

BANKING RULE BR/01

APPLICATION PROCEDURES AND REQUIREMENTS
FOR AUTHORISATION OF LICENCES FOR BANKING
ACTIVITIES UNDER THE BANKING ACT 1994

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	24 June 2020	Amendment to paragraph 24D to align the Rule with the MFSA Shareholding Policy for applicants for authorisation as Credit Institutions and Insurance Companies
2.00	07 January 2022	Amendment to delete Appendix III and Form 3 of the Rule
3.00	23 January 2023	Amended to align the information required with the EBA Guidelines on a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of Directive 2013/36/EU (EBA/GL/2021/12)

APPLICATION PROCEDURES AND REQUIREMENTS FOR AUTHORISATION OF LICENCES FOR BANKING ACTIVITIES UNDER THE BANKING ACT 1994

Introduction

1. In terms of Article 4 of the Banking Act 1994 ('the Act') the Competent Authority ('the Authority') as appointed under Article 3 (1) of the Act may make Banking Rules as may be required for carrying into effect any of the provisions of the Act. The Authority may amend or revoke such Banking Rules. The Banking Rules and any amendment or revocation thereof shall be officially communicated to banks and the Authority shall make copies thereof available to the public.
2. The Application Procedures and Requirements for Authorisation of Licences for Banking Activities Rule ('the Rule') is being made pursuant to Article 6 of the Act which requires the Authority to publish a Rule in accordance with its requirements for an application for a banking licence:

"All applications for a licence shall be in such form and accompanied by such information and shall conform with such requirements as may be prescribed from time to time by banking rule, and or electronic money rule ..."
3. The Rule provides applicants for a licence 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 potential applicants. Potential applicants should be guided by Banking Notices as may be issued by the Authority from time to time.
4. It should be emphasised, however, that the Rule does not provide a complete summary of the Act and 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 and the individual persons concerned. Potential applicants should therefore refer to the Act and may also wish to seek legal advice.
5. In assessing an application for authorisation to carry out the business of banking, the Authority shall be guided by the Guidelines on a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of Directive 2013/36(EU) (EBA/GL/2021/12). In this regard, potential applicants shall ensure that all information indicated in these

Guidelines, paying particular attention to the RTS on information for authorisation¹ referred to therein, is submitted to the Authority.

6. In assessing an application for authorisation to carry out the business of banking submitted pursuant to Article 6A of the Act, as indicated in EBA/GL/2021/12, the Authority shall also be guided by the RTS 2020/11 (information for authorisation under Article 8a(6)(a) CRD²). In this regard, potential applicants falling within such category shall ensure that the information referred in the said RTS, is submitted to the Authority.
7. In assessing whether persons desirous to apply for authorisation to carry out the business of banking have the required reputation, knowledge, qualifications and the right skills set to execute their role in an effective manner, licensed entities are expected to follow the Guidelines on the assessment of the suitability of members of the management body and key function holders issued by the EBA under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12).

Scope and Application

8. The Rule applies to all companies as defined in Article 2 of the Act desirous of commencing the business of banking in or from Malta.
7. Article 5 (1) of the Act prohibits a person from transacting the business of banking in or from Malta unless that person is a limited liability company as interpreted under Article 2 (1) of the Act in defining 'company', and which is authorised under the Act to carry out these activities.
- 7A. Article 5(1) of the Banking Act 1994 and paragraph 6 of this Rule, shall not apply to the taking of deposits or other funds repayable by a Member State's central government or central bank or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect deposits and investors and applicable to those cases.
- 7B. For the purposes of this Rule, entities exempt in terms of paragraph 7A above shall also include those defined in **Title 1 – Definitions and Scope**, Article 2 of EU Directive 2006/48/EC and as listed in Appendix III to this Rule.

¹ EBA/RTS/2017/08 and EBA/ITS/2017/05/ issued on 14 July 2017: <https://eba.europa.eu/regulation-and-policy/other-topics/rts-and-its-on-the-authorisation-of-credit-institutions>

² EBA RTS/2020/11 of 16 December 2020: <https://eba.europa.eu/regulation-and-policy/investment-firms/regulatory-technical-standards-prudential-requirements-investment-firms>

- 7C. As also stipulated under Article 5(2) of the Banking Act 1994, in the event of doubt, the business of banking or of accepting deposits or whether such transactions are being undertaken in or from Malta by any person shall be conclusively determined by the competent authority appointed under the Act.
- 7D. A licence to carry out the business of banking is subject to an annual fee as the Authority may determine from time to time in accordance with Appendix II of the Rule.

Definition of 'Business of Banking'

8. Article 2 (1) of the Act defines the 'business of banking' as:

"... the business of a person who as set out in subarticle (2) accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money"

9. Credit Institutions are to be considered pivotal in the allocation process between the ultimate lenders and borrowers of funds. Consequently the receipt of deposits or other repayable funds is indissolubly linked with either the granting of credit facilities or the investing for the account and at the risk of the person accepting such funds. An undertaking which restricts its business exclusively to one of the two activities is not therefore covered by the definition and such one-sided undertaking does not necessarily fall within the scope of the Act.
10. An institution which, pursuant to its Memorandum and Articles of Association, has the formal possibility to engage in the banking activities mentioned in the definition in paragraph 8 above falls within the scope of the Act. The possibility to do any of the activities suffices for licence application purposes. It is immaterial whether or not such an institution actually conducts only one or even more of the respective activities. On the other hand, the mere fact that a person or company pursues the business of banking whether or not that person, if a company, is authorised to engage in these activities pursuant to its Memorandum and Articles of Association is not material: that fact on its own makes that person or company a credit institution which should be properly licensed and supervised.
11. Notwithstanding the above, Article 2(2) of the Act holds that the acceptance of deposits of money, including the raising of funds by other public means, should be a regular feature of that institution's business. This includes the advertising

or soliciting for such deposits. In the Authority's view, however, an institution which holds itself out to accept deposits on a day to day basis would be caught by the Act even if it in fact accepts deposits on particular occasions, and does not advertise for such deposits.

12. In terms of the Proviso to Article 2(2) of the Act, the acceptance of money against any issue of debenture or debenture stock or other instruments meeting or acknowledging indebtedness offered to the public in accordance with any law in force in Malta does not of itself constitute the acceptances of the deposit of money for the purpose of this Act.

Similarly, in the Authority's view, the deposit of money which is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided, also falls within the scope of the Proviso of Article 2 (2) of the Act.

13. An institution which engages in both the distinct activities of borrowing and lending (or investing) is not considered as a credit institution in its own rights if such activity is ancillary to its non-financial business. The raising of funds from the public by the issue of any instrument acknowledging a debt by an institution which at the same time:
 - (a) grants some sort of consumer credit; or
 - (b) grants credits exclusively to other component parts of the same group to which it belongs,

does not necessarily make that institution a credit institution under the Act.

