

# CHAPTER 1 OF THE FINANCIAL INSTITUTIONS RULEBOOK

FIR/01

RULES APPLICABLE TO FINANCIAL INSTITUTIONS  
APPLYING FOR A LICENCE OR REGISTRATION IN TERMS OF  
THE FINANCIAL INSTITUTIONS ACT

Draft Consultation

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## **Title 1      Applications for authorisation in terms of the Financial Institutions Act**

### **Section 1      Introduction**

R1-1.1      The Financial Institutions Act, 1994 ('the Act') as amended and supplemented provides a statutory basis for regulating the activities of Financial Institutions.

Pursuant to Article 4(2) of the Act, this Chapter sets out the application procedures and requirements applicable to persons wishing to undertake activities of a Financial Institution in or from Malta.

R1-1.2      This Chapter is not intended to provide a complete summary of the Act, regulations or rules issued thereunder. Therefore, it must not be construed as being a substitute for a reading of the applicable regulatory framework. Licence Holders shall refer to the Act, the regulations issued thereunder, applicable rules issued by the Authority and any other relevant legal and regulatory requirements.

The Licence Holder is also expected to take due account and, where applicable, comply with any relevant local and EU Regulations and Directives, Commission Delegated Regulations and Directives, Regulatory Technical Standards and Implementing Technical Standards, as well as any Guidelines which may be issued by the EBA and as may be amended from time to time. These include but are not limited to:

- i. Central Bank of Malta [Directives](#);
- ii. the [Prevention of Money Laundering Act](#) and subsidiary legislation;
- iii. the [Companies Act](#) (Cap. 386 of the Laws of Malta) and subsidiary legislation emanating therefrom;
- iv. the [Civil Code](#) (Cap. 16 of the Laws of Malta);
- v. the Payment Accounts Directive;
- vi. the SEPA Regulation;
- vii. the Cross-Border Payments Regulation;
- viii. The Instant Payment Regulation;
- ix. The Settlement Finality Directive.

R1-1.3      This Chapter shall also be read in conjunction with other Chapters of the Financial Institutions Rulebook as applicable, which set out the ongoing requirements applicable to financial institutions.

- R1-1.4 Title 2 of this Chapter outlines the activities covered by the Financial Institutions Act and the business of financial institutions and obligations for certain exempted entities.
- R1-1.5 Title 2 of this Chapter outlines the process and minimum criteria for authorisation as a financial institution.
- R1-1.6 Title 3 of this Chapter outlines other application processes, including (i) extension of license; (ii) surrender of licence/ cessation of activities; and (iii) the prudential assessment of acquisitions and increase in holdings.
- R1-1.7 Applicants shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information and/or documentation it may require throughout the Application Process.

## Section 2 Definitions

For the purposes of this Chapter, the definitions set out below shall apply.

In the event that any of the definitions contained herein conflict with a definition under the Act or any other law administered by the Authority for the time being in force in Malta, the definitions set out in the Act shall prevail, unless otherwise specified herein.

**Applicant** means a person seeking authorisation as a Financial Institution in terms of the Act.

**Authorisation** means a licence or registration issued in terms of the Act.

**Directive (EU) 2015/2366 (PSD)** means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market as may be amended from time to time.

**Financial Institutions Act or 'the Act'** means the [Financial Institutions Act](#), Chapter 376 of the Laws of Malta.

**Financial Institutions Act (Fees) Regulations** means the [Financial Institutions \(Fees\) Regulations](#), Subsidiary Legislation 376.03 of the Laws of Malta.

**FIR02** means Financial Institutions Rule 2 issued in terms of the Act.

**FIR03** means Chapter 3 of the Financial Institutions Rulebook issued in terms of the Act.

**MFSA or 'the Authority'** means the Malta Financial Services Authority as established by the [Malta Financial Services Authority Act](#), Chapter 330 of the Laws of Malta.

