MFSA MALTA FINANCIAL SERVICES AUTHORITY

FINANCIAL INSTITUTIONS RULE FIR/01

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

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REVISIONS LOG

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

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 3 of the Malta Financial Services Authority 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. This Rule on Application Procedures and Requirements for Authorisation under the Financial Institutions Act 1994 (the Rule) is being made pursuant to Article 4(2) 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.

4. This 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 or registration 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 or registration.

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. This Rule applies to all persons 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 2015/2366/EU 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 and EU Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

8. A licence or registration 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 this 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 undertaking 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 and who is licenced or registered under the Act.

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 authorisation under the Act, prospective applicants should first consult the Authority to establish whether their potential activities would require authorisation and whether such authorisation 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 Act (payment institutions) or issuing electronic money[1] 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 and Account Information Service Providers (AISPs) shall not issue electronic money unlike electronic money institutions which may engage in the provision of payment services. Financial institutions undertaking activities under the Second Schedule to the Act (except for AISPs) shall be permitted to grant credit, although it is explicitly prohibited to use customers' money to fund such credit. 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) and 3(2A) of the Act define those activities which do not constitute business of a financial institution and therefore would not require a licence or registration 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, if still in doubt, should consult the Authority for it to establish, in terms of Article 3(3) of the Act, whether or not a licence or registration is required for the intended activities.

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 LICENSING

16. The statutory minimum criteria for licensing, 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.

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

17. A licence shall not be granted unless the initial share capital is in accordance with the principles established in paragraph 31 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)(c) 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 prevent it from the effective exercise of its supervisory functions.

24. The Act defines "close links" as having the same definition as in the CRR. The CRR defines "close links" as follows:

"close links" means a situation in which two or more natural or legal persons are linked in any of the following ways:

a) participation in the form of ownership, or by way of control, of 20% or more of the voting rights or capital of an undertaking;

b) control;

c) a permanent link of both or all of them to the same third person by a control

relationship;"

STATUTORY MINIMUM CRITERIA FOR REGISTRATION

25. No natural person or company shall be registered as an AISP unless the qualifying shareholders, Controllers and all persons who effectively direct the business of the AISP are suitable persons to ensure its sound and prudent management.

26. Before a registration is granted, the Authority must be satisfied that the natural person or company has sound and prudent management, and has robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the natural person or company as may be determined by the Authority from time to time and, or as may be specified by a Financial Institutions Rule.

27. Furthermore the Authority has to be satisfied that, where there are close links between the natural person or the company and another person or persons, such links do not prevent it from exercising effective supervision functions.

28. Notwithstanding paragraphs (16) to (27) above, a person who applies for a licence or a registration as applicable, to provide payment initiation services and, or, account information services, shall, as a condition for the granting of its licence or registration as applicable, also be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability.

29. With respect to the person that intends to provide payment initiation services, in accordance with Article 5(1B) of the Act, the professional indemnity insurance or other comparable guarantee shall be required against liability to ensure that persons that intend to provide it can cover its liabilities as specified in Articles 73, 89, 90 and 92 of the Payment Services Directive as transposed in directives issued by the Central Bank under the Central Bank of Malta Act.

30. With respect to a person that intends to provide account information services, also in accordance with Article 5(1B) of the Act, the professional indemnity insurance or other comparable guarantee shall be required against its liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information:

Provided that the amount of the professional indemnity insurance or other comparable guarantee referred to in this sub-article shall be calculated in accordance with the method laid out in Annex IV to this Rule.

Provided further that any information required by the Authority in order to calculate the amount of professional indemnity insurance or other comparable guarantee shall be provided to the Authority in terms of a Financial Institutions Rule.

INITIAL CAPITAL REQUIREMENTS

31. (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 the items listed in Article 26(1)(a) to (e) of the CRR.

(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 listed under paragraphs 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 (with the exception of those institutions carrying out **only account information services)**, 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 activities listed under paragraph10 of the First Schedule to the Act), as indicated in paragraph 18 of FIR/03.

