



## Banking in Malta

### Authorisation Requirements for carrying on Banking Operations

*This publication provides a synopsis of the legal requirements for authorisation to carry on the business of banking in Malta, which is regulated by the Banking Act (Chapter 371 of the Laws of Malta), subsidiary legislation issued under the Banking Act, and the Banking Rules issued by the Malta Financial Services Authority (MFSA). In addition, the MFSA has issued Banking Notices, but these take the form of best practice guidelines rather than legally binding rules.*

#### **THE TRANSACTION OF BANKING ACTIVITY IN MALTA**

The applicable legal requirements vary depending upon the means through which banking activity is transacted in or from Malta.

##### **Malta-based banks**

Any company intending to set-up a bank having its head office in Malta must first apply for a banking license from the MFSA.

##### **Setting-up a branch, agency, office, joint venture or subsidiary of a bank licensed in a non- EEA State**

Any bank licensed in a non-EEA State intending to open (i)a branch, (ii)agency, (iii)office or (iv)set-up a joint venture or (v)subsidiary in Malta must also apply for a banking license from the MFSA.

In considering an application for a license to set-up a branch in Malta, the MFSA would, typically, need to be reassured by the home country authority that the bank applying to set-up the branch in Malta is managed in a prudent manner, is financially sound and is subject to a satisfactory level of supervision by such home country authority. The MFSA will also examine the planned business of the proposed local branch, its internal controls, accounting and other records, personnel and management arrangements. Any concerns are discussed with the applicant, and if deemed necessary, the home country authority.

The local branch is exempted from having to have an initial capital of EUR 5,000,000 as is required by banks setting-up their head office in Malta, since the principal bank and its branches are considered to be one and the same bank.

##### **Setting-up of branches or the provision of services by banks licensed in the EEA**

Banks which have been licensed in the EEA intending to set-up a branch or provide services in Malta are not required to apply for a banking license. They must, however, abide by the 'establishment' and 'service' conditions and certain notification and reporting requirements, as laid down in the European Passport Rights for Credit Institutions Regulations.

##### **Representative Offices**

A representative office is defined as premises in Malta from which the business of banking is promoted or assisted in any way. The operations of a representative office are confined to purely liaison activities<sup>1</sup>. They are not allowed to engage in financial transactions or execute any documents relating to such transactions. Although a banking license from the MFSA is not required in order for a bank licensed abroad (no distinction between EEA and non-EEA banks) to open a representative office in Malta, the MFSA must give its authorisation thereto after having been notified (by means of the Notice of Proposal to Establish a Representative Office in Malta - Form 4 / Banking Rule 01) at least two months before the representative office is to be opened in Malta. The foreign bank must also submit to the MFSA a certified copy of the authorisation to conduct the business of banking in a country other than Malta.



## APPLICATION FOR A LICENSE

The applicant bank must submit to the MFSA the banking license application form which may be found in Banking Rule 01 (Form 1). The application form must be accompanied by:

- a copy of the Memorandum and Articles of Association of the applicant bank;
- audited financial statements for the last three years (if applicable);
- a business plan, setting out the structure, organisation and management systems of the prospective bank;
- the Personal Questionnaire (also found in Banking Rule 01) completed by individuals proposed to become qualifying shareholders<sup>ii</sup> or proposed to occupy certain positions of trust or to carry out certain activities within the applicant bank;
- the Questionnaire for Institutional Controllers, in those cases where a controller of the bank is an institution;
- an authenticated copy of an identification document (identity card or passport) of all persons completing the Personal Questionnaire;
- a recent copy of a police conduct certificate of all persons completing the Personal Questionnaire;
- such other information as may be required by the MFSA; and
- the appropriate fee (see below).

## ENTRY REQUIREMENTS

The Banking Act and Banking Rules establish minimum requirements which must be satisfied by the applicant bank in order for a banking license to be granted.

- *Initial capital*

The applicant bank must have an initial capital of no less than five million euros (5,000,000) or equivalent in foreign currency.

- *The effective direction of the bank in Malta*

The Banking Act also requires a minimum of two individuals to effectively direct the business of the bank in Malta.

- *The 'fit and proper' test*

The applicant bank must satisfy the MSFA that all qualifying shareholders, controllers and all persons who will effectively direct the business of the bank are suitable persons to ensure its prudent management and have passed the 'fit and proper' test. Furthermore, no officer of the applicant bank must be disqualified from acting as such in terms of the Banking Act.<sup>iii</sup>

- *The absence of obstacles to the exercise of effective supervision*

Where close links<sup>iv</sup> exist between the applicant bank and any other person(s), the MFSA must be satisfied that such close links do not prevent it from exercising effective supervision over the applicant bank.

- *Capital requirements*

Banks are required to permanently maintain, on a solo and on a consolidated basis, a minimum capital requirement ratio (i.e. the ratio of own funds to risk weighted assets and off balance sheet items) of 8%, unless the MFSA allows otherwise. In order to ensure compliance, the MFSA requires banks to submit the Capital Requirements Ratio Return form (as found in Appendix 5 of Banking Rule 04) on a quarterly basis.

- *Consolidated supervision*

In line with the Recast Banking Consolidation Directive (2006/48/EC), the MFSA must ensure that banks forming part of a banking group are subject to a satisfactory level of consolidated supervision. In order to determine if this is indeed the case, the applicant bank must submit to the MFSA a detailed

report on the composition of the banking group to which it belongs, which should include: the name of the undertakings forming part of the group; the type of activities in which they are engaged; their balance sheet totals; the extent of the participation, where the undertaking is not a subsidiary; and where applicable, which of the group undertakings are supervised by another competent authority, which should also be identified.