**PSD2** means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder.

**Senior Management** shall refer to those natural persons who exercise executive functions within the Licence Holder and who are responsible and accountable to the Board for the day-to-day management of the Licence Holder.

### **Section 3 Activities covered by the Act**

R1-3.1 The First Schedule to the Act lists the following activities:

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);
2. Financial Leasing;
3. Venture or risk capital;
4. Payment services set out in the Second Schedule to the Act;
5. Issuing and administering other means of payment (travellers' cheques and bankers' drafts and similar instruments) in s far as this activity is not covered by point 4 above;
6. Guarantees and commitments;
7. Trading for own account or for account of customer in:
  - a. money market instruments (cheques, bills, certificates of deposits and similar instruments);
  - b. foreign exchange;
  - c. financial futures and options;
  - d. exchange and interest rate instruments;
  - e. transferable securities;
8. Underwriting share issues and participation in such issues;
9. Money broking;
10. Issuing of electronic money as defined in the Third Schedule.



## Section 4 Guidance on the definition of business of financial institutions

The definition of a financial institution as included in Article 2 of the Act establishes the business of a financial institution as the regular or habitual undertaking of any activity listed in the First Schedule to the Act for the account and at the risk of the person carrying out the activity and who is licenced or registered under the Act.

### ***Activities carried out on a regular and habitual basis***

In assessing whether an activity is deemed to be carried out on a regular and habitual basis, reference should be made to recent case law. An activity may be considered to be undertaken on a regular or habitual basis if it is considered a regular occupation or business activity in its own right and not merely as ancillary to another business activity.

An activity should be considered a regular occupation or business activity if a person either:

- i. holds itself out as providing any activity listed in the First Schedule for the account and at the risk of the person carrying out the activity; and/or
- ii. is being directly or indirectly in receipt of remuneration or other benefits derived from carrying out any of the activities listed in the First Schedule of the Act.

In determining whether the service is provided on an ancillary basis, the fact that a service is provided as part of a package with other services does not, however, necessarily make it ancillary to those services and the guiding principle is whether that service is in fact itself carried out as a regular occupation or business activity.

Other criteria to consider in determining whether the services provided can be considered a regular occupation or business activity include:

- i. the remuneration received from the activity relative to entire income;
- ii. the nature of the relationship between the provider and the receiver of the relationship;
- iii. the existence of a business relationship through which habitual or frequent or regular provision of service is introduced; or
- iv. the person offering more than one type of any of the activities listed in the First Schedule of the Act. Where multiple factors of the above are present then the service is likely to be considered regular and habitual.

### ***Nature of activities***

Because some of these activities may be similar to those carried out by credit institutions authorised under the Banking Act 1994, the Act specifically makes a distinction on the method by which a financial institution funds its activities. A financial institution cannot fund its activities through the taking of deposits or other repayable funds from the public as defined in the Banking Act 1994. In this respect the Authority recommends prospective

applicants to read the Banking Rule 'Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994' (BR/01).

Various activities listed in the First Schedule to the Act might be more appropriately regulated under the Investment Services Act 1994 and would consequently require a licence under that Act.

The Authority therefore recommends that prior to seeking authorisation under the Act, prospective applicants should first undertake a legal analysis to establish whether their potential activities would require authorisation and whether such authorisation should be sought under the Act, the Banking Act 1994 or the Investment Services Act 1994.

Pursuant to the above, a financial institution is an entity which may raise its funds, for instance, on the interbank market from credit or other financial institutions or from other professional market parties such as institutional investors and insurance companies. Accordingly, financial institutions, whether acting as payment service providers within the meaning of the Act (payment institutions) or issuing electronic money within the meaning of the Third Schedule to the Act (electronic money institutions) or undertaking other activities licensable under the First Schedule to the Act (traditional FIs), shall not be involved in deposit-taking. Payment institutions and Account Information Service Providers (AISPs) shall not issue electronic money unlike electronic money institutions which may engage in the provision of payment services. Financial institutions undertaking activities under the Second Schedule to the Act (except for AISPs) shall be permitted to grant credit, although it is explicitly prohibited to use customers' money to fund such credit. Apart from the activities mentioned, payment institutions would also be entitled to perform all operational and ancillary services necessary for the performance of payment services. These activities may include foreign exchange services, safekeeping activities, storing and processing data on behalf of undertakings or public institutions, and the operation of payment systems.

