

BANKING RULE BR/01

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

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[Annex I: Notification Form to establish a Representative Office in Malta](#)

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).
4.00	11 February 2026	Inclusion of new section on Fit and Proper Assessments; deletion of various Annexes; and streamlining of the entire Rule to authorisation practices.

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 (Cap. 371 of the Laws of Malta) (the “Act”), the competent authority (the “Authority”) as appointed under article 3(1) of the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta) is empowered to make Banking Rules as may be required for carrying out any of the provisions of the Act and for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instruments issued by the European Banking Authority (the “EBA”) and the European Central Bank (the “ECB”), as may be required. The Authority may also amend or revoke such Banking Rules. The Banking Rules and any amendments or revocation thereof shall be officially communicated to credit institutions. All Banking Rules, and amendments thereto, will also be made available to the public on the MFSA website.
2. In terms of article 5(1) of the Act, no business of banking shall be transacted in or from Malta, except by a company which is authorised by the Authority under the Act to carry out such activities.
3. The Rule should not be construed as a substitution of the Act and shall be read in conjunction with the Act and any other Regulations issued thereunder. The responsibility for observing the law rests entirely with the applicant and the individual persons concerned.

Scope and Application

4. The Application Procedures and Requirements for Authorisation of Licences for Banking Activities Rule (the “Rule”) applies to any company, as defined in article 2(1) of the Act, desirous of commencing the business of banking in or from Malta, with the exception of the entities listed in the Second Schedule to the Act.

5. The Rule provides applicants for a banking licence with details of the procedures and requirements for the processing of applications by the Authority, pursuant to article 6 of the Act.
6. In terms of article 16(2)(a) of the Malta Financial Services Authority Act, the Authority may issue and publish Rules regulating the procedures and duties of persons licensed or authorised by it or falling under its regulatory or supervisory function. [MFSA Rule 4](#) on Authorisations provides the related procedures and duties of persons licensed or authorised by the Authority or falling under its regulatory or supervisory functions. In conjunction with the Rule, prospective applicants shall be guided by the Authorisations Process Service Charter (the “Charter”), established through MFSA Rule 4. The Charter is available on the [Authorisations Section](#) of the Authority’s website. Prospective applicants shall also be guided by Banking Notices and Application Guidelines as may be issued by the Authority from time to time.
7. The Rule also implements the EBA Guidelines on a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of the Directive 2013/36/EU ([EBA/GL/2021/12](#)), and the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU ([EBA/GL/2021/06](#)).
8. An application for a licence to carry out the business of banking is subject to fees as provided for in the [Credit Institutions \(Fees\) Regulations \(Subsidiary Legislation 371.10\)](#). Branches established in Malta of foreign credit institutions are also subject to fees as stipulated in the same Regulations.

Definitions

9. Unless otherwise specified, words and expressions used in this Rule shall have the same meaning assigned to them under the Act, any Regulations or Rules issued thereunder, as well as any EBA Guidelines that the Rule is implementing as outlined in paragraph 7.

Definition of ‘Business of Banking’

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

“the business of a person who as set out in article 2A 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;”

11. Credit Institutions are 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.
12. Article 2A of the Act holds that the acceptance of deposits of money, including the raising of funds by other public means, includes the advertising or soliciting for such funding. An institution which holds itself out as accepting deposits would be caught by the Act even if it in fact accepts deposits on particular occasions and does not advertise for such deposits.
13. In terms of the second proviso to article 2A 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 second proviso to article 2A of the Act.
14. Article 5(3) of the Act 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 company which is in doubt as to whether its current or potential activities constitute the business of banking under the Act is recommended to seek legal professional advice prior to approaching the Authority.

Minimum Criteria for Authorisation

15. 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.
16. The applicant and other relevant parties must provide such information and documentation which are required to be submitted in connection with the application. Prospective applicants shall refer to the [Authorisations Section](#) present on the Authority's website for the referred applications.
17. In exercising its discretion to grant authorisation, the Authority shall also consider the possibilities of it 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.
18. In assessing an application, the Authority shall consider whether the institution and the group to which it may belong could be subject to consolidated supervision, and hence shall be satisfied of the institution's and the group's ability, as applicable, to fulfil the obligations under the Act, the Supervisory Consolidation (Credit Institutions) Regulations (Subsidiary Legislation 371.22), and any Banking Rules to that effect issued by the Authority. The Authority shall take account of any factor which might inhibit its effective supervision.
19. Where the prospective application is for a subsidiary of a credit institution established in a third country, the Authority will consequently have to be satisfied that the parent credit institution is similarly supervised by the third country regulatory authority, the standing of the third country regulator, scope of the supervision exercised and that it is able to exchange information on a timely basis. The Authority shall also need to be satisfied that the third country regulatory authority has been notified of the setting up of such a subsidiary in Malta, and that it has consented to it.
20. 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.