(5) With respect to financial institutions licensed to carry out other activities found under the First Schedule to the Act, together with activities listed under paragraph 4 and/or 10, which are set out in more detail in 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 listed under paragraph 4 and 10), set a level of initial capital as it may require which will take

into consideration the requirements of paragraph 31(2) above, while at the same time with respect to those activities found under the Second or Third Schedules to the Act, ensure that the institution complies with the requirements emanating from paragraphs 31(3) or 31(4) above.

32. The Authority moreover draws the attention of applicants to the ongoing own funds requirements applicable to institutions carrying out activities falling under the Second (with the exception of those institutions carrying out **only account information services)** and Third Schedules 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 LICENSING OR REGISTRATION

33. 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.

Article 4(1A) of the Act requires that any natural person or company desirous of commencing the business of an account information service provider shall, before commencing any such business, apply in writing to the Authority for a registration under this Act.

The following rules on application documents for licencing or registration are supplemented by Annexes I, II and III reflecting 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).

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

- **Application documents**

34. Pursuant to Article 4(2) of the Act, the Authority requires that all applications for a licence or registration 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 constitutive documents of the proposed institution where applicable;

(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 31 above. Moreover, where applicable 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 61;

(e) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the financial institution whenever there are any operational - or security incidents;

(f) where applicable a description of the process in place to file, monitor, track or restrict access to sensitive payment data;

(g) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;

(h) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;

(i) where applicable, a security policy document, including a detailed risk assessment in relation to its payment services, is applicable, and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;

(j) where applicable, 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;

(k) 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 on-site and off-site checks which should be carried out at least on an annual basis, as well as the 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;

(l) Audited Financial Statements for the last three years, if applicable;

(m) the identity of all officers and controllers of the institution as defined in Article 2 of

the Act;

(n) where applicable, 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, and to continue to support the institution on an ongoing basis. Information should also be provided regarding the current financial position of the proposed shareholders as well as the source of such funds;

(o) 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 (a personal questionnaire, needs to be submitted by each individual);

(p) the identity of statutory auditors and audit firms;

(q) the applicant's legal status;

(r) the address of the applicant's head office; and

(s) a detailed report verified by a qualified Systems Auditor, covering the salient aspects of the proposed technological arrangement, including *inter alia* its cyber security framework and other measures aimed at mitigating cyber risk.

(t) for applicants for a financial institution's licence intending to undertake activities listed under paragraphs 4 or 10 of the First Schedule to the Act, a description of the measures taken for safeguarding payment service users' funds as referred to in paragraph 61 below.

The above documentation needs to be submitted to the Authority in both hard and soft copy (by email to aubankingFIs@mfsa.com.mt) format.

35. The Authority reserves the right to demand that prospective applicants for a licence or registration complete as applicable the 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.

36. Notwithstanding the submission of the information and documents indicated under paragraph 34 above, the Authority may, under Article 4(3) of the Act, require an applicant for a licence or registration to submit additional information as it may deem appropriate to determine an application for a licence or registration.

37. It is expected that an applicant for a licence or registration notifies the Authority immediately of any subsequent additions or alterations with respect to any of the documents or information submitted under paragraphs 33, 34, 35, and 36 of the Rule.

- **Before applying for authorisation**

38. In advance of submitting an application for authorisation, the applicant should satisfy itself that:

- its proposed business model requires authorisation in terms of the Act. It should also be clear which of the activities in the Schedules to the Act would need to be applied for;
- it is capable of complying with the authorisation requirements and can adhere to all ongoing supervisory and regulatory requirements.

It is recommended that applicants should seek legal/professional advice if they are unsure as to which type of activity they need to apply for or if they are unsure as to how they should comply with the authorisation requirements and/or compile the necessary documentation.

39. Prospective applicants shall set up a pre application meeting with the Authority in order to discuss and answer specific questions about any aspect of the application process and completing the necessary documentation. However, it is recommended that the prospective applicant would have completed their application material to an advanced state before requesting such a meeting and have their specific questions prepared in advance in order to make the meeting as productive as possible.

40. An applicant shall not submit an application to the Authority if it has not yet determined with reasonable certainty the scope of the activities in which it proposes to engage and its proposed business and operational model. There should be no significant changes made to the applicant's application for authorisation during the course of the application process. Where such significant changes are made, a new application submission will be required.