Article 3(2) and 3(2A) of the Act define those activities which do not constitute business of a financial institution and therefore would not require a licence or registration under the Act. The Authority, however, recommends that any person carrying out or who intends to carry out similar activities is encouraged to seek proper legal advice and, if still in doubt, should consult the Authority for it to establish, in terms of Article 3(3) of the Act, whether or not a licence or registration is required for the intended activities. Furthermore, persons availing themselves of the exemptions listed in articles 3(2A)(k) and (l) are to refer to the requirements set out in Section 5 of this Title.

Without prejudice to Article 5(6) of the Act, financial institutions shall not undertake unsolicited additional business activities that are not included in the Schedules to the Act, whether undertaken directly or indirectly. However, the Act permits financial institutions carrying out payment services and issuing electronic money respectively to engage in the provision of additional activities as laid down in the Second and Third Schedules. The Authority expects financial institutions that are proposing to undertake any additional activities when these activities are either of a financial nature or deemed as being

complementary to the activities included in the Schedules to the Act, to seek the Authority's prior written authorisation. Such authorisation would be without prejudice to the financial institution obtaining any other appropriate authorisation that it may require under any other law of Malta. Furthermore, the Authority may, in terms of Article 5(6) of the Act require the financial institution to carry out such additional activities through a subsidiary.

## **Section 5 Notification requirements for certain exempted entities**

R1-5.1 In terms of the Act, persons availing themselves of the exemptions listed in articles 3(2A)(k) (*limited network exemption*) and 3(2A)(l) (*electronic communications exemption*) are required to submit a notification to the MFSA when meeting the criteria outlined therein.

### **R1-5.2 The Limited Network Exemption**

Where a person undertakes an activity within scope of the Limited Network Exemption for which the total value of payment transactions executed over the preceding twelve months exceeds the amount of one million euro (€1,000,000), that person shall send an annual notification to the MFSA.

The notification form, which may be downloaded from the [Authorisations](#) Section of the MFSA website, shall be submitted through the [LH Portal](#).

Provided that, on the basis of such notification, the MFSA shall take a duly motivated decision where the activity does not qualify as a limited network and shall inform the service provider accordingly.

### **R1-5.3 The Electronic Communications Exemption**

Where a person undertakes an activity within scope of the Electronic Communications Exemption, that person shall send an annual notification to the MFSA. Such notification shall include an annual audit opinion testifying that the activity complies with the limits as set out in the Act.

The notification form, which may be downloaded from the [Authorisations](#) Section of the MFSA website, shall be submitted through the [LH Portal](#).

## Title 2 Authorisation as a Financial Institution

### Section 1 Introduction

R1-2.1.1 Pursuant to Article 3(1) of the Act, Applicants wishing to undertake any activities of the First Schedule shall, prior to providing such service, obtain a licence from the Authority.

Provided that an Applicant which proposes to undertake solely Account Information Services as listed in paragraph 2(h) of the Second Schedule to the Act will follow the registration process outlines in Sub-section 2.

#### ***Before applying for authorisation***

R1-2.1.2 In advance of submitting an application for authorisation, the applicant should satisfy itself that:

- i. its proposed business model requires authorisation in terms of the Act. It should also be clear which of the activities in the Schedules to the Act would need to be applied for;
- ii. it is capable of complying with the authorisation requirements and can adhere to all ongoing supervisory and regulatory requirements;
- iii. it is able to meet the Authority's expectations as further set out in this Title

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

R1-2.1.3 Without prejudice to the basis upon which the MFSA may grant or refuse authorisation as a Financial Institution in terms of Article 5 of the Act, the MFSA expects Applicants to give due consideration to the following areas prior to, and throughout the application process:

- i. Business strategy and competitive analysis

Applicants should be able to demonstrate the competitiveness of their business model compared to other similar institutions, as well as the business strategy to be updated. Applicants should be able to demonstrate how they consider their business model to complement the local ecosystem.

ii. Viability of business model and availability of capital

Pursuant to (i) above, Applicants should be able to demonstrate the viability and resilience of the business model and prove the availability of capital which will be required during the authorisation process.

iii. Identification of local mind and management

Throughout the Authorisation process, the Applicant will be required to provide details on their shareholding and organisational structure. Although the identification of all personnel of the Applicant may not necessarily be required at authorisation stage, the Applicant will be required to identify, at the outset, persons within the shareholding structure and persons who will be effectively directing the business of the Applicant from Malta.

iv. Substance

In terms of the Act, Maltese financial institutions are required to carry out at least part of their business in Malta. Additionally, the Applicant will be required to demonstrate its level of substance in Malta, including an outline of the local mind and management as outlined in point (iii) as well as the key function holders and internal control functions which the Applicant intends to appoint or establish locally.

v. Governance

The Applicant is to note the MFSA's expectations in relation to governance, emanating from the Financial Institution Rulebooks as well as the MFSA Corporate Governance Code. The MFSA expects Applicants to take due consideration of these requirements, and the requirements pertaining to conflicts of interest when proposing governance arrangements as part of their application. Applicants will also be expected to have a strong understanding of the risks pertaining to their proposed business model and have a strong internal control framework which incorporates the three lines of defence.

vi. Outsourcing

Applicants are to note that the MFSA will not accept so-called 'Letterbox entities' and will carefully assess over-reliance on outsourcing as part of an Applicant's proposed business model. Where an Applicant's business model relies heavily on outsourcing, Applicant's will be required to demonstrate robust internal control frameworks which sufficiently mitigate the heightened risks. The outsourcing of functions by the Applicant to entities within the same group should not affect the Applicant's ability to comply with

the outsourcing requirements. The Authority will critically assess all outsourcing arrangements, including where functions are outsourced intra-group. Applicants will also be required to appoint an independent person to oversee any outsourced arrangements.

## Section 2 The Authorisation process

R1-2.2.1 Applicants for an authorisation as a Financial Institution shall follow the Authority's Authorisation Process as set out in [Rule 4 of the MFSA Act](#) and the [Authorisation Process Service Charter](#), available at: <https://www.mfsa.mt/our-work/authorisations/>.

R1-2.2.2 Pursuant to R1-2.2.1, Applicants shall be required to submit a presentation to the MFSA at least 10 working days prior to the preliminary meeting held as part of the authorisation process.

The presentation shall include information on:

- i. the full group structure of the Applicant, including a chart incorporating any sister entities of the local entity;
- ii. the regulatory history of the Applicant and entities within its group, including any other licenses or registrations held by them;
- iii. explanation of the licensable activities in terms of the Act that the Applicant intends to offer, including specific identification of the services as outlines in the Schedules to the Act;
- iv. Flow of funds diagram showing the licensable activities the Applicant intends to undertake;
- v. Financial projections for the first three years of operations;
- vi. The Applicant's organisation chart for first three years of operations, including the correct reporting lines and three lines of defence and an indication of the personnel which will be based in Malta;
- vii. Explanation of the operating model;
- viii. Business strategy and competitive analysis;
- ix. Internal system and IT/platform including how the Applicant intends to comply with the DORA Regulation;
- x. Outsourcing Arrangements; and
- xi. Safeguarding Arrangements.

The Applicant shall demonstrate its ability to meet the Authority's expectations as outlined in R1-2.1.3 during the preliminary meeting.

The Authority reserves the right to postpone or cancel a scheduled preliminary meeting where a presentation including the above information has not been submitted 10 working days prior to the scheduled date of the meeting.

