



## **Financial Services in Malta**

The global and regional business and the financial markets are undergoing a consolidation process and this brought about important changes in the banking and financial services sectors throughout the world.

With the accession of Malta in the European Union, Maltese market players have been given a larger role on the financial plane, due to the increased coverage given in the area of the European Single Market. As a result of Malta's accession into the European Union Malta has become another onshore jurisdiction in the European arena, thus facilitating entrance for other European financial players who intend to invest in Malta.

The first step was that of Synchronising and harmonising its legislation with that found on the international plane, this was Malta's prime move, to ensure that the best practice to reforming the finance sector legislation be advanced.

Malta managed to reach an accord with the Organisation for Economic Cooperation and Development (OECD), one of its aims is the contribution to growth in world trade, and therefore had to reform all its legislation regarding the financial sector for it to be in accordance with the international sphere. In fact, Malta was one of the first six countries in the world to reach such an advanced accord on fiscal matters with OECD.

In April 2009, Malta was among the 40 countries praised by the OECD for "substantially implementing" internationally agreed tax standards. This was a major achievement for the country which has long fought for this recognition. The Chairman for the Malta Financial Services Authority (MFSA), Joe Bannister, has often made interventions in foreign media clarifying that Malta was aiming to be a financial service centre without being a tax haven.



Apart from the OECD, Malta is an active player within the European Union and the Commonwealth, thus contributing to the structuring of the global regulatory policy and cooperating with other global supervisory bodies such as the Financial Action Task Force (FATF).

This has led Malta to impose serious competition to other jurisdictions in the financial sector. Malta offers several financial benefits including double taxation treaties, direct applicability of EU regulations and the transposition of financial services directives. In addition to this there is the possibility to offer EU wide acceptable products, as well as the presentation of a number of fiscal and business promotional incentives and other advantages including the single passport regime.

In July 2009, at the start of the global financial crisis, the Maltese financial sector continued to grow despite the prevailing tough economic times. In fact, it was the Maltese banking sector which proved to be relatively resilient, in the face of global financial turmoil.

## **Regulatory Bodies**

### **The Central Bank of Malta**

The Central Bank of Malta (CBM) was established by means of the Central Bank of Malta Act of 1968. It has contributed to the country's financial and economic development particularly through a stable financial system.

With the entry of Malta in the EU, the CBM became a member of the European System of Central Banks (ESCB), and in 2008 it became a member of the Euro system thus allowing it to participate in the decision-making process of the Euro system monetary policy in maintaining price stability.

The CBM teams up with local authorities and international institutions on matters of common concern. It is therefore imperative for the CBM to work in close contact with the Malta Financial Services Authority so as to fulfill its responsibilities



regarding financial stability as well as compilation of monetary statistics. The CBM also collaborates with the, the National Statistics Office (NSO) for the collection of statistics for the improvement of the economic sector of Malta.

On an international plane, the CBM has joined forces with global economic and financial institutions, such as the International Monetary Fund (IMF), the World Bank and the European Bank for Reconstruction and Development (EBRD). The CBM offers a wide range of services including the possibility of cheque and money order clearing arrangements between participating institutions through the Malta Clearing House.

The CBM is also a direct member of the Trans-European Automated Real Time Gross Settlement Express Transfer (TARGET2) - the European clearing and settlement system which is run by the European Central Bank. The TARGET2 system started operating in November 2007 when a group of countries migrated to the single shared platform (SSP). Malta was one of the groups of countries migrating to the SSP. Other domestic institutions also join cross-border transfer solutions such as Visa Net and STEP2.

### **The Malta Financial Services Authority**

The MFSA is the single regulator of all the financial services in Malta, and it represents the framework for the regulation and supervision of the financial industry in Malta. It was set up in 2002 by means of the Malta Financial Services Authority Act, enabling it to operate as an autonomous public authority. Although it is publicly accountable to Malta's Parliament, the MFSA works on an independent basis of the Maltese Government.

The MFSA is responsible for the licensing, regulation and supervision of credit institutions, money institutions as well as financial institutions. It also licenses, regulates and supervises investment services, insurances, collective investment schemes and recognised investment exchanges, furthermore, it has also taken over the responsibility as the Listing Authority.



One of the main responsibilities of the MFSA is responsible for the day-to-day monitoring and scrutiny of the conduct and management of the financial services industry. The MFSA cooperates and collaborates with other financial regulatory bodies both on a domestic as well as an international level.

The MFSA signed a number of bilateral Memoranda of Understanding with international regulators of financial services. It is also a signatory to multilateral specialised Memorandum of Understanding through international economic organisations such the International Organisation of Securities Commissions (IOSCO) as well as the Committee of European Securities Regulators (CESR).

By means of these Memoranda, exchange of information and the creation of formal framework regulatory collaboration and cooperation between regulatory authorities has been facilitated.