21. Where, in any case, the applicant is a credit institution and 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 regulatory authorities.
22. If the Authority establishes that these minimum criteria are not being met, it could impose restrictive measures or outrightly refuse applications for a licence.

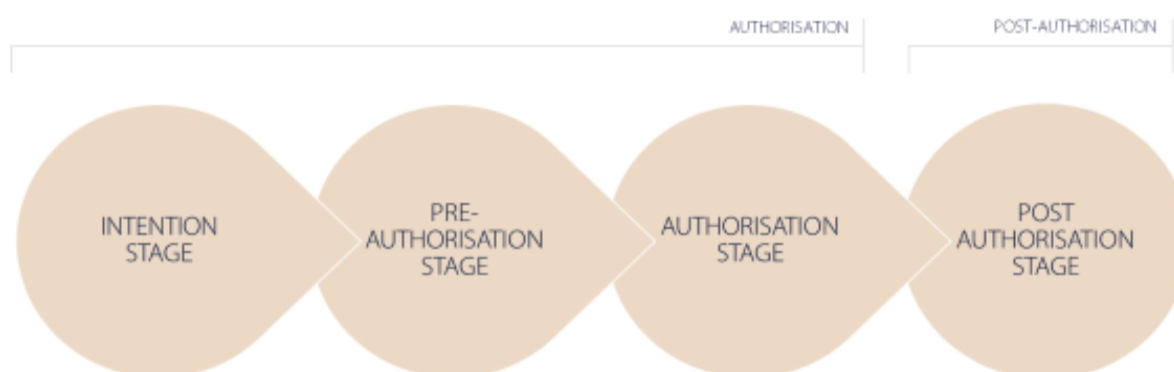
Application for Authorisation

23. 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. The Authority must be satisfied that the criteria for authorisation as set out in article 7(1) of the Act are fulfilled prior to granting a banking licence. In line with the Single Supervisory Mechanism (SSM) framework, applications for a banking licence are also assessed by the ECB, as the authorisation process is handled by the Authority jointly with the ECB for the purpose of its powers to grant authorisations in terms of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. The role and the process pertaining to the ECB is further explained in the section titled *"Parallel ECB Procedure – Granting of Authorisation"* of this Rule.
24. Prospective applicants shall comply with the provisions outlined in [MFSA Rule 4](#) on Authorisations, issued under the MFSA Act, as applicable, and shall refer to the MFSA Authorisation Process Service Charter and other relevant documentation, including but not limited to the Application Forms Guidelines and the Authorisations FAQs, which can be accessed through the [Authorisations Section](#) of the Authority's website.
25. When applying for authorisation and before commencing activities, applicants shall ensure that they comply with the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU Suitability Assessment (EBA/GL/2021/06), when proposing and appointing individuals to take up the role of director and/or member of the management body and/or key function holder.

26. Pursuant to the proviso to article 6(2) of the Act, an application may be withdrawn by written notice to the Authority at any time before it has been granted or refused.

The Authorisation Process

27. The authorisation process follows the stages depicted in the figure below.



28. Prospective applicants shall ensure that they follow all the authorisation process stages in line with the requirements and details outlined in this Rule. An Authorisation process shall be triggered once a prospective applicant submits to the Authority its intention to apply for a credit institution licence.
29. In determining an application for a licence, the Authority shall abide by the authorisation-related provisions in the Act and this Rule as well as the Authorisation Process Service Charter found in the [Authorisations Section](#) of the Authority's website.

i) Intention Stage - Submission of Intent and Preliminary Meetings

30. Prospective applicants desirous of obtaining a credit institution licence shall duly submit their intention in the form of a high-level presentation, referred to as the 'Statement of Intent'. The 'Statement of Intent' must include the following information:
- a) A structure chart of the group to which the Applicant belongs, clearly identifying all natural/legal persons involved up to the Ultimate Beneficial Owners (UBOs), as well as their respective voting and/or capital rights, company registration or identification number and location.