14. The Authority's primary objective of the prudential supervision of credit institutions is the protection of depositors and savers in a sound financial system. Hence the prerequisite that the deposits and other repayable funds must be received from the public. In the Authority's view the public would include an individual person or a legal person both in or outside Malta. For that reason an undertaking either raising its funds exclusively on the interbank market from credit institutions or from other professional market parties or using its own or intergroup funds to finance lending activities does not qualify as a credit institution under the Act.
15. Article 5(2) of the Act however empowers the Authority to determine, in the event of reasonable doubt, whether the business of banking is or is not being transacted in or from Malta. Any institution which is in doubt as to whether its current or potential activities constitute the business of banking under the Act may therefore wish to consult the Authority or take legal advice.

Statutory 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 banking licence, are set under Article 7(1) of the Act.
17. The Authority shall not accept an application for a licence unless the applicant's own funds, calculated in accordance with the Own Funds Rule (BR/03) whether in Euros or in another currency amount to the value of five million Euros. This applies equally to Maltese registered banks and to overseas institutions wishing to set up branches in Malta.
18. Article 7(1)(b) of the Act provides that at least two individuals must effectively direct the business of the bank in Malta (the "four-eyes" principle).
19. Article 7(1)(d) of the Act provides that the Authority has to be satisfied that where there are close links between that credit institution 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 credit institution itself under the provisions of the Act or any banking rule.
- 19A. The Act defines "close links" as referring to a situation where:
- "two or more persons are linked:-*
- (a) *by participation, through direct ownership or by way of control of twenty per centum or more of the voting rights or capital of a body corporate; or*
 - (b) *by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act (Cap 386); or*
 - (c) *permanently to one and the same person through a control relationship."*
20. An applicant for a licence must satisfy the Authority that all qualifying shareholders, controllers and all persons who will effectively direct the business of the bank and of its financial holding company or mixed financial holding company³ (if any) are suitable, fit and proper persons. These criteria go beyond questions of the suitability of particular individuals but entails 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 an applicant for a licence to Article 32 of the Act.

³ "financial holding company" and "mixed financial holding company" shall have the same meaning as in Regulation EU No 575/2013 (CRR).

Minimum Criteria for Authorisation

21. In order to be able to grant a licence under the Act the Authority must be satisfied that the minimum criteria relating to prudent conduct, fit and proper persons, integrity and professional staff and safety of potential depositors are fulfilled with respect to the applicant.
22. The Authority cannot be so satisfied unless the applicant institution and other relevant parties provide such information and documents which the Authority requires to be submitted in connection with the application.
23. In exercising its discretion to grant authorisation the Authority shall also consider the possibilities of its receiving adequate flows of information from the institution and relevant connected parties in order to monitor the fulfilment of prudential criteria and to identify and assess any threats to the interests of depositors and potential depositors. This requirement is defined in the Banking Rule on Statutory Financial Information to be submitted by Credit Institutions authorised under the Banking Act 1994 (BR/06) issued pursuant to Article 19 (4) of the Act.
24. In assessing the requirements of paragraph 23 above the Authority requires to be satisfied that the institution and the group to which it may belong could be subject to consolidated supervision, in accordance with Articles 15(A), 20(7) and 22(2) of the Act and any Banking Rules to that effect issued by the Authority. The Authority will take account of any factor which might inhibit such effective supervision.
- 24A. The Authority recognises that applicants may seek to obtain a licence for the following types of establishments:
 - i. *branches of foreign banks* - Such operating entities do not have a separate legal status and are thus integral parts of the foreign credit institution (refer to paragraphs 29 – 32 below).
 - ii. *subsidiaries* being legally independent institutions, wholly or majority owned by a credit institution which is incorporated either in Malta or in a foreign country;
 - iii. *joint ventures* being legally independent institutions controlled by two or more parent institutions being either foreign or domestic and not all of which being necessarily credit institutions;
 - iv. other entities proposing to carry out the business of banking but not having a credit institution as part of the group's shareholding structure.

- 24B. In the case of subsidiaries of foreign incorporated credit institutions the Authority will consequently have to be satisfied that the parent credit institution is supervised by a home country authority that capably performs consolidated supervision and is able to exchange information on a timely basis. The prior consent of the home authority is required.
- 24C. The requirements in paragraph 24B above are applicable in the case of a joint venture where the applicants are registered as credit institutions in their own rights. The Authority may, at its discretion, also seek to be so satisfied on the standing of all shareholder institutions and their home country authority.
- 24D. Where the applicant for business is not authorised as a credit institution, either in Malta or in its own country, and is therefore not subject to supervision, in considering whether to grant authorisation, the Authority shall take into consideration the Shareholding Policy for applicants for authorisation as Credit Institutions and Insurance Companies published by the Authority.
- 24E. Where, in any case, the applicant credit institution is not the ultimate parent but an intermediate institution, the Authority reserves the right to deal with both the applicant institution and its parent, as well as with their respective banking supervisory authorities.
- 24F. Where either the parent or the intermediate institution is not itself a credit institution, the Authority will apply the minimum criteria as it deems appropriate to the relative case.
- 24G. If the Authority establishes that these minimum criteria are not being met it could impose restrictive measures or outrightly refuse applications for a licence.

Parallel ECB Procedure – Granting of Authorisation

25. With the establishment of the SSM Regulatory Framework, the ECB has the power to grant an authorisation of any credit institution. This is done jointly with the MFSA being the National Competent Authority (NCA). The ECB also must ensure compliance with EU banking rules and the EBA regulation as well as the application of the single rulebook. Where appropriate, it may also consider imposing additional prudential requirements on credit institutions in order to safeguard financial stability. The ECB's Authorisation Division is responsible for these tasks.
- 25A. The SSM Framework Regulation has established a number of procedures, known as the "common procedures", which ultimately are decided on by the ECB, regardless of the significance of the credit institution concerned. These are the procedures for authorisations to take up the business of a credit institution. The SSM Framework Regulation sets out how the ECB and the NCAs are involved in these common procedures.

25B. The SSM common procedures govern the following key principles:

- Applications for authorisations are sent by the applicant entity to the relevant NCA for the granting of new banking licence, this is the NCA of the Member State.
- The NCA notifies the ECB of receipt of an application for authorisation within 15 working days. Applicants should therefore ensure that their applications are complete and well structured. If the first review of an application reveals omissions or inconsistencies, the receiving NCA immediately asks the applicant to make the necessary amendments.
- Once applications have been submitted and their completeness verified, they are subject to a complementary assessment by the receiving NCA, the ECB and any other NCAs concerned (if applicable). The assessment seeks to ensure that all relevant parties gain a thorough understanding of the business model and its viability. To this end, the assessment covers all the criteria set out in relevant national and EU laws.
- If the NCA is satisfied that the application complies with national conditions for authorisations, it proposes to the ECB a draft decision containing its assessment and recommendations. Once a final decision has been reached, the applicant is notified by the NCA processing the application (in the case of licensing applications).

Application for Authorisation

26. Article 6(1) of the Act requires that any company desirous of commencing the business of banking in or from Malta shall, before commencing any such business apply in writing to the Authority for a licence.

26A. The application can be withdrawn by written notice to the Authority at any time before it has been granted or refused.