The MFSA and the CBM also concluded agreements on the exchange of information in the area of financial services and in respect of the payment and securities settlement systems.

### **The Maltese Regulations in the Banking Industry**

The Banking Act came into force in 1994 and was amended in 2004. The main reference guides for regulatory concepts as well as supervisory practices are adopted under the EU Directives, which greatly influenced the Banking Act. Other important legislations are those regarding the electronic money institutions where the Electronic Commerce Act regulates the sector.

The MFSA recently converted its Banking Directives into Banking Rules reflecting all the amendments necessitated by the introduction of the Capital Requirements Directive. These new banking rules include, "The Supervisory Review Process of Credit Institutions Authorised under the Banking Act 1994" which was issued in



2008, as well as the “Outstanding of Credit Institutions Authorised under the Banking Act 1994” currently being drafted.

### **Preventing Money Laundering**

Preventing money laundering is important so as to protect Malta’s financial services sector and reinforcing Malta’s status as a full member of the EU. Money laundering is therefore regulated by two statutory instruments:

1. The Prevention of Money Laundering Act.
2. The Prevention of Money Laundering and Funding of Terrorism Regulations.

The anti-money laundering EU regulations, particularly the provisions of the 2nd and the 3<sup>rd</sup> Directive have also been transposed into both of these instruments. Malta’s legislation in this regard is also compliant with the Financial Action Task Force Recommendations.

Preventing money laundering falls within the ambit of Financial Intelligence Analysis Unit (FIAU) which is responsible for the collection, collation, processing, analysis and dissemination of information of suspected money laundering or terrorist financing-related activities.

### **Committee of European Banking Supervisors**

The CEBS, the Committee of European Banking Supervisors, is responsible for providing advice to the Commission regarding the proper implementation of community legislation in the banking industry throughout the EU. It also aims at converging practices and promoting supervisory cooperation and exchange of information. The MFSA adheres to the guidelines issued by the CEBS, so as to ensure that local regulations are in line with European requirements.

### **Incorporating Banks in Malta**



When a company intends to establish banking business in Malta the first step is to file an application for a license with the MFSA prior to the commencement of the business. The following are the 3 establishments for which a license may be filed.

- ➔ Branches for foreign banks.
- ➔ Subsidiaries which are legally independent institutions, either a great part of which or are wholly owned by a credit institution which is incorporated either in Malta or in a foreign country.
- ➔ Joint ventures.

The application for each of these includes:

1. Information regarding the license holder or the body which has applied to become a license holder;
2. Personal information about the application, which include:
  - i. Personal contact details.
  - ii. Qualifications.
3. Memberships.
4. Employment history.
5. Directorships.
6. Applicant's bank references.
7. Other regulatory authorizations.
8. Other general information (declarations, confirmations and others).

These are required according to Banking Rule BR/01, "Application Procedures and Requirements for Authorisation of Licenses for Banking Activities under the



Banking Act 1994” which outlines the procedures and requirements to be carried out by the MFSA when processing such applications.

In addition to the above, the MFSA also requires:

1. A copy of the Memorandum and the Articles of Association of the institution;
2. Audited financial statements for the previous 3 years (if applicable).
3. Business plan for the prospective bank (the structure, organisation and management system).
4. Identity of all directors, controllers and managers.
5. Identity of all shareholders with a qualifying shareholding.
6. Identity of the individuals who will be effectively directing the business of the prospective bank.

The MFSA may require any other information it deems appropriate for the determination and granting of a license.

The law sets out a number of minimum requirements which must be met when applying for a banking license:

1. Applicant’s funds are to amount to not less than €5million.

In the case of electronic money institutions, the applicant’s funds must not amount to less than €1million (The MFSA may vary these amounts through banking rules).

2. At least two individuals will be effectively directing the business of the credit institution to Malta (the four eyes principle).



3. All qualifying shareholders, controllers and persons directly effecting the business of the credit institution must be suitable persons who may ensure diligent management.
4. MFSA must be satisfied that there are no close links between the company and any other person who is in any manner prevented from exercising effective supervision of the company under the provisions of the Banking Act.

When the MFSA grants the license, it must also be satisfied that the minimum criteria relating to prudent conduct are met and that the establishment being licensed will be composed of professional staff which will ensure safety for potential depositors.

When the license has been granted, a credit institution is obliged to inform the MFSA of any changes concerning the application and is required to provide the required information for monitoring on a continuous basis. The MFSA may also require the possibility of receiving adequate flows of information from the institution so as to be able to monitor the fulfillment of prudential criteria and identity and assess any threats which may be imposed on the interests of the potential depositors.

According to the Banking Act, the application for a license is to be determined within six months from receipt. When the application does not comply with the requisites, or if more information is required, the application is to be determined within six months of compliance from the required form. In all cases, however, an application is to be approved within 12 months of its receipt.