- b) Information regarding the source of wealth for all proposed qualifying natural persons, as well as audited financial statements for the past three years for proposed qualifying legal entities, where such statements are available.
 - c) Indication of the prospective Applicant's and related entities regulatory history, if applicable.
 - d) Motivation of the UBOs for setting up a credit institution in Malta.
 - e) A diagram illustrating the proposed organisational structure, encompassing the designated board members, committees, and key function holders, with clearly defined reporting lines. The names (if known), locations of operation and time commitment of key individuals should be identified, along with a specification of whether each function will be performed in-house or outsourced.
 - f) Details on whether any UBOs will participate in the governance or management of the Applicant.
 - g) Identification of the proposed activities in the First Schedule to the Act that the prospective applicant intends to undertake.
 - h) An outline of the organisation's objectives, long-term strategy, type of clients to be serviced, target jurisdictions and products, any planned critical outsourcing activities, reliance on group entities and internal systems to be used.
 - i) An assessment of the applicant vis-a-vis the [Shareholding Policy for Credit Institutions and Insurance Companies](#) and the Authority's [Risk Appetite Statement](#).
31. The 'Statement of Intent' shall be submitted to the email address - AuthorisationsBanking@mfsa.mt.
32. During the intention stage, the Authority may ask for further information or documentation to be submitted. Preliminary meetings may also be held between the Authority and the Applicant.

33. The Authority shall formally communicate to the applicant its no objection for the applicant to proceed with the submission of its application, as detailed below.

ii) Pre-Authorisation Stage – Application Forms, Supporting Documentation, and Reviews

34. To enter the pre-authorisation stage prospective applicants shall submit the necessary application forms and supporting documentation to the Authority, which will be processed and reviewed. Such submission shall be made within forty (40) working days from the no objection communication by the Authority referred to in paragraph 33 of the Rule.
35. All forms can be accessed through the [Authorisations Section](#) in the Authority's website, under Banking\Credit Institutions.
36. The application forms and the documentation shall be submitted through the Licence Holder Portal (LH Portal) and shall include at least the following:

a) Application Form (Form AA01: Credit Institutions Application)

Prospective Applicants shall fill in all the three parts of the application form relating to the following;

- i) *Applicant Details*: For this part of the application, besides covering basic details, applicants are required to provide granular information related to the applicant's structure and regulatory history.
- ii) *Activity & Method of Operations*: In this part of the application, details on the business model, strategy and activity shall be provided. In addition, other important information on governance and risk, compliance, conduct, prudential aspects, AML and CFT, and ICT (via attachment Annex – AX05 as specified further below) are requested.
- iii) *Declaration Form*: A dedicated declaration form needs to be provided. To note that within the declaration form, applicants shall also provide the list of documentation that have been submitted with their application form, through the checklist included therein.

b) Personal Questionnaire/s

Individuals taking up positions which influence the direction of a credit institution are subject to regulatory approval. Such individuals undergo a fit and proper assessment, which also includes a rigorous due diligence process. Individuals proposed to take up such positions shall complete and submit a Personal Questionnaire (PQ) in own name. Such individuals are expected to familiarise themselves with [Guidelines to the Personal Questionnaire](#) issued by the Authority.

The Personal Questionnaire shall be submitted online through the LH Portal. For information purposes, a dedicated PQ template can be found in the [Personal Questionnaire Section](#) on the Authority's website. Such space provides also other important information, including related circulars and targeted guidance. Prospective applicants and such individuals shall ensure that they have a thorough understanding of the Circulars and Guidelines present in this Section before completing their respective PQs.

c) AX01 – Corporate Questionnaire (Form AX01: Corporate Questionnaire)

This questionnaire shall be duly compiled by the Direct Qualifying Shareholders and the Ultimate Parent Qualifying Shareholders who have a legal personality and that are being proposed with the Applicant. The Authority may request such Questionnaire to be submitted by other Qualifying Holders or other Legal persons that are being proposed with the Applicant. Prospective Qualifying Holders shall complete all seven sections relating to the following:

- i) Applicant Details
- ii) Qualifying Holder Details
- iii) Qualifying Holder Structure
- iv) Governance: This part relates to the Management Body and is only applicable to Qualifying Holders which qualify as Direct Qualifying Holders of the Applicant.
- v) Regulatory History: Regulatory History in this context shall mean any type of official recognition such as the provision of a license issued by a regulatory body.
- vi) Integrity and Due Diligence Confirmations
- vii) Declaration Form: This form needs to be submitted through LH Portal. To note that within the declaration form, qualifying holders should provide the list of documentation that have been submitted with the Corporate Questionnaire, through the checklist included therein. The Authority

reserves the right to request the Qualifying Holder for further information and/or documentation.

