

Credit Institutions in Malta are licensed and regulated in terms of the Banking Act (the 'Act', Chapter 371 of the Laws of Malta). Following the establishment of the Single Supervisory Mechanism on the 4th of November 2014, licensing of Credit Institutions has fallen under the exclusive competence of the European Central Bank (ECB) in close cooperation with the Malta Financial Services Authority (MFSA) as the designated National Competent Authority (NCA).

PARTICIPATION BY AN AUTHORISED CREDIT INSTITUTION

An application for a Credit Institution under Maltese law is subject to Banking Rule/01 which creates an additional requirement through paragraph 24D thereof. Prospective applicants for a credit institution license are therefore expected to comply with paragraph 24D, which reads as follows:

“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 may require an active participation both by way of shareholding interest and/or by way of management by an authorised credit institution of repute. The level of participation is a matter at the discretion of the Authority.”

WAIVER REQUEST

However, the MFSA may, at its sole discretion, exempt the applicant from having to comply with the requirements included under paragraph 24D upon submission of a formal application requesting a waiver therefrom. In considering such applications, the MFSA will take into account the applicant's:

- Shareholding structure;
- Quality and track record of the management team – promoters should ideally be in possession of significant experience with other reputable institutions and therefore be able to demonstrate a strong level of diversified banking acumen;
- The target market;
- Due diligence investigations;
- Capital structure being proposed;
- Level and nature of business risk involved;
- Impact on depositor compensation scheme (DCS)

IMPACT ON THE DCS

When considering an application for a waiver, the MFSA places particular reliance on the applicant's impact on the DCS. Should the applicant bank propose a funding structure which does not have an impact on the Maltese DCS, the requirement stipulated by paragraph 24D may be waived in its entirety.

Nevertheless, even if a waiver is granted, the MFSA would still retain its right to apply more onerous regulatory requirements if these are deemed applicable, following a thorough review of the applicant's proposed operations.

For more information on Credit Institutions, please contact Denia Ellul on dellul@arqgroup.com. ARQ Group offers a number of complementary services including corporate structures, tax advice, residency & citizenship, compliance, legal service and accounting.