A license may be granted without any conditions or subject to conditions which the MFSA may deem appropriate. The Financial Services Tribunal hears appeals which the applicant may lodge regarding any type of decision the MFSA has taken in regard to an application for a license.





## **Branches of overseas institutions**

In this case, a license which is issued to an institution incorporated outside Malta for it to operate its business of banking through a branch in Malta is deemed to have been granted to that institution as a whole. The MFSA is to be informed in writing with such, before opening a new branch or office in Malta.

Authorisation for the opening of such a branch is then granted once the MFSA is satisfied that it will receive regular information on the institution's operations. The MFSA would also require that adequate supervisory arrangements exist in the foreign country and any existent regulation in the foreign country shall not restrain the flow of information to the MFSA regarding the establishment which would enable it to exercise consolidated supervision.

## **Representative Offices**

A representative office may be established only after it has given at least two months notice to the MFSA that it intends to establish such office. Form 4 of the "Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994" must be filled by the foreign bank so as to establish a representative office in Malta.

Other relevant material may be included, such as a certified copy of the authorisation of the company to conduct the business of banking in a country other than Malta.

When the credit institution has been authorised, the MFSA may conduct supervision on an individual basis taking into account the operations of the bank and other financial companies connected to the authorised institution.

## **Publication of annual report and audited financial statements**



Audited financial statements are to be drawn up on an annual basis using International Financial Reporting Standards adopted by the European Union.

These financial statements are to be submitted to the competent authority and the CBM within 4 months from the closing of the financial year or any other time authorised by the MFSA. A copy should of the documents is to be made public.

The MFSA may also, if it deems appropriate, require the overseas institution to include with its audited financial statements additional information, as applicable. Such information shall be submitted not later than 4 months from the closing of its financial year or at any other time as may be exceptionally licensed by the Competent Authority.

## **Taxation**

### **Corporate Taxation**

In Malta, tax is paid by a company registered in Malta on its profits. However when this company distributes its profits to its shareholders, wherever these may be, the shareholders are entitled to receive a refund of a substantial part of the tax paid by the distributing company.

Malta in fact, implements the full imputation system. Through this system, the tax paid by the company remains a pre-paid tax on behalf of the shareholders' tax liability. Certain dividends are exempt from tax.

### **Taxation for branches**

Under the new system, shareholders of foreign companies which have branches established in Malta, benefit from the refundable tax credit system. Under this system, tax paid in Malta by branches on profits attributed to its activities performed in Malta will be refunded when the profits are distributed by the principal of the branch to its shareholders.



## **Participation Exemption**

This exemption was introduced in January 2007. This participation exemption exempts tax income and capital gains derived from participating holdings or from the disposal of such holding.

Companies may select to pay tax on income and capital gains from participating holdings rather than apply the participation exemption. When dividends are distributed, shareholders may make a claim for a full refund of the tax paid by the company.

## **VAT – Value Added Tax**

The VAT Act provides that certain credit and banking related services are VAT exempt without credit (i.e. no VAT is charged on such services.) Hence, a bank does not charge VAT on most of the services it provides and therefore will not be in a position to recover any input VAT it incurs in respect of exempt services.

Some services which banks provide do not fall within the ambit of banking services and are therefore not VAT exempt. These services include, issue of letters of reference, issue of certificates to auditors and night safes. Therefore they are charged at the rate of 18%.

## **Double-taxation relief**

Malta has an extensive treaty network, however it still provides relief for double taxation on a unilateral basis. Double taxation is relieved by the credit method and is available to all persons residing in Malta.

## **Unilateral Relief**



Maltese domestic law provides for unilateral relief which is then granted via the credit method. Following the 2007 amendments, unilateral relief is available to resident companies and resident individuals.

### **Flat Rate Foreign Tax Credit (FRFTC)**

This kind of relief is set at a fixed rate of 25%. This is only available for companies registered in Malta. In fact, the company must be empowered to receive the FRFTC against profits allocated to the foreign income account. The recipient must have documentary evidence confirming these requirements. FRFTC may not be claimed in respect of profits resulting from dividends paid out of the foreign income account of another Maltese resident company.

### **Commonwealth Relief**

This may be claimed by residents and non-residents in respect of Commonwealth income tax.

### **Personal tax liability**

Under the Maltese Income Tax law, persons ordinarily resident and domiciled in Malta are taxed on their income irrespective of whether it is income and capital gains arising in Malta or otherwise and whether received in Malta or elsewhere.

An individual who is either ordinarily resident and/ or domiciled in Malta is subject to tax on income arising in Malta, on income arising abroad but received in Malta and on taxable capital gains arising in Malta.

Persons who are not ordinarily resident and not domiciled in Malta are taxed only on income arising in Malta. Tax is charged at progressive rates up to a maximum rate of 35%.