

31 October 2019

Circular to Financial Institutions on the Amendments to Financial Institutions Rules FIR/01, FIR/02 and FIR/03

The Authority is hereby issuing a revised version of Financial Institution Rules FIR/01, FIR/02 and FIR/03 (hereinafter referred to as the “Rules” when reference is made to them cumulatively). The amendments to the Rules are aimed at aligning them with the recent amendments made to the Financial Institutions Act (Chapter 376 of the Laws of Malta), which were effected to transpose Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (hereinafter referred to as the “PSDII”). The Rules are being amended in terms of Article 13(2) of the Financial Institutions Act, which provides for the Authority’s power to issue, amend or revoke Financial Institution Rules as may be required to carry into effect any provisions of the Act.

Amendments to FIR/01 on Application Procedures and Requirements for Authorisation under the Financial Institutions Act 1994

FIR/01 is made pursuant to Article 4 of the Act which requires all applications for a licence or registration to be in such form and accompanied by such information and to conform to such conditions as shall be prescribed from time to time by a Financial Institutions Rule.

The Rule lays down what is required by the Authority when processing applications. The amendments introduced in FIR/01 are aimed at transposing Article 5 of the PSDII and take into consideration the introduction of payment initiation services and account information services, introduced in the Second Schedule of the Financial Institutions Act, implementing Annex 1 of the PSDII.

Furthermore, a new procedure has been introduced for the processing of applications for registration of account information service providers. Notably, the minimum criteria for registration do not include a minimum capital requirement. On the other hand, applicants for a licence or a registration, as applicable, to provide payment initiation services and, or, account information services, must, as a condition for the granting of the licence or registration as applicable, hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability.

FIR/01 also implements the European Banking Authority (EBA) Guidelines on the information to be provided by applicants intending to obtain authorisation as payment and electronic money institutions as well as to register as account information service providers (AISP) under the Payment Service Directive (PSD2) (EBA/GL/2017/09). In this regard, FIR/01 is supplemented with Annexes I, II, III and IV as described below:

- Annex I – Information required from applicants for authorisation as Payments Institutions (PIs)

This Annex is being introduced to provide further detail in relation to the application documents to be submitted in accordance with paragraph 34 of FIR/01. It applies to applicants that intend to provide activity (a)-(g) of paragraph 2 of the Second Schedule to the Act or activity (h) of paragraph 2 in combination with other payment services.

- Annex II - Information required from applicants for authorisation as Account Information Service Providers (AISPs)

This Annex is being introduced to provide further detail in relation to the application documents to be submitted in accordance with paragraph 34 of FIR/01. It applies to applicants for authorisation as AISPs, that is, entities that provide activity (h) of paragraph 2 of the Second Schedule to the Act (account information services) only.

- Annex III - Information required from applicants for authorisation as Electronic Money Institutions

This Annex is being introduced to provide further detail in relation to the application documents to be submitted in accordance with paragraph 34 of FIR/01. It applies to applicants for authorisation as Electronic Money Institutions.

- Annex IV – The Criteria on How to Stipulate the Minimum Monetary Amount of the Professional Indemnity Insurance or Other Comparable Guarantee

This Annex is being introduced to provide further detail in relation to the obligation laid down in the provisos to Article 5(1B) of the Financial Institutions Act, which provide that all applicants for a licence or registration to provide payment initiation services and, or account information services shall be required to hold a professional indemnity insurance covering the territories in which the institution offers its services, or some other comparable guarantee against liability, as a condition for the granting of their licence or registration. This Annex aims to implement the provisions prescribed in the EBA Guidelines on the criteria on how to calculate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of the PSDII (EBA/GL/2017/08), issued on 7 July 2017.

FIR/01 is also accompanied by two new application forms. Application Form 1A should be submitted by applicants for a licence to provide any of the activities listed in the First Schedule to the Act (which include activities (a)-(g) of the Second Schedule to the Act or service (h) in combination with other payment services or the activity listed in the third schedule to the Act). Form 1A will therefore replace the current application form. Application Form 1B should be submitted by applicants for registration to provide account information services only.

Amendments to FIR/02 on the Supervisory and Regulatory Requirements of Institutions Authorised under the Financial Institutions Act 1994

The Authority has also amended FIR/02 to reflect the amendments made to the Financial Institutions Act following the transposition of the PSDII, in particular, Article 9 of the said Directive. This Article lays out the methods that payment institutions shall use to calculate the amount of own funds that they must hold at all times. In this respect, amendments were made regarding the scaling factor (k) to be used in two of the three methods for the calculation of the amount of own funds, which reflect such changes brought about by the PSDII.

Amendments have also been made to FIR/02 in view of the removal of the institution's requirement to seek the Authority's recognition in the case of an outsourcing service provider in terms of Article 8B of the Financial Institutions Act.

Amendments to FIR/03 on the Taking up, Pursuit and Prudential Supervision of the Business of Financial Institutions Authorised to Issue Electronic Money under the Financial Institutions Act 1994

FIR/03 is being amended in order to reflect the deletion of the waiver of the application of provisions on the general prudential requirements, initial capital, own funds and safeguarding requirements in certain cases in article 3(7) of the Financial Institutions Act. In this regard, the section entitled 'Small electronic money issuers' of this Rule has been deleted.

Furthermore, the section on 'Safeguarding Requirements' in the said Rule is being amended in order to remove reference to BR/08, since the latter had been repealed in light of the introduction of the capital requirements introduced by Regulation (EU) No 575/2013 (the CRR). Consequently, in order for institutions to determine whether assets are secure and low-risk, reference is being made to the categories set out in Article 366 of the CRR.

The revised Rules and Annexes will come into force with immediate effect.

Any queries in relation to the above should be directed to Banking Supervision (Policy Section) on bsupolicy@mfsa.com.mt.