27. Pursuant to Article 6(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 copy of the Memorandum and Articles of Association of the institution;
- (b) audited financial statements for the last three years (if applicable);

- (c) a business plan including the structure, organization, management systems, governance arrangements and internal control systems of the prospective bank which demonstrates that these arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate to the business model proposed for the prospective bank. The Business Plan is to delineate the internal governance and the assessment of the prospective bank's compliance function and procedures with a view to ensure that the prospective bank will have a full system of governance, compliance and internal controls in place to prevent the materialization of AML risk in line with the Basel III capital framework.

The Business Plan is to account for operational risk and the assessment of conduct risk. The assessment of this category of risk to capital ensures that the prospective bank is sufficiently resilient to withstand the negative consequences of the occurrence of AML risk. The content is to include legal and reputational risks arising for the prospective bank from AML concerns when it assesses the need for supervisory measures on an ongoing basis to ensure an adequate coverage of such risks.

The business model of the prospective bank also takes into account the assessment of the potential impact of AML risk on the viability and sustainability of the bank's business model.

28. The application shall set out all of the following on the internal control framework of the applicant credit institution:
- (a) an overview of the internal organisation (including devoted budgetary and human resources) of the compliance function, risk management function, internal audit function, including an explanation of how the applicant credit institution will satisfy its legal and prudential requirements, including antimoney laundering and counter-terrorist financing requirements, the identity of the persons responsible for the internal control functions and a description of the institution's compliance, internal control and risk management systems and procedures and of the reporting lines to the management body;
 - (b) an outline of the following policies and procedures dealing with matters relevant to the following:
 - (i) whistleblowing policy;
 - (ii) conflicts of interest policy;
 - (iii) complaints handling policy;

- (iv) market abuse policy;
 - (v) consumer protection policy;
 - (vi) the policy promoting diversity of the management body;
 - (vii) the remuneration policy for staff members whose professional activities have a material impact upon the applicant credit institution's risk profile;
 - (viii) the policy and procedure in relation to Anti Money Laundering and Counter Terrorist Financing. It is important that these documents are finalized prior to the granting of authorisation;
 - (ix) the ICT policy which should ensure the sound, reliable and secure functioning of information and communications systems of the applicant credit institution. It should also include the adequate prevention, monitoring and mitigation of ICT risks; and
 - (x) the systems and controls which the applicant has or will put in place to ensure that their policies and procedures indicated above remain up to date, effective and relevant.
- (c) an outline of the systems and policies for assessing and managing the risks of money laundering and terrorist financing including an overview of the key procedures that have been put in place to counter the risk that the applicant credit institution might be used by others to further financial crime.
- (d) the identity of all directors, controllers and managers of the institution; identity of the individuals who will be effectively directing the business of the prospective bank.
- (e) the identity of all shareholders with a qualifying shareholding;

29. Pursuant to the information to be provided under paragraph 28 the applicant credit institution shall also refer to Banking Rule BR/24 on Internal Governance of Credit Institutions licensed under the Banking Act.

Additional Information

30. Notwithstanding the submission of the information and documents indicated under paragraphs 27, 28 and 29 above, the Authority may, under Article 6(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 or to determine whether to restrict or revoke 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 26, 27, 28 and/or 29 of the Rule.

Branches of Overseas Institutions

32. A branch is an integral part of the institution to which it belongs. A licence issued to an institution incorporated outside Malta to operate its business of banking 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 under Article 7(1)(a) of the Act although paragraph 17 of the Rule shall apply.
33. In the case of an institution whose principal place of business is in a country outside Malta, the Authority may, at its discretion, regard itself as satisfied that the minimum criteria for authorisation under paragraphs 21-24 above are fulfilled if:
 - (a) the banking supervisory authority in that country informs the Authority that it is satisfied with respect to the prudent 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 that country's relative authority.
34. 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. 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 overseas supervisory authority.
35. In this respect information regarding directors, controllers and managers required from overseas institutions operating through branches in Malta may, however, be less detailed than that required from institutions registered in Malta.
- 35A. Where branches of European credit institutions are to be established in terms of Article 20 of EU Directive 2000/12/EC, paragraphs 32 to 35 above shall not apply. However, such institutions are to be guided by the provisions of Section

3 of Legal Notice 88 of 2004, European Passport Rights for Credit Institutions Regulations, 2004.

Branches of Credit Institutions Licensed under the Act

36. Article 11 of the Act regulates the opening of branches by institutions licensed under the Act by requiring that:
- "(1) A credit institution shall inform the Competent Authority in writing before opening a new branch, agency or office in Malta;
 - (2) Unless with the written consent of the Competent Authority, no credit institution incorporated in Malta may open a new branch, agency or office or set up or acquire any subsidiary in any place outside Malta."
- 36A. In order to grant authorisation in terms of Article 11(2) of the Act, the Authority has to satisfy itself that it will receive regular information on the operations and situation of such establishments and that such establishments will be adequately supervised by the host country.
- 36B. In order to satisfy itself on these points the Authority would need to establish that adequate supervisory arrangements exist in the host country and that the host country regulations would not inhibit adequate flows of information to the Authority about such establishment in particular to enable the Authority exercise full consolidated supervision.
- 36C. Where branches of local credit institutions are to be established within an EEA State, such institutions shall comply with the requirements of Section 8 of Legal Notice 88 of 2004, European Passport Rights for Credit Institutions Regulations, 2004.

Determination of an Application for a Licence

37. Under Article 7(3) the Authority must determine an application for a licence within six months of receipt of the application.
38. In the case where an application is not filed in compliance with Article 6(2) of the Act or if additional information is requested under Article 6(3) of the Act, the Authority must determine that application within six months of compliance under Article 6(2) or submission of information under Article 6(3) whichever is the later.
39. In any event, the Authority is bound to determine an application for a licence within twelve months.
40. An application for a licence is deemed to be determined by the Authority by:

- (a) granting a licence without condition;
- (b) granting a licence subject to such conditions it may deem appropriate;
- (c) refusing to grant a licence.

40A. Article 10 of the Act provides that a person can lodge an appeal to the Financial Services Tribunal any decision taken by the Competent Authority concerning an application for a licence.

Additional Business Activities

41. In granting a banking licence the Authority may, subject to any other law regulating such activity, authorise an institution to further carry out all or any of the additional activities listed in Schedule to Article 2(4) of the Act. The carrying out of these activities on their own do not however constitute the business of banking in terms of the Act. The carrying out of any other activity not included in the Schedule is prohibited unless so authorised by the Authority. Such authorisations are without prejudice to the institution obtaining any other appropriate licence that it might require under any other law and the Authority may require the credit institution to carry out such activities through a subsidiary.

