the Act, to safeguard funds which have been received from the payment services users or through another financial institution undertaking activities listed in the Second Schedule to the Act for the execution of payment transactions or to safeguard funds received in exchange for electronic money in the case of financial institutions issuing electronic money. A description of the measures to be taken by the applicant for safeguarding payment service users' funds is to be provided in the business plan referred to in paragraph 28 above.

Such funds shall not be commingled at any time with the funds of any natural or legal person other than the financial institution's client(s) on whose behalf the funds are held. In the event that by the end of the business day following the day when the funds are received, they are still held by the financial institution, these shall be deposited in a separate bank account in a credit institution or invested in secure, liquid low-risk assets.

Such funds shall be insulated in terms of a Legal Notice issued to protect the interests of the financial institution's clients against claims of other creditors of the financial institution, in particular in the event of insolvency.

Such funds may be alternatively covered by an insurance policy or some other comparable guarantee from an insurance company or credit institution, which does not belong to the same group as the financial institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the financial institution is unable to meet its financial obligations.

Where a financial institution is required to safeguard funds and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the safeguarding requirements.

Provided that where the portion is variable or unknown in advance, the financial

³ Currently as determined by the relevant provisions of FIR/02.

institution shall apply this paragraph on the basis of a representative portion assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the authority.

APPEALS AGAINST DECISIONS OF THE AUTHORITY

57. Any person, as defined in the Act, who is aggrieved by a decision of the authority to impose or vary any condition or restriction of the licence, to revoke a licence or to make any order in respect of the participation in or control of the institution has a right of appeal to the Financial Services Tribunal as established in terms of Article 21(8) of the Malta Financial Services Authority Act (Cap 330).

CONFIDENTIALITY

58. The Professional Secrecy Act 1994 prohibits the authority, its staff and others from disclosing information received by them for the purposes of the Act except in restricted circumstances.
59. Article 25 of the Act defines circumstances under which disclosure of information by the authority or officers of a financial institution is not considered as a breach of confidentiality.

OFFENCES AND PENALTIES

60. Article 22 of the Act details circumstances under which a person, as defined in the Act, is deemed to have committed or is accomplice to an offence under the Act. Any person who commits an offence in terms of Article 22 of the Act is liable to such penalties prescribed in the said Article.
61. Within the context of paragraph 60, the authority draws the attention to the provisions of Article 23 of the Act in cases when it decides to impose an administrative penalty on a person in lieu of criminal proceedings.

OTHER REQUIREMENTS – AS APPLICABLE

62. In line with the provisions of the Act, those financial institutions and potential applicants for a licence to undertake Activities under the Second Schedule to the Act are also advised to read carefully the requirements concerning transparency of conditions of information requirements for the undertaking of payment services under the Second Schedule to the Act and the respective rights and obligations of payment services users and payment service providers which arise from Directives issued under the Central Bank of Malta Act, particularly the Central Bank of Malta Directive No 1 and where necessary, to seek clarifications from the Central Bank of Malta.

63. It shall be one of the conditions of a licence of a financial institution authorised under the Act that reference of a dispute to arbitration, in accordance with the Arbitration Act, would be undertaken in line with the relevant provisions of Article 26(2) of the Act. This is without prejudice to the function of the Consumer Complaints Manager, appointed under Article 20 of the Malta Financial Services Authority Act (Cap 330).

DRAFT & UNOFFICIAL

APPENDIX I

FEES PAYABLE BY INSTITUTIONS AUTHORISED UNDER THE FINANCIAL INSTITUTIONS ACT 1994 (Article 3(4) and L.N. 217 of 2003, as amended by LN 425/2007)

Fees outlined under this Appendix are not refundable. Any charges relating to the electronic transfer of funds in settlement of the under-mentioned fees shall be incurred by the applicant and/or licence holder.

Financial Institutions

[a] APPLICATION AND PROCESSING FEE	€1,200
[b] LICENSING FEE	€1,800
[c] SUPERVISION FEE	0.000175 X Items in the Balance Sheet But not less than €2,500 or more than €50,000

Notes:

- (i) *The above fees shall be applicable to institutions applying and licensed under the Financial Institutions Act 1994;*
- (ii) *Application and Processing Fees shall be payable on the submission of draft documentation under the Financial Institutions Rule FIR/01;*
- (iii) *On the granting of a licence under the Financial Institutions Act 1994, financial institutions shall pay the licensing fee and supervision fee which shall be proportionate to the period between the date when the licence is granted and the dates established in Note (vi) below.*
- (iv) *Supervision Fees are equivalent to 0.000175 of the total of the items in the balance sheet as reported in terms of Financial Institutions Rule FIR/02. Payment shall not be less than €2,500 or more than €50,000;*
- (v) *The Supervisory Fees are calculated on the balance sheet items as reported in the statutory schedules under FIR/02 that reflect the audited financial statements at the end of the year preceding the year immediately before the year in which the fee is payable;*
- (vi) *Supervision Fees shall be payable to the authority on the 1st January of every year;*
- (vii) *The Supervision Fees of financial institutions licensed after 1st January 2004, shall be equal to a proportion of such fee that would have been otherwise payable in respect of the whole calendar year in which the licence was granted.*

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

BANKING SUPERVISION UNIT

***APPLICATION FORM FOR A LICENCE UNDER THE
FINANCIAL INSTITUTIONS ACT 1994***

Ref: FIR/01/2011

**If insufficient space is provided,
please attach a separate sheet.**

FINANCIAL INSTITUTIONS ACT 1994

APPLICATION FOR AUTHORITY TO SET UP A FINANCIAL INSTITUTION OPERATING IN OR FROM MALTA

Applicants are required to submit their applications to the competent authority ('the authority') as appointed under Article 12(1) of the Act. Before answering this questionnaire, applicants should read the Financial Institutions Act 1994 and the Financial Institutions Rules issued in conjunction with this Act.

QUESTIONNAIRE

(Questions 1-8 relate to the promoters of the proposed institution)

- 1. Please state the name(s) of the promoters (corporate name and any business name(s) used for purposes of or in connection with any business carried on by them).**

- 2. If any of the promoters is a body corporate, indicate the legal form of the institution.**

- 3. Any former name(s) by which any institution in 2 above has been known.**

- 4. The name the promoters propose to use for purpose of or in connection with the business proposed to be carried on by it in or from Malta.**

- 5. Country or territory and date of incorporation or formation of all promoting institutions.**

- 6. (a) Registered address of the Head Office, and**

(b) principal place of business in Malta if different (including address).

-
7. If the promoters' principal place of business is in a country or territory outside Malta, give details of any banking authorisation granted by authorities in that country or territory and give the names of the authorities concerned. (Please authorise such authorities to give the authority any relative information it might request to enable it to determine this application and provide a copy of such authorisation).
-

8. Name(s) and address(es) of the promoters' bankers in Malta within the last 10 years. If no bankers held in Malta, please give details of such bankers outside Malta. (Please also indicate the promoters' principal bankers.) Relative authorisations as in 7 above are required.
-

(Questions 9 - 32 relate to the applicant institution (thereto 'the institution') to be licensed).

9. Name and address of the institution's auditors in Malta. Please give the name and professional qualification of the partner(s) who will be responsible for the assignment.
-

10. Names of all officers and controllers of the institution as defined in Article 2 of the Act, indicating with respect to controllers and with reference to Article 9(5) of the Act the sense in which persons, whether individual or corporate, are controllers. Please attach a curriculum vitae for all identified officers and controllers.
-

11. Names of all qualifying shareholders of the institution as defined in Article 2 of the Act, indicating the sense in which and the extent to which the persons, whether individuals or institutions, constitute qualifying shareholders. (The authority may request references from suitable persons in respect of any such shareholder.)
-

12. Is the business of the institution effectively directed by at least two individuals as required by Article 5(1)(b) of the Act (the 'four eyes' principle)? The names, positions in the institution and curriculum vitae of the persons who will effectively direct the business should be given.
-

13. Does the institution hold, or has it ever held, any authority from a supervisory body to carry on any business activity in Malta or elsewhere? If so, give particulars. If any such authority has been revoked or in any way restricted, give particulars.
-

14. Has the institution ever applied for any authority from a supervisory body to carry on any business in Malta or elsewhere other than an authority mentioned in answer to Question 13? If so, give particulars. If any such application was for any reason refused or withdrawn after it was made, give particulars.

15. List all companies "in the same group" as the institution.

16. Has the institution or any company in the same group within the last 10 years failed to satisfy a judgement debt under a court order in Malta or elsewhere within a year of the making of the order? If so, give particulars.

17. Has the institution or any company in the same group made any compromise or arrangement with its creditors within the last 10 years or otherwise failed to satisfy creditors in full? If so, give particulars.