- R1-2.2.3 The information which shall be collected as part of the application process is set out in Annex I to these rules and is based on the [EBA guidelines on authorisation and registration under PSD2](#).
- R1-2.2.4 Provided that the Authority may request any additional information/documentation that it deems necessary for determining an application for a licence or a registration, as applicable, throughout the authorisation process.
- R1-2.2.5 Applicants shall notify the Authority immediately of any changes and/or additions to the information and/or documentation submitted throughout the Application Process.

### **Section 3 Licensing Considerations (minimum expectations)**

#### ***General***

- R1-2.3.1 Article 5 of the Act sets out the conditions which an Applicant must meet in order to be granted a financial institution authorisation.
- R1-2.3.2 When considering whether to issue a Financial Institution authorisation to an Applicant, the Authority shall, inter alia, have regard to:
- i. The protection of investors and the general public
  - ii. The protection of the reputation of Malta taking into account Malta's international commitments;
  - iii. The promotion of innovations, competition and choice;
  - iv. The reputation and suitability of the Applicant and all other parties connected to the Applicant;
  - v. The ability of the Applicant to comply with ongoing obligation emanating from the Financial Institutions Rules as applicable to the prospective activities of the Applicant.

#### ***Demonstrating ability to comply with ongoing requirements***

- R1-2.3.3 The Authority may authorise the Applicant subject to it demonstrating its ability to comply with all regulatory requirements under the relevant provisions of the Act, as well as any rules and regulations issued thereunder, as applicable, on an ongoing basis.

#### ***Specifically:***

- a. persons wishing to seek authorisation to provide payment services or issue electronic money shall demonstrate their ability to comply with the requirements set out in the Act and **FIR03**, as may be amended from time to time;
- b. persons wishing to seek authorisation to provide other services listed in the First Schedule to the Financial Institutions Act shall



demonstrate their ability to comply with the requirements set out in the Act and **FIR02**, as may be amended from time to time;

- c. persons wishing to seek authorisation to provide account information services shall demonstrate their ability to comply with the requirements set out in the Act.

### ***Fit and Proper Assessment***

R1-2.3.4 Pursuant to Article 5, the Authority may authorise an Applicant as a Financial Institution subject to that Applicant being a fit and proper person.

R1-2.3.5 The onus of providing sufficient assurance to the Authority that the person is a fit and proper person to undertake the financial institution activities concerned rests with the Applicant.

R1-2.3.6 Notwithstanding R1-2.3.5, the Authority shall, as part of the assessment process, avail itself of any additional information which may be available to it. Such information may include information which was not provided by the Applicant.

R1-2.3.7 Pursuant to R1-2.3.5, in assessing whether a person is a fit and proper person, the MFSA will follow the [Guidance on the Fitness and Propriety Assessments applied by the Authority](#).

The fitness and propriety assessment shall be applicable to every (i) person that has a qualifying holding in the applicant; (ii) beneficial owner; (iii) member of the Board of Directors; (iv) Senior Manager; (v) Money Laundering Reporting Officer; (vi) Compliance Officer and any other person which the Authority may deem necessary.

### ***The Role of the Compliance Officer***

R1-2.3.8 As part of the authorisation process, every Applicant will be asked to identify one individual who will be responsible for ensuring the Licence Holder's adherence to its regulatory obligations.

The role of a Compliance Officer is onerous and proposed Compliance Officers should be aware of the extent of responsibilities linked to this role. Some specific points which persons being proposed to act as a Compliance Officer should consider prior to taking on their role include:

- i. as the person made responsible for all aspects of compliance, the Compliance Officer will be expected to demonstrate independence of judgement and to exercise proper day-to-day supervision and control over the activity of the Institution.



Therefore, the Compliance Officer must not be involved in the operations of the Licence Holder.