d) AX02 – Involvement Suitability Assessment (Annex AX02: Involvement Suitability Assessment)

The Applicant shall submit an Involvement Suitability Assessment form in relation to each Proposed Individual submitting a Personal Questionnaire and who intends to hold a position that requires the Authority's prior approval. Specific guidance on the submission of Involvement Suitability Assessment is found [here](#).

e) AX03 – Third-Party Outsourcing Assessment (Annex AX03: Third-Party Outsourcing Assessment)

The Applicant shall submit a Third-Party Outsourcing Assessment form for each outsourcing third-party provider which aims to capture information in relation to the Applicant's outsourcing arrangements.

f) AX05 – Digital Operational Resilience Assessment (Annex AX05: Digital Operational Resilience Assessment)

The Digital Operational Resilience Assessment form primarily aims to capture relevant information in relation to the Applicant's ability to build, assure and review its operational integrity and reliability, by ensuring, either directly or indirectly through the use of services provided by ICT third-party service providers, the full range of ICT-related capabilities needed to address the security of the network and information systems which a financial entity uses, and which support the continued provision of financial services and their quality, including throughout disruptions. The Applicant shall fill in all the parts covering the following areas, as applicable, and provide any attachments as required;

- i) Applicant Details
- ii) ICT Risk Management Governance and Organisation
- iii) ICT Risk Management Framework
- iv) ICT Risk Identification, Control and Monitoring
- v) ICT Asset Management
- vi) ICT Asset Management: Differently from the previous Section, this area deals with ICT Systems, Protocols and Tools.
- vii) Security, Protection and Prevention
- viii) Business Continuity Management

- ix) ICT-Related Incident Management, Classification and Reporting
- x) Management of ICT Third-Party Risk
- xi) Digital Operational Resilience Testing

g) AX18 – Trusts and Fiduciaries Additional Questionnaire (Annex AX18: Trust and Fiduciary Arrangements Questionnaire)

This questionnaire shall be duly filled in by Qualifying Holders who are submitting a Corporate Questionnaire and hold the shares of the Applicant on a Trust or Fiduciary basis, as a mandatory for and on behalf of other persons.

h) AX26 – Source of Wealth and Source of Funds Self-Declaration Form (Annex AX26: Source of Wealth and Source of Funds Self-Declaration Form)

Qualifying Shareholders and Politically Exposed Persons (“PEPs”) shall duly fill in and submit this form. This form shall also be submitted as part of and when required with the relevant Personal Questionnaires documents. Such form aims to capture relevant information in relation to the person’s Source of Wealth and Source of Funds (“SOW/SOF”). Related guidelines on the submission of the Statement of Source of Wealth and Source of Funds can be found [here](#).

i) AX40 – SME Self Declaration (Declaration for SMEs)

The Applicant shall compile and submit this form declaring the size (i.e. Micro, Small, Medium, or non-SME) of the underlying institution. Such classification shall be established in accordance with the EU Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC).

j) AX50 - ICT Third-Party Arrangement (Annex AX50: ICT Third-Party Service Provider)

The Applicant shall submit this form as part of and in conjunction with the form Annex AX05 – Digital Operational Resilience Assessment. This Annex primarily aims to capture relevant information in relation to the Applicant’s arrangement with an ICT third-party service provider (“ICT TPP”) for ICT Services supporting critical and important functions, or material parts thereof. Such form shall be completed and submitted for each ICT third-party arrangement held, or intended to be held.

k) Other Supporting Documentation

Prospective applicants shall submit the following additional documentation:

- i) Application Fee: To provide proof of payment with respect to the application fee.
- ii) Audit - Letter of Engagement (once available)
- iii) Case Evidence (if applicable)
- iv) Committees' Terms of Reference
- v) Compliance Monitoring Programme
- vi) Constitutional Document
- vii) Financial Projections
- viii) Group Structure Diagram
- ix) Internal Audit Programme (if available)
- x) Legal Opinion: A legal opinion determining that the activities proposed within the business model of the applicant, fall within scope of the definition/s of the activity/ies as set out in the Schedule to the Act.
- xi) Logo/s (if applicable)
- xii) Organigram
- xiii) Other Information (Prudential): As required in the application
- xiv) Own Funds: Applicants should provide an explanation of the available funding sources for own funds and, where available, evidence of the availability of those funding sources.
- xv) Service Level Agreement/s
- xvi) Statutory Financial Statements
- xvii) Transaction Flow Diagram: This diagram outlines the flow of funds, the parties to the transactions, and all the respective details related to the envisaged business of the applicant institution.
- xviii) Audited Financial Statements (if applicable)
- xix) Certificate of Good Standing
- xx) Share Register