Internet and Electronic Banking

- 41A. Evolving technological innovation has given rise to alternative ways, besides the more traditional ones, of conducting the business of banking and the ancillary activities included in the Schedule to the Act. The same applies to the process of providing customer information. The rapid developments that are being experienced in electronic banking capabilities, particularly banking on the Internet, therefore carry benefits but also risks.
- 41B. In view of this and in line with internationally recognised standards the Authority, while maintaining that Internet Banking is subject to all the statutory and regulatory provisions that are applicable to traditional banking from time to time, recognises that this method of carrying out the business of banking and the related ancillary activities poses strategic, operational, legal and reputational risks that are more complex than those related to the traditional banking. Furthermore, electronic banking increases the dependence of a credit institution on sound system design and architecture as well as system interfacing and operational scalability.
- 41C. The increase in dependence referred to in paragraph 41B highlights an even further increase in the technical complexity of many operational and security issues. It also

creates the possibility of technical agreements with third parties many of whom are unregulated (e.g. Internet Services Providers – ISP's)

- 41D. The Internet is global by nature and is a network that is accessible from anywhere by unknown parties. Messages are routed through unknown locations and through rapidly evolving technical devices. Therefore the importance of security controls, know your customer techniques, data protection, audit trail procedures and customer privacy standards assumes an even higher level of relevance than the one usually associated with traditional banking.
- 41E. For this reason, both at licensing stage and on an ongoing basis, the Authority will endeavour to ensure that all the risks referred to in paragraph 38B are adequately identified, monitored and provided for by credit institutions intending to undertake the business of banking on the Internet.
- 41F. Appendix 1 of the Rule addresses the risks referred to in paragraph 38B and is intended as a means through which the Authority would evaluate the methodology that would be applied by the applicant institution to cater for such risks. In this way, from the outset, the Authority would be in a position to establish whether, in its opinion, any prospective service on the Internet would be provided in a prudent manner. In addition, such information would serve as the basis for on-going supervision of the particular credit institution's activities via Internet once such institution is licensed.
- 41G. Therefore, within the scope of the foregoing, applicant institutions who are desirous to provide any Internet related service included in Appendix 1 would be required to complete the Appendix as applicable and submit it together with the documentation required in terms of paragraph 27.
- 41H. In order to minimise duplication of information, applicant institutions may refer to details as featured in Appendix 1 when drawing up the business plan required in terms of sub article (c) of paragraph 26. Before completing the relevant Questionnaire, applicant institutions are expected to familiarize themselves with the principles included in the Annex accompanying Appendix 1 together with the relevant document on Risk Management Principles for Electronic Banking issued by the Basle Committee on Banking Supervision dated May 2001. The Authority considers compliance with these principles as being crucial for the prudent management of internet and electronic banking related activities.
- 41I. In issuing the Questionnaire, the Authority is not expecting currently licensed credit institutions to complete it in respect of electronic services offered at the time paragraphs 41A to 41H come into force.
- 41J. On the other hand the Authority expects such licensed banks to familiarise themselves with the contents of the Questionnaire and to complete it as applicable when proposing to undertake new electronic services including those on the Internet. On completion as applicable, the Questionnaire is to be submitted to the Authority for its consideration before the proposed new services are provided.

Payment Services

- 41K. Credit institutions, including branches of credit institutions, located in the Community, and having their head offices inside or outside the Community shall for the purposes of the Act and Rules be considered as payment services providers. However, it should be noted that credit institutions fall outside the scope of Directive 2007/64/EC (the Payment Services Directive) as transposed locally through the Financial Institutions Act, applicable Regulations, Financial Institutions Rules and relevant Central Bank Directives.

Business to be Conducted in a Prudent Manner

42. Pursuant to Article 9(2)(h) of the Act the Authority expects that an authorised institution conducts its business in a prudent manner.
43. Without prejudice to Article 7 of the Act and to the generality of consideration as to whether the business is being conducted prudently, an authorised institution shall not be regarded as conducting its business in a prudent manner unless:
- (a) the directors include non-executive directors as the Authority considers appropriate having regard to the nature and scale of operations of the institution and who shall act in a control capacity in questioning the approach of the executive directors and other management;
 - (b) every person who is a director, controller or manager of the institution and every person who effectively directs the business of a financial holding company of that institution (if any) is a fit and proper person to hold that particular position and to carry out the requisite business with integrity and skill. Without prejudice to Article 32 of the Act, in assessing whether a person has the relevant competence, soundness of judgement and diligence, the Authority considers the experience of similar responsibilities, qualifications and training;
 - (c) it adapts at all times to the requirements of the relative Rules issued under the Act by the Authority [Article 33(a)];
 - (d) it makes adequate provisions for depreciation or diminution in the value of its assets, for liabilities which will or may fall to be discharged by it and for losses which it will or may incur. In assessing the adequacy of an institution's provisions, the Authority shall regard that institution's provisioning policies including the methods and systems for monitoring recoverability of loans and policies and practices for the taking and valuation of security. In this respect the Authority has issued Banking Rule BR/09 on Credit and Country Risk

Provisioning in terms of Article 17(a) of the Act;

- (e) it maintains adequate accounting and other records and adequate systems of control of its business and records that are commensurate with its needs and particular circumstances in such a way as to enable the business of the institution to be prudently managed and for it to comply with the duties imposed on it by or under the Act. In assessing this adequacy the Authority shall take into consideration the internal audit procedures of the institution.

Supervisory and Other Requirements of Licensed Institutions

- 44. Article 19 requires licensed institutions to submit statistical information to the Authority and the Central Bank who both attach great importance to timely and accurate reporting. Statistical information is necessary for supervisory reasons, for the operations of monetary policy, to advise the Government on general financial and economic policy and for the general overview of the financial system.
- 45. Once authorised, all credit institutions are subject to the Authority's continuing prudential supervision under the Act. The Authority may conduct its supervision on an individual (solo) basis or on a consolidated basis taking account of the operations of banking and other financial companies connected to the authorised institution always having regard to the individual structure and circumstances of each authorised institution.
- 46. The Authority may use its powers under Article 20 of the Act to require the submission of information and documents, and reports by accountants on that information. In particular the Authority may require reports on authorised credit institutions' returns and on their accounting and other records and their internal control systems.
- 47. The Authority can, under written notice to an authorised institution, use its powers under Article 22 of the Act to appoint competent persons to investigate and report on:
 - (a) the nature, conduct or state of the credit institution's business or any particular aspect of it; or
 - (b) the ownership or control of a credit institution.

Notification Requirements under the Act

- 48. Any person, as defined in the Act, who is proposed to be a controller or a director of a credit institution incorporated in Malta shall be a suitable person

to exercise such control. Accordingly, such person is advised to consult carefully the provisions of the Act in particular Article 14, and, if necessary, to seek legal advice. For the purposes of this Rule, this requirement also applies to directors of financial holding companies (if any) of the credit institution as is the case at application stage as set out in paragraphs 20 and 41(b) of this Rule.

49. Article 14 of the Act imposes notification requirements with respect to any person who is proposed to become a controller or director of the credit institution.
50. The Act imposes the obligation on a credit institution to obtain the consent of the Authority in terms of Article 13C before it may lawfully change its composition or structure.
51. Article 31 imposes the obligation on a credit institution to notify the Authority upon the appointment or any change in the appointment of its auditors. An auditor of an authorised 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 credit institution is obliged to notify the Authority and the Governor of the Central Bank should it consider that it is likely to become unable to meet its obligations.