41. The Authority reserves the right to return an application if this does not satisfy the application criteria as stipulated under this rule.

- **Application process**

42. In summary, the key stages of an application process are the following:

(i) pre-application meeting set up with the Authority as per paragraph 39 above;
(ii) if required by the Authority, following the abovementioned pre-application meeting, further preliminary details of the application, may be submitted for the Authority's consideration and comments;
(iii) the applicant shall submit the completed Application Form together with the supporting documentation;
(iv) the Authority will acknowledge receipt of the application received in sub-paragraph (iii) within 3 working days of receipt;
(v) the Authority will then check that the application material submitted contains all the key information and documentation required to proceed to the assessment phase. Within 10 working days of receipt of the application, the Authority will either:
    a. advise the applicant that the application contains sufficient material to proceed to the assessment phase (further information is likely to be required as part of the assessment phase and may also be required thereafter before a

decision is made in respect of the application). The commencement of the assessment phase will trigger the three month period specified in paragraph 43 below and, in this respect, the applicant will be advised accordingly; or

b. advise the applicant that the application does not contain sufficient material to proceed to the assessment phase and consequently it shall not be progressed to the said phase. A statement noting the omitted information shall also be provided to assist the applicant should it wish to submit another application in the future. Any subsequent application will be considered as a new application and the application process shall start over at the stage indicated in sub-paragraphs (i) or (iii) as applicable;

(vi) Where sufficient information has been received as outlined in sub-paragraph (v) (a) above, the Authority will then proceed to the assessment phase of the application process. The application material submitted will be reviewed against the relevant authorisation requirements to determine whether sufficient information has been provided to enable the Authority to determine the application. During this process, the Authority will issue comments, as required, to the applicant based on its review of the application material submitted and any subsequent review of responses submitted by the applicant. The applicant would, in turn, be provided with the opportunity to address the comments and requests issued by the Authority.

(vii) The application will be formally determined within 3 months from the receipt of the complete application as per sub-paragraph (v)(a) above, and the applicant will be notified accordingly, as detailed in paragraph 46 below. Failure by the Authority to determine an application within this time frame shall be deemed to constitute a refusal.

DETERMINATION OF AN APPLICATION FOR A LICENCE OR REGISTRATION

43. In terms of Article 5(2) of the Act, the Authority must determine an application for a licence or registration within three months of receipt of the formal complete application. For avoidance of doubt, the three month period shall only start running from the date of receipt of a formal and complete application, as required by the Authority.

44. In the situation where an application is not filed in compliance with Article 4(2) of the Act or additional information is requested under Article 4(3) of the Act, the Authority must determine that application within three months from the actual date of compliance or when the information requested is furnished as the case may be, whichever be the later.

45. In any event, the Authority is bound to determine an application for a licence or registration to carry out activities listed in the First Schedule to the Act (except for activities listed under paragraphs 4 and 10) within six months of its initial receipt.

46. An application for a licence or registration is deemed to be determined by the Authority when:

(a) the Authority has decided to issue a licence or registration without conditions; or

(b) the Authority has decided to issue a licence or registration subject to such conditions it may deem appropriate. All such conditions shall be specified and noted in writing; or

(c) the Authority notifies the applicant that it is minded to refuse the application and provides details regarding the basis for the proposed refusal. The applicant will then have an opportunity to make submissions in response to the proposed refusal.

It is important to note that the granting of a licence or registration 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 in Malta or in any other jurisdiction, as applicable.

47. In terms of Article 5(5) of the Act, failure by the Authority to determine a licence or registration within the period prescribed in Article 5(2) of the Act shall be deemed to constitute a refusal to grant a licence or registration.

BRANCHES OF EU/EEA FINANCIAL INSTITUTIONS (OTHER THAN THOSE UNDERTAKING PAYMENT SERVICES OR ISSUING ELECTRONIC MONEY) BENEFITING FROM THE RIGHT TO "PASSPORT"

48. 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 (with the exception of activities listed under paragraph 4 and 10), 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 out 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 111 to 127 of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms for the calculation of the capital requirements; Article 92 of Regulation (EU) No 575/2013 for the control of large exposures; and Articles 89 to 90 of Regulation (EU) No 575/2013 for the purposes of the limitation of holdings.