- ii. in order to be able to satisfy these requirements, the Compliance Officer must familiarise themselves thoroughly with the regulatory framework applicable to the Institution as well as any relevant Guidance issued by MFSA – and take steps to ensure that the Institution’s staff are familiar with the regulatory requirements that are relevant to their role within the Company.
- iii. the Compliance Officer must pay particular attention to the ongoing requirement for the Institution to establish, implement and maintain adequate policies and procedures to identify breaches by the Institution of the applicable regulatory requirements, and to minimise the risk of such breaches.
- iv. the MFSA also expects the Compliance Officer not to breach, or to permit breaches by others, of internal control procedures and systems or regulatory requirements applicable to the Institution. If the Compliance Officer becomes aware of such breaches, (s)he is expected to draw them to the attention of the person concerned and, where appropriate, to the attention of the Board of Directors (as appropriate). All such breaches and action taken as a result should be recorded in writing.
- v. The MFSA also expects the Compliance Officer to ensure, so far as is possible, that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.
- vi. the MFSA requires very high standards of conduct and compliance from all its Licence Holders. Consequently, a breach of any regulatory requirements, and in particular, evidence of bad faith, lack of care and concern for the interests of customers, deceptive acts and behaviour, and incompetence, are all considered to be serious matters.

#### ***The role of the Money Laundering Reporting Officer (MLRO)***

- R1-2.3.9 Applicants may refer to the Authority’s [Guidance for Money Laundering Reporting Officers in the Financial Services Sector](#) for more information on the role of the MLRO and the Authority’s expectations in this respect.

#### ***Initial Capital Requirements***

- R1-2.3.10 Applicants will be required to demonstrate their ability to comply with initial capital requirements as follows:

- I. For Applicants wishing to carry out the activities found under the First Schedule to the Act (with the exception of activities listed under paragraphs 4 and 10), the risk profiles of the different types of financial institutions that can be licensed under the Act may result in considerable variation in the level of capital required to be held against such risk(s). Therefore, the initial capital of an applicant institution will be set by the Authority on a case-by-case basis and will be commensurate with the level of risk pertaining to the number and type of activities proposed to be undertaken and as laid out in the business plan.
- II. Applicants wishing to carry out activities found under the Second Schedule to the Act shall hold, at the time of authorisation, initial capital as indicated within Chapter 3 of the Financial Institutions Rulebook (FIR/03).

#### ***Professional Indemnity Insurance***

- R1-2.3.11 Pursuant to article 5(1B), Applicants seeking to provide the services listed under paragraph 2(g) or 2(h) of the Second Schedule to the Act shall be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee.
- R1-2.3.12 The amount of professional indemnity insurance or other comparable guarantee referred to in R1-2.3.11 shall be calculated in accordance with the method laid out in Annex II to this Chapter.

#### ***Application Fees***

- R1-2.3.13 Applicants shall pay all applicable fees pursuant to the Financial Institutions (Fees) Regulations ([S.L. 376.03](#)).

### **Section 4 Pre-licensing requirements**

- R1-2.4.1 Upon issuance of an in-principle approval letter, the MFSA is indicating its approval, 'in-principle', of the business plan and information communicated throughout the application process. At this stage, the Applicant will be required to formalise its arrangements and prepare to commence business. To this end, a number of pre-licensing conditions shall be imposed on the Applicant.

Such conditions include, but are not limited to:

- i. submission of the final certified true copy of the Memorandum and Articles of Association (M&AA);
- ii. submission of finalised documents that had been submitted in draft form during the application stage;
- iii. submission of any outstanding due diligence information;
- iv. submission of a final signed business plan and application form;
- v. declaration that the Applicant's key functionaries identified in its business plan/ organisational structure chart have been recruited;
- vi. the provision of an audited account statement or public register certifying the amount of capital of the Applicant;
- vii. submission of the executed letter of engagement with respect to any outsourced functions;
- viii. the appointment of any key function holders required by the MFSA, subject to the satisfactory conclusion of the assessment conducted by the Authority;
- ix. pre-licensing meetings with other competent authorities.