Restriction and Revocation of a Licence

53. In certain circumstances the Authority may revoke or impose restrictions on a licence. The Authority's powers to revoke or impose restrictions become exercisable if it appears that any one of a number of grounds as specified under Article 9 of the Act is applicable. In doing so the Authority may at any time make public any action it has taken if it is satisfied that circumstances warrant such course of action.
54. When the Authority's power to revoke or restrict a licence becomes exercisable, the Authority shall give notice of intention to the institution concerned setting out its reasons for its proposed actions and specifying a period in which the institution is to make its representations as to why such action should not be taken. The Authority cannot exercise its powers before the expiry of such period unless the matter is urgent.
55. In any event the institution concerned has the right to lodge an appeal under Article 10 of the Act.

Representative Offices of Non-Maltese Banks

56. A representative office for the purposes of the Act means premises in Malta from which the business of banking of the company is promoted or assisted in any way.
57. A representative office cannot be established in Malta unless the Authority is given two month's notice within which time it can refuse the establishment of such office.
58. Such notice must specify the name and address of such office and be accompanied by a certified copy of the authorisation of the company to conduct the business of banking in a country other than Malta. It must be filed in accordance with an application form as issued by the Authority.
- 58A. When supervising Representative Offices, the Authority may, by Banking Rule invoke procedures that are similar to those applicable to banks in respect of:
- supervision
 - right of entry
 - investigation
 - suspected offence, and
 - obstruction

In doing so the Authority would be acting in accordance with the provisions of Article 8(7) of the Act.

59. Therefore non-Maltese credit institutions seeking to establish a representative office in Malta are advised to read carefully Article 8 of the Act in view of the Authority's powers exercisable under this Section. Reference should also be made to Legal Notice 42 of 1995, Legal Notice 113 of 1998 and Banking Notice (BN/02).

Appeals Against Decisions of the Authority

60. Any person, as defined in the Act, who is aggrieved by a decision of the Authority to impose any condition on the granting of a licence, to impose or vary a restriction, to revoke a licence, to issue any notice or make any order under Article 13 or Article 14 of the Act has a right of appeal to an independent Financial Services Tribunal under Article 21 of the Malta Financial Services Authority Act *Cap 330*.
61. There is also a right of appeal by a person on whom an administrative penalty has been imposed by the Authority under Article 35(5)(d) of the Act.

Use of the Word 'Bank'

62. Article 12 of the Act restricts the use of the word 'bank' except by a credit institution licensed under the Act which must at all times use as part of its description or title the word 'bank' or one or more of its derivatives.
63. The Authority expects an authorised 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 reasons for the proposed changes. An authorised 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.

Prohibited Transactions

64. Authorised institutions and potential applicants for a banking licence are advised to read carefully Article 15 of the Act which restricts or prohibits certain transactions and to contact the Authority for any clarification on such transactions where necessary.

Confidentiality

65. The Professional Secrecy Act 1994 prohibits the Authority, its staff and others from disclosing information received by them under or for the purposes of the Act except in certain restricted circumstances.
66. Article 34 of the Act further prohibits the Authority or the Central Bank from enquiring into the affairs of any individual customer of a bank except in certain restricted circumstances.
67. Article 34 also restricts the disclosure of information relating to the credit institution or its customers to certain special circumstances.

The Authority to take Control of Banks (Credit Institutions)

68. The control of a credit institution may be taken over by the Authority should any of the circumstances indicated in Article 9(2) of the Act apply.
69. In this respect authorised institutions and potential applicants are advised to consider carefully Articles 9 (2), 28 and 29 of the Act and, if necessary, take legal advice.

Offences and Penalties

70. Article 35 of the Act details circumstances under which a person, including a body corporate, is deemed to have committed or is accomplice to an offence under the Act. Such circumstances include:
- (a) the fraudulent inducement to make a deposit;
 - (b) contravention of any provision of the Act or Banking Rules;
 - (c) non-compliance with any order or requirement of the Authority, the Banking Tribunal or any other person made under the Act; and
 - (d) the alteration, suppression, concealment, destruction or non-production of any document which that person is required to produce.
71. Any person who commits an offence in terms of this Rule as provided for under Article 35 of the Act is liable to such penalties as may be prescribed pursuant to the said Section.

Monetary Control Requirements

72. Authorised institutions and potential applicants for a banking licence are also advised to read carefully the monetary control requirements under the Central Bank of Malta Act and, where necessary, to seek clarifications from the Central Bank of Malta.

BANKING RULE BR/01

**INTERNET AND ELECTRONIC BANKING
QUESTIONNAIRE**

APPENDIX 1

Internet and Electronic Banking Questionnaire

This questionnaire is to be compiled by prospective licence holders who would be providing any internet and electronic related services. The annex to the questionnaire is an integral part of the Appendix and should be construed accordingly.

Questionnaire

(Questions 1 – 5 relate to the general introduction of the proposed institution)

1. Under which of the three categories described below does the service offered fall
 - (a) Information only
 - (b) Information exchange
 - (c) Transactional
 - (d) Any combination of (a), (b) and (c) above?

Note: Any additional on-line services to be provided should also be disclosed.

2. Will the institution allow customers to obtain consolidated information about their financial and nonfinancial accounts. If in the affirmative please give details.
3. Will the institution be dealing with residents and/or non-residents?
4. Will the institution be dealing in the euro and/or foreign currencies?
5. Which currency will be the base accounting currency for the institution?

(Questions 6 – 13 relate to the strategy of the proposed institution)

6. Kindly provide details of the proposed Internet Banking business strategy and indicate the way in which it is consistent with the institution's overall strategy and aligned with its other lines of business?
7. Briefly describe the overall systems implementation plans and any envisaged operational developments during the first months of operation.
8. Will the institution have its own deposit and/or withdrawal infrastructure or will it rely on other institutions' networks and ATMs?
9. Is it the institution's intention to establish some type of physical presence intended for customer service?
10. If in the affirmative would the services offered cater for multiple national jurisdictions differences? If in the negative what would be the alternative arrangements being provided for customer service.
11. How would project progress be monitored and reported at Board level?
12. In what way would the Board of Directors and senior management establish effective management oversight over the risks associated with e-banking activities, including the establishment of specific accountability policies and controls to manage risks?
13. Please provide details of the proposed staff training programmes in relation to the envisaged operations

(Questions 14 – 26 relate to client information of the proposed institution)

14. What type of information/client profile details would be collected regarding prospective clients prior to providing access to the system and prior to acceptance of clients?

15. Describe the measures that would be taken to establish positive customer identification
16. How would positive customer identification be checked?
17. How would customer information be verified with information databases of fraudulent activity?
18. Would electronic credentials be required by a third party of repute (e.g. reference letter)?
Please give details
19. In what way would the institution monitor customer accounts to ensure that they are in line with the customers' financial/ business profile as understood by the institution?
20. What additional safeguards will the system have to prevent money laundering?
21. Who would be the money laundering reporting officer and how will he be identified?
22. What records will be maintained in order to be able to reconstruct a financial transaction?
(Audit trail)
23. Would the customer's profile be used for other specified purposes?
24. What further uses, if any, will the customer profile details collected by the institution have?
25. (a) What procedures would the institution have for up-dating customer profile details?

