

**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

**BANKING UNIT**

**BANKING NOTICES**

*NOTICE ON THE LEGAL AND REGULATORY PROVISIONS OF  
REPRESENTATIVE OFFICES OF FOREIGN BANKS IN MALTA  
AUTHORISED UNDER THE BANKING ACT 1994*

Ref: BN/02/2002

**NOTICE ON THE LEGAL AND REGULATORY PROVISIONS  
OF REPRESENTATIVE OFFICES OF FOREIGN BANKS IN MALTA  
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**INTRODUCTION**

1. In terms of Section 2(1) of the Banking Act 1994 (the Act), a representative office is defined as premises from which the business of banking is promoted or assisted in any way.

2. The definition states that:

*“A representative office means, in relation to a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a foreign country, premises in Malta from which the business of banking is promoted or assisted in any way, and in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of Malta, premises outside Malta from which the business of banking is promoted or assisted in any way.”*

3. Section 8 of the Act further provides for the type of information requested, and the time limit required, by the competent authority for the setting up of a representative office. For guidance, Section 8 of the Act has been reproduced as an attachment to this document.

**PURPOSE OF THE NOTICE**

4. This notice is issued pursuant to Section 4 of Legal Notice 113 of 1998 on *Representative Offices (Activities) Regulations, 1998* which states:

*“In undertaking these activities a foreign bank having a representative office in Malta and the representative office itself shall comply with any guidelines as may be established by the competent authority from time to time.”*

5. The purpose of the notice is to provide guidance to prospective applicants on the prevailing policy adopted by the competent authority regarding the establishment of representative offices in Malta.

**OPENING OF A REPRESENTATIVE OFFICE IN MALTA**

6. In terms of Section 8 of the Act, a company incorporated outside Malta which carries on the business of banking must give the competent authority at least two months notice prior to opening of a representative office.

7. The notice referred to in Section 8 to the Act also includes the manner as to how the information regarding the details of the representative office is to be presented to the competent authority. Such details should include the business name and address of the office and an authorisation from the supervisory authority of the country of incorporation of the foreign credit institution

allowing the foreign credit institution to open the representative office in Malta.

8. The competent authority in Malta may request any additional information it may reasonably require. It may also serve notice on the representative office, objecting to the name or the proposed name of such office so as to ensure that the name proposed is not misleading to the public. If the representative office does not agree with this line of action, it has a right of recourse by applying to the Financial Services Tribunal, set up in terms of Section 10 of the Act, to confirm or otherwise the objection of the competent authority.
9. Form 4 annexed to Banking Directive BD/01 stipulates all the necessary information required from institutions applying for the opening of a representative office in Malta.
10. The competent authority will only consider approving the establishment of representative offices of foreign banks which are of good repute and are subject to adequate standards of prudential supervision in the home country on a consolidated basis consistent with internationally agreed standards.

#### **OBLIGATIONS OF A REPRESENTATIVE OFFICE IN MALTA**

11. The Act provides that a company having a representative office in Malta shall notify the competent authority, at least two months in advance, of any proposed change in the name of the representative office. The same will apply where there is any change in its licence to conduct the business of banking in a country other than Malta.
12. In terms of Section 12 of the Act, the competent authority will authorise the use of the word 'bank' in the name of the foreign bank only in conjunction with the description "representative office" and the representative office shall always include such description in its office signage, letterheads, advertising, business cards, etc.
13. The Act further provides that a company having a representative office in Malta may be required by the competent authority to provide it with such information or documents as may be reasonably required. The Company shall submit these within the period specified by the notice for the production of the said information or documents.
14. A representative office in Malta is required to provide the competent authority with a copy of any document which it is required to forward to the Registrar of Companies no later than the time by which such document must be made available to the said Registrar.

#### **PERMITTED ACTIVITIES**

15. In terms of Legal Notice 113 of 1998, a representative office established in Malta may only undertake the conduct of business of purely liaison activities.
16. As defined in the Legal Notice, this activity can take the form of:
  - the provision, upon request, of factual information relating to the products and services of the bank it represents;
  - the conduct of research work into the economy of Malta to inform Head Office accordingly;
  - liaison with Maltese customers of the bank it represents;
  - undertake credit assessments on reports on Maltese entities for any business with the bank.