18. Has any person been appointed in Malta to take charge of the assets or to assume control of the business of the institution or of any company in the same group, or has the substantial equivalent of any such person been appointed in any other jurisdiction, in the last 10 years? If so, give particulars, including whether such person or equivalent is still acting under the appointment.

19. Has a petition been served in Malta for the appointment of a person as in Question 18, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years? If so, give particulars.

20. Has a notice of resolution for the voluntary liquidation of the institution or of any company in the same group been given in Malta, or has the substantial equivalent of such a notice been given in any other jurisdiction, in the last 10 years? If so, give particulars.

21. Has a petition been served in Malta for the compulsory liquidation of the institution or any company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years? If so, give particulars.

22. Are the affairs of the institution or any company in the same group being or have ever previously been investigated by an inspector or other authorised officer appointed to do so under any Maltese or overseas legislation? If so, give particulars.

23. Has the institution or any company in the same group ever been refused entry in Malta or elsewhere to any professional body or trade association concerned with banking or financial activities or decided not to apply for entry after making an approach? If so, give particulars.

24. i) To what date have the institution's tax computations been agreed by the Inland Revenue (or equivalent taxation authority in any other relevant jurisdiction)?

(ii) To what date have the assessments based on these computations been settled?

25. Are there any material matters in dispute between the institution and the Inland Revenue (or any equivalent taxation authority in any other jurisdiction)? If so, give particulars.

26. Is the institution or any company in the same group engaged, or does it expect to be engaged, in Malta or elsewhere, in any litigation which may have a material effect on the resources of the institution? If so, give particulars.

27. Is the institution engaged, or does it expect to be engaged, in any business relationship with any

of its directors, controllers or managers? If so, give particulars.

28. Is the business of any of the institution's officers or controllers, or of companies in the same group guaranteed or otherwise underwritten or secured, or expected to be guaranteed or underwritten or secured, by the institution? If so, give particulars.
-

29. Please provide a statement of aims and programme of operations for the future development of the business for a minimum of 3 years from the date of this application, including the sources, nature and scale of business envisaged, balance sheet and profit and loss projections for each year and details of the staffing, management, organisation and controls of the institution. The assumptions underlying the projections should be stated. In addition, please provide a sensitivity analysis of the plan submitted or other similar analysis of the extent to which the forecasts will change other projections depending on varying assumptions. Indicate activities as listed in the Schedule to the Act which the institution intends to undertake.
-

30. Please provide audited accounts for the institution for the last three financial years (if available). If the most recent audited accounts are more than six months out of date, they should be accompanied by management accounts (which need not be audited) showing the current financial position and the current results of the institution.
-

31. Please provide * copies of the Memorandum and Articles of Association or any other constitutional documents of the institution.
-

32. Please provide any other information which may assist the authority in reaching a decision on the application.

DECLARATION

We certify that we have read the Financial Institutions Act 1994 and the relative Financial Institutions Rules in particular the Rule on Application for an Authorisation to establish a Financial Institution and Articles 22 and 23 of the Act.

We certify that the information given in answer to the questions above is complete and accurate to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the authority should be aware.

We undertake to inform the authority of any changes material to the application which arise while the authority is considering the application.

We undertake that, in the event that the institution is granted authorisation under the Financial Institutions Act 1994 we will notify the authority of any material changes to or affecting the completeness or accuracy of the answers to the above questions immediately these come to our attention.

We are aware of our obligations under Article 9 of the Financial Institutions Act 1994. We further undertake to forthwith inform the authority of the fact that any person has become or ceased to be an officer of the institution as defined in Article 2 of the Financial Institutions Act 1994.

Name _____ Position held _____

Signed _____ Date _____

Name _____ Position held _____

Signed _____ Date _____

FINANCIAL INSTITUTIONS ACT 1994

QUESTIONNAIRE FOR QUALIFYING SHAREHOLDERS OTHER THAN INDIVIDUALS

“Qualifying Shareholding” is defined in Article 2 of the Act. Qualifying shareholders other than individuals should provide the information as set out hereunder. For the purposes of this questionnaire, qualifying shareholder shall include a prospective qualifying shareholder.