37. Notwithstanding the submission of the information and documents indicated above, the Authority may, in accordance with 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.

iii) Authorisation Stage – Final Review, Decision Making, and Issuance of Authorisation Documentation

38. Following the Pre-Authorisation Stage and the Application is deemed complete, the Application is vetted and the appropriate decision related to the issuance of the licence is taken. This is further detailed in sections “*Determination of an Application for a Licence*” and “*Parallel ECB Procedure – Granting of Authorisation*”.

iv) Post-Authorisation Stage

39. During this stage the Authority shall monitor whether the Post-Authorisation Requirements, if any, are being satisfied, and in turn initiate the respective supervisory processes.
40. An applicant for a licence shall notify the Authority immediately of any subsequent additions or alterations with respect to any of the documents or information submitted during the authorisation process.

Regulatory Approval of Individuals Assuming Key Positions

41. Individuals intending to take up positions enabling them to exercise control and have influence over the direction of a credit institution are subject to prior regulatory approval before taking up such roles, in line with the Authority’s ex-ante approach. Such positions include directors and/or members of the management body, as applicable, as well as key function holders. Such individuals are required to complete the dedicated Personal Questionnaire and submit it together with any supporting documentation to the Authority so that the latter can conduct its suitability assessment. Such assessment needs to take place at authorisation stage, and whenever an institution intends to appoint or replace an individual to occupy such positions.
42. The Applicant shall ensure that they comply with the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2021/06), when proposing and appointing individuals to take up director and/or member of the management body and/or key function holder positions. The Applicant shall notify the Authority immediately in the case of an individual proposed to take up a key position in the credit institution is no longer pursuing such role.

Determination of an Application for a Licence

43. In terms of article 7(2) of the Act the Authority must determine an application for a licence within six months of receipt of the complete application.
44. In conducting its assessment, the Authority shall be guided by 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). These lay down a common assessment methodology to be used by competent authorities for the purposes of granting authorisation as a credit institution.
45. Furthermore, when assessing suitability of the management body and key function holders, the Authority shall also be guided by the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2021/06). These provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as their good repute, honesty and integrity, and independence of mind.
46. In the case where an application is not filed in compliance with article 6(2) of the Act, or if additional information is requested in terms of article 6(3) of the Act, the Authority must determine that application within six months of compliance with Article 6(2) or the submission of information under article 6(3), whichever is later.
47. In any event, the Authority is bound to determine an application for a licence within twelve months.
48. In line with article 7(3) of the Act, an application for a licence is deemed to be determined by the Authority by:
 - a) granting a licence without conditions;
 - b) granting a licence subject to such conditions it may deem appropriate; or
 - c) refusing to grant a licence.

Parallel ECB Procedure – Granting of Authorisation

49. With the establishment of the Single Supervisory Mechanism (SSM) Regulatory Framework, the European Central Bank (ECB) has the power to decide on the authorisation of any credit institution. This is done jointly with the MFSA being the National Competent Authority (NCA). The ECB must also ensure compliance with the EU regulatory framework and where appropriate, it may also consider imposing additional prudential requirements in order to safeguard financial stability. The ECB's Authorisation Division is responsible for these tasks.

50. Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities, commonly referred to as 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 include the procedures for authorisations to take up the business of a credit institution. The SSM Framework Regulation sets out how the ECB and the National Competent Authorities (NCAs) are involved in these common procedures. For the purpose of this paragraph, the term "significance" refers to significance as established in Council Regulation (EU) No 1024/2013.

51. The SSM common procedures govern the following key principles:
 - a) 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.

 - b) The NCA notifies the ECB of receipt of an application for authorisation within 15 working days and shares all information accordingly. 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.

 - c) Once an application has been submitted and its preliminary completeness verified, it is 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.

- d) 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 accordingly by the NCA processing the application (in the case of licensing applications).

- 52. Prospective applicants for a banking licence shall refer to the SSM Framework Regulation and the [ECB Guide to assessment of license applications](#). The latter describes the assessment criteria and processes for establishing a credit institution in the euro area. Amongst others, these criteria include the applicant banks' capital levels, their programme of operations, the structural organisation and the suitability of their management body, key function holders and qualifying shareholders.

