

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

BANKING UNIT

BANKING NOTICES

*NOTICE ON ADVERTISING FOR DEPOSITS BY CREDIT
INSTITUTIONS AUTHORISED UNDER THE BANKING ACT 1994*

Ref: BN/05/2002

NOTICE ON ADVERTISING FOR DEPOSITS BY CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT 1994

INTRODUCTION

- 1 The Malta Financial Services Authority ('the authority') appointed in terms of the Banking Act 1994 ('the Act') considers the issue of this Notice containing the norms to be followed when advertising for deposits as defined in the Act, as an important best practice guideline in view of the particular nature of advertising and soliciting for money from the public. Such advertising needs to be addressed within the parameters of statutory provisions related to such activity as provided for in the Act and ethical considerations that have to be taken into account in view of the delicate nature of this category of advertising.
2. The authority recognises that advertising for deposits has distinct commercial and ethical characteristics that go beyond those applicable to advertising for goods and services that are not of a financial nature. Although advertising for deposits has certain analogies with advertising in general, it has deeper repercussions since it is related to the welfare derived from proper utilisation by banks of their customers' money.
3. The Notice on Advertising for Deposits ('the Notice') should be considered as being a best practice guideline on the advertising standards to be adopted when advertising for the taking of deposits and should not be interpreted that credit institutions are under an obligation to seek prior vetting of an advert from the authority. The authority however is prepared to discuss with any credit institution which seeks its advice or which intends to introduce types of deposits which are materially different from traditional ones. The term *deposit* as included in the Notice therefore, should be interpreted to include all types of products that involve funds repayable to the public as defined in the Act and as referred to in paragraph 5 of the Notice.

RELEVANT LEGAL PROVISIONS

4. Section 2(1) of the Act defines the business of banking as:

“the business of a person who ... 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.”

5. In addition, Section 2 (1) of the Act also defines the term *deposit* as being:

“ a sum of money paid in on terms under which it will be repaid with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.”

6. Furthermore, Section 2 (2) of the Act states that:

“ A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business or if, whether as principal or agent, he advertises or solicits for such deposits without regard to the terms and conditions under which such deposits are solicited or received or without regard to whether certificates or other instruments are issued in respect of any deposits.”

7. For the purpose of the Notice, advertising media should be taken as meaning advertising in:

- ✍ print (e.g. newspapers or brochures/leaflets/direct mailshots available to the public)
- ✍ visual means (e.g. television)
- ✍ sound (e.g. radio)
- ✍ electronic (e.g. Internet)

PURPOSE OF THE NOTICE

8. The purpose of the Notice is to establish best practice guidance on:

- ✍ The Objectives to be kept in view when advertising for deposits;
- ✍ Ethical and practical considerations;
- ✍ Criteria applicable for compliance with the Act;
- ✍ Requirements for advertising for deposits; and
- ✍ Miscellaneous provisions.

THE OBJECTIVES BEHIND ADVERTISING FOR DEPOSITS

9. The authority recognises that advertising and promotion in general are very important elements in the marketing of products in a liberalised environment. This applies even more for products and services provided by credit institutions.

10. Within the above context, the aims of advertising for deposits should not only be to announce a service or product, but also to provide all the necessary information for customers to form an opinion on the deposit being advertised and on the implications of entering into a business relationship with a credit institution during which both parties have to adhere to the highest ethical standards.

ETHICAL AND PRACTICAL CONSIDERATIONS

11. Advertising in the banking system, in particular advertising for deposits and similar services and products, is crucial to the well-being of the community since it involves the utilisation of money received from actual or prospective customers.
12. Money and its proper management constitute essential factors to personal and corporate well-being and to the sanity of the financial system. Therefore there is an added responsibility to whoever advertises for deposits to ensure that advertisements contain the necessary requisites that enable judicious analysis by the customer aided by all the necessary background information.
13. It is therefore appropriate and necessary that any advertising for deposits and similar products by licensed institutions ensures that:
 - ✍ the customer is made fully aware of all the financial implications and legal aspects related to the deposits;
 - ✍ the returns promised to the customer are realisable;
 - ✍ the quality of deposit is guaranteed;
 - ✍ the legal responsibilities of the providers of the deposit and their liability are clearly spelled out;
 - ✍ the deposit will encourage a healthy relationship between the customer and the credit institution that provides it; and
 - ✍ the deposit is compliant with the provisions of the Act, related Directives and any other laws of Malta.
14. In advertising for deposits and in keeping with the requirements listed in paragraphs 24 to 37 of this Notice, credit institutions are to maintain a sense of responsibility to their customers and to the financial system as a whole.
15. Advertising by credit institutions should therefore respect the principles of fair competition as established by the laws of Malta and should not bring the financial sector into disrepute.
16. When advertising for deposits, credit institutions are expected to be aware that misleading advertising leads to the distortion of competition within the market and jeopardises the economic welfare of actual and/or potential customers. Misleading advertising may also lead customers into taking decisions that could be prejudicial to their financial well-being.