R1-2.4.2 Applicants would be expected to comply with the said conditions **within a maximum of six (6) months from the date of the in-principle approval letter**. Failure to satisfy the pre-licensing conditions would render the in-principle approval letter invalid.

Provided that, in line with the Authorisation Process Service Charter, an Applicant may request an extension of the said deadline provided it notifies the MFSA immediately and submits a justifiable explanation as to why the said extension is being requested.

R1-2.4.3 Once the pre-licensing conditions set out in the in-principle approval letter are satisfied, the Authority may proceed with the issuance of the Financial Institution licence or registration, as applicable.

## **Section 5 Post-licensing, pre-commencement of business requirements**

R1-2.5.1 Upon satisfaction of the pre-licensing conditions, the Authority will proceed with the issuance of a licence or registration, as applicable. At this stage, the Authority may impose post-licensing, pre-commencement of business requirements, which would typically include:

- i. submission of duly executed letter of engagement with the designated credit institution with which the Licence Holder intends to establish bank accounts exclusively for the safeguarding of client funds;
- ii. declaration by the Board of the Licence Holder that:

- a. the relevant policies and procedures are in place;
- b. that the relevant agreements (including inter alia outsourcing agreements) have been duly executed;
- c. that the systems of the Licence Holder have been tested and duly implemented and that accordingly, the Licence Holder is able to start accepting client orders;
- iii. declaration that the employees identified in the Business Plan/ Organisational Structure chart of the Licence Holder have been recruited;
- iv. submission of complete contact details of the Company, including e-mail addresses to be used by the Compliance Officer and MLRO;
- v. confirmation of the registered and business address utilised by the Licence Holder to carry out regulated activities;
- vi. submission of any outstanding documentation;
- vii. notification to the MFSA of the actual date of commencement of business.

R1-2.5.2 Once the post-licensing, pre-commencement of business conditions are satisfactorily met, the MFSA will proceed to issue the commencement of business letter to the Institution.

R1-2.5.3 Following the commencement of business, the Authority reserves the right to impose further post-licensing conditions which the Institution would be required to meet within specified timeframes ranging from 6 to 18 months. These may include:

- i. recruitment and/or relocation of additional individuals;
- ii. re-assessment of time commitment of Key Function Holders;
- iii. submission of a Compliance Report and/or the compliance monitoring programme;
- iv. submission of an independent internal audit report (including but not limited to internal policies and procedures, governance structures, risk control framework and adherence to AML/CFT procedures) covering the first 12 months of operations;
- v. submission of redemption or recovery plans, where applicable.

R1-2.5.4 Persons authorised to provide the services listed under paragraph 2(g) or 2(h) of the Second Schedule to the Act shall be required to review, and if necessary recalculate, the minimum monetary amount of their professional indemnity insurance or other comparable guarantee on an annual basis.

## **Title 3      Other authorisation procedures applicable to Financial Institutions**

### **Section 1      Introduction**

R1-3.1.1      This Title sets out other authorisation procedures applicable to persons who are authorised in terms of the Financial Institutions Act, including:

- i.          Modification of licence procedure;
- ii.        Change in shareholding procedure;
- iii.        Surrender of licence or registration/ cessation of business.

R1-1.2          The rules in this section shall apply to persons registered as Account Information Service Providers mutatis mutandis.

### **Section 2      Modification of licence**

R1-3.2.1      Licence Holders wishing to modify their licence shall notify the Authority of their intention to do so prior to effecting any change to their business.

Provided that a person which is registered to provide account information services and proposes to undertake other Financial Institution activities listed in the First Schedule will be required to undergo a full authorisation process as outlined in Title 2.

R1-3.2.2      Pursuant to R1-3.2.1, the notification shall include a comprehensive description of the proposed activities as well as a timeline for the revision of licence.

R1-3.2.3      Pursuant to R1-3.2.2, the Licence Holder shall also submit:

- i.          an updated FI application form clearly indicating the proposed modifications to the business of the Licence Holder;
- ii.        a resolution by the Board of Directors approving the said changes;
- iii.        a revised business plan and organigram; and
- iv.        revised financial projections.