(b) What safeguards are/ will be in place to keep the customer profile current?

26. Will the institution use direct and targeted marketing to existing customers?

(a) If YES what mechanisms will be used?

(b) Will the authorisation from the client be sought prior to direct marketing?

(c) Will there be a revocation option?

(Questions 27 – 39 relate to the web site information of the proposed institution)

27. What information would the institution be giving on itself?

28. Would the institution's website be connected to the parent institution? [Please answer if applicable].

29. (a) What would be envisaged as the risks related to the operation of the system? [e.g. Systems delay]

(b) Will these risks be disclosed on the web site? If no, please indicate what measures would be taken to ensure customer awareness.

30. (a) What general banking related risk warnings will be displayed?

(b) Would these risks be disclosed on the web site? If no, please indicate what measures would be taken to ensure awareness

-
31. (a) Would the web-site have business related chat areas and/or on line discussion forums?
- (b) If YES how would the institution monitor chat areas and on-line discussion forums?
32. (a) Would the institution make a disclaimer with respect to business related hyperlink information, if any, or would it endorse the information contained in the hyperlink?
- (b) Would there be any clear indication that the viewer is leaving the institution's web-site?
- (c) Kindly provide a list of proposed hyperlinks and if the hyperlinks relate to other regulated banking and financial services providers kindly provide the name of the regulator.
33. Would the following information be disclosed on the web-site?
- (a) A detailed statement and information regarding the manner, in which orders are accepted, processed, settled and cleared.
- (b) A statement of policies regarding the manner in which operational difficulties such as system problems and power cut will be handled, including the alternatives available to clients during disruptions.
- (c) Procedures to cancel pending orders during system failures.
- (d) Information relating to transactions and banking fees.
- (e) When the information on the web site is subject to update, will the date last updated be disclosed.

-
- (f) If the answer to any of the foregoing is in the negative please indicate what alternative measures would be taken to ensure customer awareness.
34. (a) Would the institution notify its clients and provide other means to make transactions should access to the principal web site be temporarily unavailable?
- (b) If YES what other alternatives will be made available.
- (c) How will customer identity be verified?
35. (a) Would the institution target specific jurisdictions, states or countries to provide its service?
- (b) If YES please ensure that there are no regulatory/ licensing implications in the targeted jurisdiction/state/country which may have been overlooked. Legal advice is recommended.
- (c) It is the company's responsibility to ensure compliance with any applicable overseas regulations.
36. Would a privacy statement be stated on the web-site? Please give any relevant details.
37. Would the system allow customers to decline from permitting the bank to share with a third party for crossmarketing purposes any information about the customer's personal needs, interests, financial position or banking activity?
38. What measures would be put in place to ensure privacy and confidentiality?

-
39. How would customers be informed of their rights and obligations and of any liabilities arising out of their customers of the institution?

(Questions 40 – 44 relate to the transaction information of the proposed institution)

40. (a) Would conditions, interest rates applicable for loan and deposits advances or other information be subject to any system-induced delay?
- (b) If YES by how long?
- (c) Would details be disclosed on the web-site?
41. (a) How often would account information be updated?
- (b) Would the frequency be disclosed on the web site? If not what measures would be taken to ensure customer awareness
42. (a) What will be the sources of the information displayed on the web-site?
- (b) Would the source be stated?
43. Which customer verification system will be used? (e.g. electronic signatures, password, pin, etc)
44. Which banking products and ancillary banking services will be offered electronically? Please give details.

(Questions 45 – 47 relate to the trade information of the proposed institution)

45. (a) Would updated exchange rates be available on line?
- (b) How often would these be updated?
- (c) How would the correctness of exchange rates be verified
46. How would the institution ensure that market reports are not considered by any interested parties as advices?
47. What mechanisms will be in place to ensure the integrity of third party information feeds and to ensure that the information is up to date at all times?

(Questions 48 – 54 relate to the best execution policy of the proposed institution)

48. How would the institution provide customers with the necessary information about the service it offers?
49. What type of instructions will the system cater for?
50. (a) How will the institution ensure best execution?
- (b) Kindly describe the process of how a typical transaction/ client order will be catered for from start to end.
51. How would the institution evaluate its execution quality and how often would it do so?

-
52. How would customer executions be confirmed?
 53. What type of confirmation and/or documentation would be sent to clients?
 54. Will customers be made aware that they have received customised/ standard information?

(Questions 55 – 80 relate to the system security of the proposed institution)

55. What overall security policy does the institution have? Please provide details on the internal and external aspects and updated process.
56. What security procedures and mechanisms would be in place to deter unauthorised access to the system?
57. How will the system be safeguarded against viruses?
58. What mechanisms would be in place to maintain the integrity of the market data stored on the system hardware and whilst in transit?
59. What monitoring and specific controls will be in place to maintain the integrity of the source code?
60. In what manner would audit logs be used to monitor systems usage and any unauthorised activities?
61. What systems security tools are expected to be utilised on the applications, networks and operating systems?

-
62. What processes and procedures would be in place in the event that security controls are not compatible with trade partners?
 63. What configuration standards for supporting IT infrastructure would be in place?
 64. How would segregation of duties be maintained in the application and underlying technology?
 65. How would administrator profiles be controlled and checked?
 66. What internal authorisation and authentication procedures would be put in place to help guarantee the segregation of duties?
 67. What encryption techniques used to provide data integrity and confidentiality of information would be put in place?
 68. What would be the specific and monitoring controls in place over the client's bank account details?
 69. What firewalls would be used to protect data?
 70. How would the institution prevent unauthorised electronic funds transfers?
 71. With respect to authorised privileged access, what monitoring controls would be in place to prevent unauthorised access and modification of sensitive data?
 72. How often would user IDs and passwords be checked on a periodic basis?

-
73. How often would the institution conduct regular systems testing and evaluation?
74. What safeguards would the system have with respect to the safe custody of confidential information (whether stored, in transit or displayed on the client's screen)?
75. What authorisation procedures does the company intend to adopt with respect to the execution of clients orders?
76. How would an established customer be authenticated through the system?
77. Please provide details as to how would the following be identified and monitored:
- (a) Restricted transactions
 - (b) Correcting and revising entries
 - (c) Unsuccessful attempts to access the system or restricted information
78. What formal procedures would be put in place to report and respond to unauthorised attempts to access the institutions internet banking system?
79. Would the institution perform stress testing to ensure system capacity? If not what alternative measures would be adapted?
80. Please provide a summary of the details of the proposed disaster recovery plan?

(Questions 81 – 88 relate to the recovery procedures of the proposed institution)

-
81. What IT recovery procedures would be put in place in the event of a component or operating site becoming inoperable?
 82. What is the expected maximum period where the system could be unavailable?
 83. What procedures would be put in place to protect clients from losses during the period in which the system would not be available?
 84. What procedures and processes would be put in place which address system availability and systems performance?
 85. What procedures and processes would be put in place to address any failure in the systems provided by third parties?
 86. How would back-up procedures be distributed?
 87. How often would the information be backed-up?
 88. Where would the information be stored?