#### **PROHIBITED TRANSACTIONS**

17. In terms of the Act the undertaking of the business of banking and any of the additional activities as detailed in the Schedule to Section 2(4) of the Act are subject to a full or restricted banking licence.
18. Subsection (2) of Section 2 of the Act prohibits the acceptance, advertising or soliciting of deposits of money to any person except when so authorised by the competent authority in terms of the Act itself.
19. Consequently, a representative office cannot:
  - solicit or advertise for deposits;
  - receive deposits including allowing members of the public to deposit moneys into any account conducted with an authorised bank in Malta in the name of the representative office or the foreign bank for onward remittance overseas;
  - open accounts for prospective customers of the foreign bank;
  - conduct any activity listed in the Schedule to Section 2(4) of the Act;
  - execute any documentation for any of the foregoing purposes.

## **OTHER REQUIREMENTS**

20. Each foreign bank with a representative office in Malta must provide to the competent authority an annual statement signed by the official at Head Office responsible for the oversight of the representative office confirming compliance to conditions.
21. The foreign bank is to immediately inform the competent authority of any changes at Head Office for the oversight of the representative office (refer to Question 11 of Form 4).
22. Each employee/representative, on taking office, must submit a written declaration to the competent authority that he/she is fully aware and understands his/her responsibilities and conditions applicable to the representative office.
23. A foreign bank with a representative office in Malta must register as appropriate under the relative provisions of the Companies Act 1995 (Part XI) governing the establishment of a place of business within Malta by bodies corporate which are constituted or incorporated outside Malta. Evidence of such registration must be provided to the competent authority.
24. A foreign bank with a representative office in Malta must ensure that its representative office in Malta complies at all times with the applicable laws in Malta. It must immediately inform the competent authority in writing of any breach or alleged breach of any law or any event which might reasonably lead to the cancellation of its registration as in Article 23 above.

## **DEALING WITH RESIDENT BANKS**

25. Pursuant to Section 3 of Legal Notice 113 of 1998, the representative office may open accounts in its name with other credit institutions in Malta provided that these accounts be restricted to the payment of its administrative costs only.

## **APPLICATIONS TO ESTABLISH A REPRESENTATIVE OFFICE**

26. Applications notifying the competent authority of an intention to establish a representative office in Malta in terms of Section 8 of the Act should be filed by the foreign bank using Form 4 of the Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994 Directive BD/01 and be accompanied by the relative documentation.
27. Unless ordered by the competent authority not to establish a representative office in Malta within two months from date of notification as in Article 26 above, the foreign bank having filed the relative notification, may establish the representative office.

28. A representative office is subject to an annual fee as may be established from time to time by the competent authority in terms of subsection ( 8) of Section 8 of the Act.

**CLOSURE OF A REPRESENTATIVE OFFICE**

29. In terms of subsection (9) of Section 8 of the Act, the competent authority may at any time order the closure of an established representative office.
30. The competent authority will consider non-compliance to any of the conditions to which a representative office is subject as giving rise to a valid reason for the possible closure of such an office.
31. In terms of subsection (f) of Section 10 of the Act, a foreign bank whose representative office in Malta has been ordered to close may appeal to the Financial Services Tribunal.

*Annexes:*            *Legal Notice 42 of 1995*  
                          *Legal Notice 113 of 1998*  
                          *Section 8 of the Banking Act 1994*

**L.N. 42 of 1995**

**BANKING ACT, 1994  
(ACT No. XV of 1994)**

**Representative Offices (Fees) Regulations 1995**

IN exercise of the powers conferred by subsection (9) of section 8 of the Banking Act, 1994, the Minister of Finance, after consultation with the competent authority, has made the following regulations:-

**1.** These regulations may be cited as the Representative Offices (Fees) Regulations, 1995, and shall come into force on 4<sup>th</sup> April, 1995. Citation and commencement.

**2.** In these regulations, unless the context otherwise requires:- Interpretation.

“Act” means the Banking Act, 1994;

“competent authority” means the body appointed under subsection (2) of section 3 of the Act;

“representative office” means an office established in Malta by a non-Maltese bank in terms of section 8 of the Act.