- *Continuous Liquidity*

In order to maintain and monitor continuous liquidity, the bank must establish an active treasury management operation whose functions include the monitoring of the maturity structure of the bank's receivables and payables as well as its assets and liabilities, taking into account the type, scope and risks of the credit institution's activities.

- *Auditors*

Every year, banks licensed in Malta (or in case of default, the MFSA) must appoint a duly qualified auditor, who must be authorised by the MFSA to act as such for the bank in question, to draw up a report on all of its financial statements. The MFSA also encourages the setting-up of an independent audit committee to assist the board of directors in carrying out its internal control responsibilities.

## **DETERMINATION OF APPLICATION**

The MFSA will decide whether to grant (with or without conditions) or refuse a banking license within six months from receipt of the application. If the application does not meet the applicable legal requirements or if any additional information is required from the applicant bank, the MFSA will determine the application within six months of compliance with such requirements or the furnishing of the information. If the MFSA does not determine an application within twelve months from its receipt, this shall constitute a refusal. The MFSA will inform the applicant, in writing, of the reasons for its refusal and the applicant has the right to appeal to the Financial Services Tribunal.

## **FEEES**

### **Application and processing fee**

Upon submission of an application for a banking license, the applicant bank must pay an application and processing fee of EUR 12,500, irrespective of whether the license is eventually granted or not. For this reason, it is important to ensure that all legal requirements are complied with and all requisite information is provided prior to submitting the application.

### **Licensing Fee**

If the MFSA grants a banking license, the bank must pay a licensing fee of EUR 18,000.

### **Supervision fee**

Once licensed, banks must pay to the MFSA an annual supervision fee equivalent to 0.000175 of its deposit liabilities<sup>v</sup> as reported at the previous year end. This fee is payable in two equal installments, the first, on the 1st January and the second, on the 1st July of each year. The supervision fee cannot be less than EUR 21,250 and cannot be more than EUR 500,000. When a banking license is granted after the 1st January, the fee payable shall be proportionately reduced.

### **Representative office fee**

Any bank incorporated abroad establishing a representative office in Malta must pay a fee of EUR 3,600 upon such establishment and on the anniversary of such date thereafter.

## **PARTICIPATION IN A DEPOSITOR COMPENSATION SCHEME**

### **Malta based banks**

Once a bank has been licensed in Malta to accept deposits in any designated currency (i.e. the currency of any EEA State) it is required to pay into the Maltese Depositor Compensation Scheme (DCS) an initial contribution of EUR 23,300. It must also pay into the DCS an annual supplementary contribution, the amount of which varies depending upon the total deposits (including interest) held by such bank, as well as by its overseas branches, and is calculated in accordance with the rules laid



down in the Second Schedule to the Depositor Compensation Scheme Regulations. Furthermore, participants in the DCS must set-up a Depositor Compensation Scheme Reserve, the funds in which may be called upon to pay any special contributions levied by the DCS Management Committee in order to meet the commitments of the DCS.

### Branches of non-EEA State banks

Branches in Malta of banks licensed in a non-EEA State must participate in and contribute to the DCS in Malta, unless there is in force an agreement between the DCS Management Committee and the authority administering the DCS in such non-EEA State stipulating, *inter alia*, that the level or scope of cover provided for depositors is equal or exceeds the level or scope of cover in Malta.

### Branches of EEA State banks

Branches in Malta of banks licensed in an EEA State usually opt to participate in their home country's DCS. However, it is possible for the branch to participate in the Maltese DCS if the level or scope of cover exceeds that of its home country's DCS.

### Disclaimer

The information contained herein is for informational purposes only and is not meant to serve and should not be relied upon as professional advice. Further information on the subject matter of this publication may be obtained from lecocqassociate.

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### NOTES

<sup>i</sup> Liaison activities can take the form of:

- (a) the provision, upon request, of factual information relating to the products and services of the bank which the representative office represents;
- (b) the conduct of research work into the economy of Malta to inform head office accordingly;
- (c) liaison with Maltese customers of the bank which the representative office represents;
- (d) the undertaking of credit assessments on reports on Maltese entities for any business with the bank that the representative office represents.

<sup>ii</sup> Any person directly or indirectly holding 10% or more of the equity shares in the applicant bank.

<sup>iii</sup> See article 32 of the Banking Act.

<sup>iv</sup> Close links exist when two or more persons are linked:

- by participation, through direct ownership or by way of control of 20% or more of the voting rights or capital of a body corporate;
- by a parent-subsidiary relationship; or
- permanently to one and the same person through a control relationship.

<sup>v</sup> Deposit liabilities consist of amounts owed to banks and customers less deductions.

(i) Amounts owed to banks and to customers consist in:

- deposits repayable on demand and at short notice (current and savings balances);
- matured term deposits;
- other types of deposits with a remaining maturity period of 3 months or less;
- term deposits taken under a condition which enables customers to withdraw funds at any time against a penalty; and
- any other borrowing repayable either on demand or with a remaining maturity period of 7 days or less, excluding intra-group borrowing.

(ii) Deductions consist of:

- loans received under repurchase agreements against liquid assets;
- currency swaps;
- deposits pledged as security; and
- 50% of items in course of collection