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 35 to 39 of the CRD. Moreover, such financial institutions shall be required to satisfy the conditions laid down in the European Passport Rights for Financial Institutions Regulations (S.L. 376.05) L.

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

49. 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.

Such financial institutions shall be required to satisfy the conditions laid down in the European Passport Rights for Financial Institutions Regulations (S.L. 376.05) and Commission Delegated Regulation (EU) 2017/2055.

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 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing 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.

AGENCY ARRANGEMENTS

50. 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 these arrangements.

OUTSOURCING OF OPERATIONAL FUNCTIONS

51. Article 8B of the Act determines that financial institutions may outsource their services as long as the outsourcing service provider notifies the Authority beforehand 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.

51A. 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 drawn up on the requisites of the Banking Rule BR/14.

RESTRICTION, SUSPENSION AND WITHDRAWAL OF A LICENCE OR REGISTRATION

52. In certain circumstances the Authority may withdraw, suspend or impose restrictions on a licence or registration. The Authority's powers to withdraw, suspend or impose restrictions become exercisable if it appears that any one of a number of grounds as specified under Article 6(1) of the Act is applicable.

53. Article 7 of the Act imposes the obligation on the Authority to serve a written notice on the financial institution concerned before withdrawing, suspending or restricting a licence or registration 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 withdraw, suspend or restrict the licence or registration.

54. 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

55. 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.

56. 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.

56A. 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. The Authority would be guided by the criteria laid down in Banking Rule BR/13 on the Prudential Assessment of Acquisitions and Increase in Shareholdings in assessing a proposed acquirer.

57. 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.

58. 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.

59. 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

60. 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

61. 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 (EU) 2015/849, the Prevention of Money Laundering Act (Cap. 373) and any Regulations issued thereunder, or any other applicable EU or national legislation.

INFORMATION REQUIREMENTS

62. 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 FIR/03, is to be submitted on a monthly or quarterly basis as may be applicable.

SAFEGUARDING REQUIREMENTS

63. The authority requires payment institutions and electronic money institutions providing payment services referred to in paragraphs 2(a) to (f) of the Second Schedule to the Act to safeguard all funds which have been received from payment service users or received through another payment service provider for the execution of payment transactions. A description of the measures to be taken by the applicant 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 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 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.

STATUTORY AUDIT

64. Article 17A of the Act provides that Directive 86/635/EEC, Directive 2013/34/EU and Regulation (EC) No 1606/2002 shall apply to financial institutions. Unless exempted under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC, the annual accounts and consolidated accounts of financial institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.

APPEALS AGAINST DECISIONS OF THE AUTHORITY

65. 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

66. 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.

67. 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

68. 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.

69. Within the context of paragraph 66, 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.

70. Every officer of a financial institution should take all reasonable steps to secure compliance by the financial institution with all of the provisions of the Act and any regulations and Rules issued thereunder including this Rule, and with the conditions of its licence or registration.

OTHER REQUIREMENTS – AS APPLICABLE

71. 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.

72. In line with Article 26A 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 that the processing of personal data, should be carried out in accordance with the applicable data protection legislation.

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, LN 353 of 2008 and LN 10 of 2014)*

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	€3,500
[b] ANNUAL SUPERVISION FEE	0.0002 X Total Assets[(iv)] But not less than €2,500

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 supervision fee which shall be proportionate to the period between the date when the licence or registration is granted and the end of that calendar year.*

(iv) *Supervision Fees are equivalent to 0.0002 of the total assets as reported in the statutory schedules under Banking Directive BD/06 or Banking Rule BR/06 of the year immediately before the year when the fee is payable. Payment shall not be less than €2,500;*

(v) *Supervision Fees shall be payable to the authority on the 1st January of every year based on the supervision fee paid the previous year, whilst any resulting difference being equivalent to the balance of the annual supervision fee due in terms of paragraph (iv) shall be paid on the 1st July of each year.*

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MALTA FINANCIAL SERVICES AUTHORITY

NOTABILE ROAD, ATTARD, BKR 3000, MALTA.
COMMUNICATIONS@MFSA.COM.MT
+356 2144 1155

WWW.MFSA.COM.MT