**3.** There shall be paid to the competent authority by any company incorporated outside Malta which is authorised to establish a representative office in Malta an annual fee of Lm500 on the date of such authorisation and thereafter annually, upon the anniversary of such date. Fees.

**L.N. 113 of 1998**

**BANKING ACT, 1994  
(ACT No. XV of 1994)**

**Representative Offices (Requirements and Activities)  
Regulations 1998**

IN exercise of the powers conferred by subsection (9) of section 8 of the Banking Act, 1994, the Minister of Finance and Commerce, after consultation with the competent authority, has made the following regulations:-

1. These regulations may be cited as the Representative Offices (Requirements and Activities) Regulations, 1998, and shall come into force on the 12<sup>th</sup> May, 1998. Citation and commencement.

2. In these regulations, unless the context otherwise requires:- Interpretation.

“Act” means the Banking Act, 1994;

“competent authority” means the body appointed under subsection (2) of section 3 of the Act;

“financial undertaking” includes any person undertaking banking, investment, insurance or any other financial activity;

“representative office” means an office established in Malta by a non-Maltese bank in terms of section 8 of the Act.

3. (1) The business of a representative office must be confined solely to the conduct of purely liaison activities and must not include the engagement in financial transactions or the execution of any documents relative thereto, except where necessary for and incidental to the maintenance of the office in Malta. Permitted activities.

(2) For the purpose of subsection (1) of this section, 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.

Guidelines.

4. In undertaking these activities a foreign bank having a representative office in Malta and the representative office itself shall comply with any guidelines as may be established by the competent authority from time to time.

Conditions.

5. (1) A representative office must:

(a) keep its activities separate from those of any other undertaking, financial or otherwise, operating in or from Malta;

(b) have its office distinctly located from the office of any other undertaking whether financial or otherwise;

(c) have its own employees who may not also be employees, officers or directors of any financial undertaking operating in or from Malta.

(2) Should a foreign bank with a representative office in Malta take a significant equity position (of at least 5% as defined in section 2 of the Act) in any type of a financial undertaking operating in or from Malta it should immediately notify in writing the competent authority.

*Extract from the Banking Act 1994 - Section 8*

**8.** (1) A company incorporated outside Malta which carries on the business of banking shall not establish a representative office in Malta unless it has given not less than two months' notice to the competent authority that it proposes to establish such an office. Such notice shall:

Representative offices of non-Maltese banks.

(a) specify the name it is proposed to use in relation to the activities of the representative office and the address of such office;

(b) be accompanied by a certified copy of the authorisation of the company to conduct the business of banking in a country other than Malta.

(2) A company mentioned in subsection (1) of this section having a representative office in Malta shall likewise notify the competent authority:

(a) at least two months in advance of any proposed change in name of the representative office;

(b) of any change in its licence to conduct the business of banking in a country other than Malta, no more than two months after such change.

(3) The competent authority may, at any time, serve on a representative office in Malta a notice objecting to the name or the proposed name of such office.

(4) The competent authority shall not give a notice pursuant to subsection (3) of this section unless it considers that the name or proposed name is misleading to the public or otherwise undesirable, and upon receipt of such notice, the representative office shall not use the name to which the competent authority has objected in relation to activities conducted in Malta.

(5) The competent authority may, by notice in writing, require any company having a representative office in Malta or which has given notice pursuant to subsection (1) of this section, to provide the competent authority with such information or documents as the competent authority may reasonably require, and the said company shall comply with such notice in the period as is reasonably specified by the notice.

(6) A representative office in Malta shall supply the competent authority with a copy of any document which it is required to provide to the Registrar of Companies no later than the time by which such document must be provided to the said Registrar.

(7) The competent authority may by banking directive provide that the provisions of articles 20 to 24 shall apply to representative offices in Malta in the same manner as they apply to credit institutions.

(8) The competent authority, may by banking directive impose on companies which have established or which propose to establish representative offices in Malta, such requirements as the competent authority consider appropriate in connection with those offices and the activities conducted from them any may impose on such companies such annual fees, as may be determined from time to time.

(9) The competent authority may, within the two months referred to in subsection (1), order a company referred to in the said subsection (1) not to establish a representative office in Malta and at any time thereafter order the closure of any representative office so established.