Additional Business Activities

- 53. An institution intending to extend its business to include other additional activities listed in the First Schedule to the Act not foreseen at the time of the granting of the authorisation under the Act, shall submit to the Authority an application form, accompanied by relevant supporting documentation, for the extension of its licence. The same process with the ECB mentioned in the Section *"Parallel ECB Procedure – Granting of Authorisation"* would then be followed.
- 54. In concluding the assessment of the institution's application, the Authority may, subject to any other law regulating such activity, authorise the institution to further carry out the additional activities included in the application form. The carrying out of these activities on their own do not, however, constitute the business of banking in terms of the Act.
- 55. The carrying out of any other activity not included in the First Schedule is prohibited unless so authorised by the Authority. Such authorisations are without prejudice to the institution obtaining any other relevant licence, approval and/or permission that it might require under any other law, and that the Authority may require the credit institution to carry out such activities through a subsidiary.

Branches of Credit Institutions Licensed under the Act

56. In accordance with article 11(1) of the Act, a credit institution shall inform the Authority in writing before opening a new branch, agency or office in Malta. Pursuant to article 11(2) of the Act, a credit institution shall request in writing the Authority's consent to open a new branch, agency or office or set up or acquire any subsidiary in any place outside Malta.
57. In order to grant consent in terms of article 11(2) of the Act, the Authority shall be satisfied 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. Therefore, 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 to exercise consolidated supervision.
58. Where branches of local credit institutions are to be established within an European Economic Area (EEA) State, such institutions shall comply with the requirements of Regulation 10 of the European Passport Rights for Credit Institutions Regulations (Subsidiary Legislation 371.11).

Branches of Credit Institutions Authorised in other Member States

59. In accordance with article 11(4) of the Act, the Authority shall not require authorisation or dedicated capital for branches of credit institutions authorised in other Member States. For branches of EU institutions, the standard forms, templates and procedures for the respective notifications as provided in Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014, which lay down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU, as amended from time to time, shall apply.

Branches of Credit Institutions with Head Office in a Third Country

60. A branch is an integral part of the institution to which it belongs. A licence issued to an institution incorporated in a third country to operate its business of banking through a branch in Malta is therefore deemed to having been granted to that institution as a whole. For these types of branches with their

head office in a third country, there is therefore no requirement for a branch to have its own funds under article 7(1)(a) of the Act. The underlying capital required for the institution in the third country is assumed to cover its branches.

61. In the case of an institution whose establishment and principal place of business is in a third country, the Authority may, at its discretion, regard itself as satisfied that the minimum criteria for authorisation are fulfilled if:
 - a) the overseas regulatory authority in the third country where the head office of the credit institution is established 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 third country's relative regulatory authority.
62. 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 branch of the applicant proposed to be established in Malta, 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 regulatory authority.
63. In this respect information regarding directors, controllers and key function holders required from third country institutions operating through branches in Malta may, however, be less detailed than that required from credit institutions registered in Malta.

Representative Offices of Non-Maltese Banks

64. Pursuant to article 8(1) of the Act, a company licensed or holding an equivalent authorisation in another country outside Malta which carries on the business of banking shall notify the Authority in writing of its intention to establish a representative office in Malta.
65. The notification shall be submitted at least two months before the establishment of such representative office and shall include the information and documentation specified in article 8(1) of the Act. For this purpose, such

company shall submit to the Authority the notification form found in Annex I to the Rule.

66. Pursuant to article 8(5) of the Act, the Authority may request additional information or documentation it requires.
67. A company licensed or holding an equivalent authorisation in another country outside Malta which carries on the business of banking seeking to establish a representative office in Malta shall also need to refer to article 8 of the Act, the Credit Institutions (Fees) Regulations (Subsidiary Legislation 371.10), the Representative Offices (Requirements and Activities) Regulations (Subsidiary Legislation 371.04) and any other applicable law.

Appeals Against Decisions of the Authority

68. Any person who feels aggrieved by a decision of the Authority in terms of the Act or any regulations and rules made thereunder, may appeal against such decision to the Tribunal within such period and under such conditions as laid down in article 21 of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta).

Use of the Word 'Bank'

69. 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.
70. An authorised credit institution which intends to change any name it uses shall 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 credit institution that intends to submit 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

71. Authorised credit institutions and prospective 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.

Offences and Penalties

- 72. Article 35 of the Act details circumstances under which any person is deemed to have committed or is accomplice to an offence under the Act.
- 73. 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 stipulated in the relevant articles of the Act.

Confidentiality

- 74. 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.
- 75. 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.
- 76. Article 34 of the Act also restricts the disclosure of information relating to the credit institution or its customers to certain special circumstances.

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