(Questions 89 – 96 relate to the availability of the proposed system that would be operated by the institution)

89. What resources would be put in place to ensure 100% availability of the system?
90. (a) How would the institution ensure sufficient capacity to keep up with the systems demands resulting from on-line trading?
 - (b) Who would be responsible for the review of the technological adequacy of the internet based system?

-
- (c) How often would such reviews take place?
91. How does the institution intend to apply and, if necessary upgrade its resources to handle the potential level of business activity?
92. How would the institution cater for unexpected shifts for its on-line services demand?
93. (a) What tools and techniques would be made available to monitor and measure systems availability and to take corrective action when necessary?
- (b) What periodic stress tests would be conducted?
94. Who would be responsible for the implementation and updating of the business continuity plan should the need arise? Please give a summary of the proposed plan itself
95. Please give details of the back-up power supply that would be available.
96. (a) Would there be a secondary site for contingency purposes?
- (b) If YES would there be periodical tests to ensure its functionality?
- (c) If NO what alternative measures would be taken in this regard.

(Questions 97 – 103 relate to the change over from test to live)

-
97. What documented change control procedures would be put in place in relation to the change over?
98. Would an automated change control system be utilised? If no what alternatives are proposed?
99. Would a test development system environment be a part of the process of change control? If no what alternative would be in place?
100. What test procedures would be put in place to address any system changes being migrated to the live environment?
101. How would segregation of duties be maintained between the live and the test/ development environment?
102. What formal process will be put in place to document testing and agreeing test results before functionality is promoted to the live environment?
103. (a) Would there be software that can be downloaded by the customer?
- (b) If YES would software updates be sent automatically to existing customers?

(Questions 104 – 113 relate to the systems documentation of the proposed institution)

104. What procedures would be in place to update network schematic diagrams to reflect any changes in the network environment?
105. How would the updating of the procedures and the assigning of document ownership be addressed?

-
106. Please give details of the proposed software inventory.
107. What information would it provide to the institution?
108. What would be the process for acquiring and distributing:
- (a) new or upgraded software;
 - (b) service packs;
 - (c) other requires measures;
109. What licensing arrangements would be put in place for software and with whom?
110. How would the institution ensure that it would not violate any licensing agreements with third party providers of software?
111. What would be the phases of the life-cycle to be employed?
112. What would be the nature and extent of the program documentation kept "in house"?
113. In what way would program documentation be kept up to date?

(Questions 114 – 117 relate to the IT people of the proposed institution)

114. Who would be the key IT people within the organisation and to whom would they be accountable?

-
115. Please indicate their respective duties and responsibilities within the institution.
116. What processes would be put in place to ensure that IT staff have the requisite skills to maintain and support the systems on an ongoing basis?
117. How would the risk of key dependency on particular human resources be managed?

(Questions 118 – 133 relate to other regulatory concerns of the proposed institution)

118. Please give details of any arrangements to be entered into with financial portals (e.g. Yahoo Finance)?
119. (a) Would customers be able to lodge a complaint on-line?
- (b) If YES who will be responsible for investigating the complaint?
- (c) If NO what alternatives would be offered?
120. (a) Would there be any internal checks performed to assess the computer operations and the suitability of controls?
- (b) If YES how often are these reviews performed?
- (c) Would formal reports be produced and made available for review?
- (d) If NO what alternatives would be put in place to ensure the proper checks?

-
121. Please define the role that the compliance department would have in the monitoring and overseeing the development of electronic related banking business as being proposed by the institution.
 122. Please give details of relevant risk management policies and the parameters that would be considered for their eventual review.
 123. What crisis management procedures would the institution have in place?
 124. How would the institution cater for credit risk vis a vis customer due diligence?
 125. How would the institution cater for transaction risk to deliver accurate, timely and reliable services?
 126. How would the institution cater for compliance risk for violations or non conformance with laws, rules, regulations, prescribed practices and ethical standards?
 127. How would the institution cater for the market risk and how it will hedge and provide for such risk?
 128. How would the institution cater for interest rate risk to maintain appropriate asset/liability management systems and maintain the ability to react quickly to changing market conditions?
 129. How would the institution cater for liquidity risk in respect of deposit volatility from customers?
 130. How would the institution cater for the operational risk involved especially through its outsourced functions if any?

131. How would the institution cater for the legal risk in its country of origin, country of operations and countries of its customer base?
132. How will the institution cater for reputational risk in relation to its operations?
133. Would the institution be regulated by other supervisory bodies in Malta and/or outside Malta in relation to any internet related services?

ANNEX I

Risk Management Principles for Electronic Banking

1. The Board of Directors and senior management of credit institutions should establish effective management oversight over the risks associated with e-banking activities, including the establishment of specific accountability, policies and controls to manage these risks.
2. The Board of Directors and senior management of credit institutions should review and approve the key aspects of the banks' security control process.
3. The Board of Directors and senior management of credit institutions should establish a comprehensive and ongoing due diligence and oversight process for managing the credit institutions technical relationships with non licensed third parties and other non licensed third-party dependencies supporting e-banking.
4. Credit institutions should take appropriate measures to authenticate the identity and authorisation of customers with whom it conducts business over the Internet.
5. Credit institutions should use transaction authentication methods that promote non-repudiation and establish accountability for e-banking transactions.
6. Credit institutions should ensure that appropriate measures are in place to promote adequate segregation of duties within e-banking systems, databases and applications.
7. Credit institutions should ensure that proper authorisation controls and access privileges are in place for e-banking systems, databases and applications.
8. Credit institutions should ensure that appropriate measures are in place to protect the data integrity of e-banking transactions, records and information.
9. Credit institutions should ensure that clear audit trails exist for all e-banking transactions.
10. Credit institutions should take appropriate measures to preserve the confidentiality of key e-banking information. Measures taken to preserve confidentiality should be commensurate with the sensitivity of the information being transmitted and /or stored in databases.
11. Credit institutions should ensure that adequate information is provided on their websites to allow potential customers to make an informed conclusion about the bank's identity and regulatory status of the bank prior to entering into e-banking transactions.
12. Credit institutions should take appropriate measures to ensure adherence to customer privacy requirements applicable to the jurisdictions to which the bank is providing e-banking products and services.
13. Credit institutions should have effective capacity, business continuity and contingency planning processes to help ensure the availability of e-banking systems and services.

14. Credit institutions should develop appropriate incident response plans to manage, contain and minimise problems arising from unexpected events, including internal and external attacks, that may hamper the provision of e-banking systems and services.