Provided that the Authority may require any additional information or documentation to enable it to process the revision of licence request.

R1-3.2.4      The Licence Holder shall also pay the applicable application fee set out in the [Financial Institutions \(Fees\) Regulations](#) (S.L. 376.03) upon submission of the request pursuant to R1-3.2.2.

R1-3.2.5 The Authority shall, once it is satisfied with the information received for purposes of amending an application form, fees and, where applicable, the completion of the fitness and properness assessment, issue an 'in principle Approval' for the issuance of the revised Financial Institutions licence, which shall be valid for a period of three months from the date of the issue thereof.

R1-3.2.7 The Authority shall issue the revised Financial Institution licence upon satisfaction of the requirements in this subsection and any licensing conditions which may be imposed by the Authority.

### **Section 3 Change in participation or control**

R1-3.3.1 Pursuant to Article 9 of the Act, a Licence Holder shall notify the Authority of any changes in the participation or control of the institution immediately upon becoming aware of such changes.

Provided that any change in the Licence Holder's Qualifying Holding or Beneficial Ownership structure shall require the Authority's prior approval.

R1-3.3.2 Pursuant to R1-3.3.1, the notification shall clearly indicate the Qualifying Holder/s as well as the Beneficial Owner/s following the proposed change in the Licence Holder's structure. The notification shall clearly indicate the percentage changes in participation or control.

R1-3.3.3 Pursuant to the proviso to R1-3.3.1, the Authority shall approve a Qualifying Holder and/or a Beneficial Owner only if such person satisfies the 'fitness and properness' assessment.

### **Section 4 Surrender of authorisation / Cessation of Business**

R1-3.4.1 Licence Holders should inform the MFSA at an early stage of their intentions to surrender their licence. In order to protect the interests of customers and investors the MFSA may request to delay the surrender of licence or wind-up of business.

R1-3.4.2 Pursuant to R1-3.4.1, the Licence Holder shall include the following information/ documentation when notifying its intention to surrender its licence:

- i. a certified true copy of the Directors' Resolution confirming the Licence Holder's intention to surrender its Financial Institution Licence, subject to the Authority's approval and once the necessary formalities have been finalised;

- ii. a confirmation that the Licence Holder has given due written notice to clients of its intention to surrender its licence;
- iii. a confirmation that no litigation is pending or threatened which arises out of any event that occurred whilst the Licence Holder was licensed or otherwise;
- iv. a confirmation that the Licence Holder will remove from all online interfaces, letterheads, and any other stationary, any reference to being authorised by the Authority;
- v. a confirmation that the Licence Holder has informed its Auditor and insurer, where applicable, of its intention to surrender its Financial Institutions Licence;
- vi. a confirmation from the auditors of the Licence Holder:
  - a. that the Licence Holder no longer services any clients and/or no longer holds any client funds;
  - b. specifying the date by when all business and obligations arising from the Licence Holder's financial institution activities have been settled;
- vii. a declaration that there are no pending complaints against the Licence Holder;
- viii. a confirmation that the Licence Holder has no pending supervisory fees.

R1-3.4.3 The original licence certificate shall be returned to the Authority in original prior to the surrender of licence.

R1-3.4.4 Once all the requirements listed above are satisfied, an internal process will be set in motion for approval of the surrender of the Financial Institutions Licence. Once a decision is taken, this will be conveyed to the Licence Holder which will cease to be licensed thereafter.

Provided that the MFSA may decide to approve the surrender of the Financial Institution licence prior to conclusion of the above-listed matters, on the basis of a reasoned written request by the Licence Holder.

R1-3.4.5 The MFSA will ordinarily issue a public notice regarding the surrender of the Licence.

## **Section 5     Restriction, Suspension or Withdrawal of Authorisation**

R1-3.4.1 Pursuant to Article 7 of the Act, the Authority may restrict, suspend or withdraw an authorisation subject to the process set out therein.





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