17. Advertising can be misleading when:
- ✍ the characteristics of a deposit as advertised do not reflect the financial benefits that the customer expects to derive;
 - ✍ any charges related to the deposit are hidden in such a way that the customer fails to assess their final impact on the ultimate financial benefits expected;
 - ✍ the repute of the advertising credit institution is mis-represented to the extent that the customer is deceived.
18. Therefore no advertisement should mislead customers through inaccuracy, ambiguity, exaggeration, omission, high flowing language or the creation of false expectations.
19. The primary responsibility of observing all legal and regulatory provisions related to advertising for deposits falls on the advertising credit institution and others involved in preparing and publishing the advertisements such as integrated marketing communications agencies, publishers and related service suppliers. In this respect the authority draws the attention of credit institutions to the provisions of Section 35(1) of the Act.
20. Even more essential is the need for credit institutions to ensure that there are officials of high rank who can be held accountable and responsible for the whole advertising process. Any persons having this capability would be expected to be able to handle any enquiry, customer complaints and regulatory matters that may arise in connection with advertising for deposits and for other monies repayable to the public.
21. The best practices guidelines for the advertising for deposit taking contained in the Notice should be given their due consideration in any published code of conduct of credit institutions.

CRITERIA APPLICABLE FOR COMPLIANCE WITH THE ACT

22. All advertisements for deposits should carry a statement to the effect that the advertising credit institution is licensed to undertake the business of banking in terms of the Act.
23. Credit institutions incorporated outside Malta but intending to advertise for deposits in Malta are to ensure full compliance with the relevant sections of the Act particularly Section 2 (2) thereof. In this respect the Act provides that the advertising credit institution requires a licence in terms of the Act itself.

REQUIREMENTS FOR ADVERTISING FOR DEPOSITS

General Information

24. As a minimum, every advertisement should state:
- ✍ the full name of the credit institution accompanied by the credit institution's official signage;
 - ✍ the country or territory in which the credit institution's principal place of business is situated⁽¹⁾;
 - ✍ the country or territory where the credit institution is incorporated unless the country or territory is the same as those referred to in sub paragraph (b) above⁽¹⁾;
 - ✍ the term, if any, of the deposit;
 - ✍ interest rates;
 - ✍ the frequency of payment if interest;
 - ✍ whether interest is compounded; and
 - ✍ that full *Terms and Conditions* are available on request.
25. The format, including the language used in the advertisement, should be such that it enables actual and prospective customers to be fully aware of and conversant with the nature of the commitment which they would enter into once they respond to the advertisement itself.
26. The advertisement must clearly state the full postal address and/or other contact details through which the advertising credit institution can be contacted during normal hours and any alternative arrangements as applicable.

Interest Rate Information

27. Rates of interest should be described appropriately taking into consideration the option for the application of withholding tax at source and the following terms should preferably be used, namely:
- w% gross
 - x% net (of withholding tax)
 - y% tax free (if applicable)
 - z% compounded annual rate

¹ This refers to branches of foreign credit institutions authorised under the Act to operate in Malta.

28. No rate shall be given greater prominence in size of type or otherwise than the contractual rate, provided interest is due at least annually.
29. Where rates are quoted on the basis of other than a twelve-month period, this must be clearly stated and such rates shall be given no greater prominence than the 'compound annual rate'.
30. Once a rate of interest is quoted, the advertisement must contain a specific statement indicating whether the rates quoted are fixed for any term specified and whether the interest rates are subject to variations (e.g. floating rate). If so, the relative variations should be defined in so far as is possible.
31. Advertisements quoting a rate of interest or yield that are intended for printed media or direct mail must contain a suitable qualification such as *rates correct at the time of going to press* and must state the period for which the conditions as published in the advert would apply.
32. Where interest is forfeited on any withdrawal without notice, words such as *instant access* or *immediate withdrawals* must not be displayed together with the rate of interest without qualification.

Other Requirements

33. Advertisements must contain a clear statement of the conditions of withdrawal.
34. For deposits that do not allow for withdrawals even after a period of notice without forfeiting interest, the text of the advertisement must include a statement indicating that, if a withdrawal is made, the stated interest rate will not be achieved.
35. The minimum and maximum deposit amount, if any, that would be accepted has to be clearly indicated.
36. Advertisements that invite deposits by immediate coupon response should include a statement in the sense that the terms and conditions of the deposits would be available on request prior to completing the coupon.
37. Every advertisement shall state the currency in which deposits could be made.

Media Related Requirements

38. In the case of advertising through television and other visual media or by way of sound broadcasting, the requirements listed in paragraphs 27 to 37 of the Notice should be shown clearly and legibly and spoken in a clear manner as appropriate and applicable.

MISCELLANEOUS

Credit Institutions Listed On the Malta Stock Exchange

39. While encouraging a continuous application of the practices indicated in this Notice, credit institutions listed on the Malta Stock Exchange are also expected to adhere fully to the advertising standards as may be included in the Bye-Laws of the Malta Stock Exchange from time to time.

Other Provisions

40. Observing these best practice guidelines does not exonerate a credit institution from any other responsibilities or obligations under other statutory or prudential requirements applicable in Malta (eg. consumer protection or investment services).