*Source: Basel Committee on Banking Supervision "Risk Management Principles for Electronic Banking"
– May 2001.*

APPENDIX II**Fees Payable by Institutions Authorised under the Banking Act 1994****(Article 5(4) and L.N. 218 of 2003 as amended by L.N. 351 of 2008)****Fees payable 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.****Credit and Electronic Money Institutions**

[a] APPLICATION AND PROCESSING FEE	€12,500
[b] LICENSING FEE	€18,000
[c] SUPERVISION FEE	0.000175 X Deposit Liabilities^(iv & v) But not less than €21,250 and not more than €500,000

Notes:

- (i) *The above fees shall be applicable to applicant credit/electronic money institutions and/or institutions licensed under the Banking Act 1994;*
- (ii) *Application and Processing Fees shall be payable on the submission of draft documentation under the Banking Rule BR/01 and/or Electronic Money Institutions Rule EMIR/01;*
- (iii) *On the granting of a licence under the Banking Act 1994, credit/electronic money institutions shall pay the licensing fee and the applicable supervision fee which shall be proportionate to the period between the date when the licence is granted and the dates established in Note (vii) below.*
- (iv) *Supervision Fees are equivalent to 0.000175 of its deposit liabilities (excluding intergroup deposits). The amount of Supervision Fee payable shall be not less than €21,250 and not more than €500,000;*

-
- (v) *Supervision Fees are calculated on the deposit liabilities as reported in the statutory schedules under BR/06 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 competent authority in two instalments of equal amounts on the 1st January and 1st July;*
- (vii) *The Supervision Fees of credit institutions licensed after 1st January of any calendar year, 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.*
-

Representative Offices

[a] ANNUAL FEE

€3,600

- (i) *Representative Office Fees are to be paid on establishment and in each subsequent year, upon the anniversary of such date as established in terms of Legal Notice 218 of 2003.*

APPENDIX III

Appendix III is deleted with effect from 03 January 2022 and replaced by the Second Schedule to the Banking Act, as introduced through [Act No LXXI of 2021](#).

BANKING RULE BR/01

APPLICATION FORMS FOR A BANKING LICENCE UNDER THE BANKING ACT

FORM I

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

Application for Authority to carry out the Business of Banking in or from Malta

Banking Act 1994

Applicants are required to submit their applications to the Competent Authority as appointed under Article 3(1) of the Act. Before answering this questionnaire, applicants should read the Banking Act 1994 and the Banking Rules issued thereunder.

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 purposes 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 promoter's 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 Competent 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 proposed 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 directors, controllers and managers of the institution as defined in Article 2 of the Act, indicating with respect to controllers and with reference to Article 14 of the Act the sense in which persons, whether individual or corporate, are controllers. Please attach a curriculum vitae for all identified directors, controllers and managers.

-
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 7 (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 directors, controllers or managers, 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 the additional activities as per Appendix 1 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.

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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 Banking Act 1994 and the relative Banking Rules in particular the Rule on Application for an Authorisation to carry out the business of banking and Article 35 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 Competent Authority should be aware.

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

We undertake that, in the event that the institution is granted authorisation under the Banking Act we will notify the Competent 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 Articles 13 and 14 of the Banking Act. We further undertake to forthwith inform the Competent Authority of the fact that any person has become or ceased to be a director or manager of the institution as defined in Article 2 of the Banking Act.

Name _____

Position held _____

Signed _____

Date _____

Name _____

Position Held _____

Signed _____

Date _____

FORM 2**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.

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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 upload the Personal Questionnaire as set out on the [MFSA website](#) 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);

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- (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.

BANKING RULE BR/01

PERSONAL QUESTIONNAIRE

PERSONAL QUESTIONNAIRE

Individuals intending to take up positions which can influence the direction of a credit institution or intending to occupy positions of trust are subject to prior regulatory approval. Such individuals are required to complete the online Personal Questionnaire in order for the Authority to conduct a suitability assessment. In this respect, applicants shall refer to the Authority's Personal Questionnaire webpage which can be accessed [here](#) for the submission of such questionnaire and supporting documentation.

BANKING RULE BR/01

**APPLICATION FORM FOR A
REPRESENTATIVE OFFICE UNDER THE
BANKING ACT 1994**

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

Notice of a Proposal to Establish a Representative Office in Malta

BANKING ACT 1994

Before completing this questionnaire, those individuals directing overseas institutions should read the Banking Act 1994, and in particular Articles 8 and 35, and Legal Notice 113 of 1998.

Questionnaire

1. (i) Registered name of institution in country or territory of incorporation or formation, name under which it carries on business in the country or territory in which it has its principal place of business (if different) and any business name(s) which it uses in these countries or territories. (ii) Name(s) which the institution proposes to use in relation to activities conducted by it in Malta after establishment of the representative office (Names should be in the foreign language with a faithful English translation).

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2. Address of head office and of proposed Malta office (if known).

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3. Legal form of institution (body corporate, partnership etc.)

4. Please provide the institution's Memorandum and Articles of Association, or equivalent. (If the documents are not in English, a certified English translation should be provided.)

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5. Country or territory of incorporation or formation and of principal place of business, if different.

-
6. Please provide the latest annual report and audited accounts. (If the documents are not in English, a certified English translation should be provided.)

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7. Licence or equivalent authorisations currently held by the institution in country or territory of incorporation or formation (and of principal place of business, if different). Copies of certificates or letters of authorisation (if any) should be provided. (If the documents are not in English, a certified English translation should be provided).
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8. Primary activities of institution (e.g. commercial lending, corporate finance advice, money market activities).

9. Proposed role of Malta office.

10. Is the institution seeking, or has it ever sought, any other authorisation in Malta (e.g. under the Investment Services Act 1994)? If so, give particulars.

11. Name of officer at the bank who is responsible for the oversight of the Representative Office in Malta.

12. Names and functions of main Malta personnel (if known), and likely total number of staff who will work in the representative office.

13. Have home supervisory authorities been informed of the proposal to establish a representative office in Malta and are they content? Please provide a copy of a letter or other document (if any) informing home supervisory authorities of proposal to establish a representative office in Malta, and copies of any letters of response from such authorities. (If the documents are not in English, an English translation should be provided.) If the home supervisory authorities have not been informed an explanation should be given as to why this is the case.

14. Names of all directors, qualifying shareholder and controllers (as defined in Article 2 of the Act) indicating in the case of controllers how much of the voting power of the institution each holds.

15. Has the institution ever applied for a license or equivalent authorisation from a supervisory authority in a country or territory other than Malta and excluding an authorisation mentioned in answer to Question 7? If so, give particulars. If any such application was for any reason refused or withdrawn after it was made give particulars.

16. Has the institution or a subsidiary had a winding-up order made in respect of it or been made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading or has anything analogous to any of these events occurred under the laws of any other country or territory? If so give particulars.

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17. Has any licence or equivalent authorisation held by the institution ever been revoked or in any way restricted? If so, give particulars.
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Declaration

We certify that we have read Articles 8 and 35 of the Banking Act 1994 and are aware of the offences under Article 35 of the Act. We have also read Legal Notice 42 of 1995, Legal Notice 113 of 1998 and the relative Banking Notice (BN/02) and are aware of our obligations and responsibilities.

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 relevant facts of which the Authority should be aware.

We undertake to inform the Authority of any material changes.

Name _____ Position held _____

Signed _____ Date _____

Name _____

Position Held _____

Signed _____

Date _____

***Applicant bank's
Official rubber stamp***



Malta Financial Services Authority

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www.mfsa.mt