1. Name(s) of licence holder(s) or entity in connection with which this questionnaire is being completed.
-

2. Name(s) of the qualifying shareholder including the registered name and any business name(s) used for the purposes of or in connection with any business carried on by it and indicate the legal form of the qualifying shareholder (body corporate, partnership, etc.) and the percentage holding (capital/voting rights) to qualify as such.
-

3. Any former name(s) under which the qualifying shareholder has been registered or has traded.
-

4. Country and date of incorporation or formation of the qualifying shareholder supported by official documents evidencing such incorporation or formation. Please provide certified true copies of the Memorandum and Articles of Association or any other constitutional documents of the qualifying shareholder.
-

5. (a) Registered address of the Head Office of the qualifying shareholder, and
- (b) address of the principal place of business if different from registered address.
-

6. Up to date description of the qualifying shareholder's business activities.
-

7. Names of all persons who effectively direct the business of the qualifying shareholder. Please attach the Personal Questionnaire as set out in FIR/01 in the case of directors of qualifying shareholders who are not regulated in an EU/EEA or an approved jurisdiction.
-

8. Names of all ‘beneficial owners’ of the qualifying shareholder indicating their percentage holdings.

-
9. With respect to the qualifying shareholder and any company under its control, the following information is required:
- (a) relevant criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions (including disqualification as company director or bankruptcy, insolvency or similar procedures);
 - (b) investigations, enforcement proceedings, or sanctions by a supervisory authority which the qualifying shareholder has been the subject of;
 - (c) refusal of registration, authorisation, membership, or license to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or license; or expulsion by a regulatory or government body.
-
10. Information as to whether an assessment of reputation, as a qualifying shareholder or as a person who directs the business of an institution, has already been conducted by an overseas regulatory authority (the identity of that authority and evidence of the outcome of this assessment);
-
11. Information as to whether a previous assessment by another authority or overseas regulatory authority from another sector has already been conducted (the identity of that authority and evidence of the outcome of this assessment);
-
12. Description of the financial (financial interests include for example credit operations, guarantees, pledges...) and non-financial (e.g. same shareholders, same managers, etc.) interests or relationships of the qualifying shareholder with:
- (a) any other current shareholders of the licence holder or entity;
 - (b) any person entitled to exercise voting rights of the licence holder or entity (see for example the situations mentioned in Article 10 of Directive 2004/109/EC on the harmonisation of transparency requirements; such as shares held by the qualifying shareholder as trustee or nominee; shares in the credit institution not registered in the name of the qualifying shareholder but in which it has a beneficial interest; shares charged or pledged in the name of the qualifying shareholder);

- (c) any member of the board or similar body, or of the senior management of the licence holder or entity;
 - (d) the licence holder or entity itself and its group;
 - (e) any other interests or activities of the qualifying shareholder that may be in conflict with the licence holder or entity and possible solutions to those conflicts of interest.
-

13. The shareholding structure of the qualifying shareholder, with the identity of all shareholders with significant influence and their respective percentages of capital and voting rights and information on shareholders agreement.

14. If the qualifying shareholder is part of a group (as a subsidiary or as the parent company), a detailed organisational chart of the entire corporate structure and information on the percentages (share capital and voting rights) of relevant shareholders and on the activities currently performed by the group.

15. Identification of supervised institution(s) within the group, and the names of their home state regulators.

16. Statutory financial statements, regardless of the size of the firm, for the last three financial years, approved by an auditing firm, including:

- (a) Balance Sheet,
- (b) Profit and Loss accounts/Income Statements,
- (c) Annual Reports and all relevant financial annexes.

17. Information about the credit rating of the qualifying shareholder and the overall rating of its group, if applicable.

DECLARATION

We certify that the information given in the answers to the questions above is complete and accurate to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the Competent Authority should be made aware.

We undertake that, in the event that the entity filling in this questionnaire is granted approval as qualifying shareholder, we will notify the Authority of any material changes to or affecting the completeness or accuracy of the answers to the above questions immediately these come to our attention.

By signing the declaration below, we authorise the Authority to contact any or all of the above named or any other person and to make such enquiries and seek further information as considered by the Authority to be relevant and as it thinks appropriate in the course of verifying the information given in this Questionnaire. This authorisation is valid at the date of signature and at any time in the future. We also understand that the results of any verification carried out by the Authority, in connection with this Questionnaire may be disclosed to the Licence Holder or the promoters of the Entity, in connection with which this Questionnaire is being submitted.

We understand that the information provided in this Questionnaire will be used by the Authority to discharge its regulatory and statutory functions under the laws under which it has been appointed Competent Authority and other relevant legislation, and will not be disclosed for any other purpose.

Knowing or recklessly giving the Authority information which is false or misleading may be a criminal offence.

(To be signed by applicant institutional qualifying shareholder)

Name _____ Position held _____

Signed _____ Date _____

Name _____ Position held _____

Signed _____ Date _____