

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation Procedure

Proposal for amendments to the Financial Institutions Act and Financial Institutions Rule FIR/03

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in **draft** form and **unofficial**. The documents circulated are proposals and accordingly are not binding and are subject to changes and revisions following representations received, inter alia, from licence holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

Amendments to the Financial Institutions Act and proposed Financial Institutions Rule FIR/03

1. Purpose

- 1.1. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (hereinafter referred to as 'Directive 2009/110/EC') came into force on 30th October 2009.
- 1.2. The main aim of the Directive is that of (i) enabling the creation of new, innovative and secure electronic money services; (ii) providing market access to new companies and (iii) fostering real and effective competition between market participants.
- 1.3. The deadline for the transposition of Directive 2009/110/EC in all Member States is 30th April 2011.

2. The proposed amendments to the Financial Institutions Act

- 2.1. In line with the spirit of Directive 2009/110/EC, which advocates a lighter and more flexible regime for electronic money institutions, the Authority felt that the regulation of such institutions could move to that obtaining under the Financial Institutions Act rather than through implementation of a new law.
- 2.2. This approach is also consistent with the approach taken on the implementation of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC and 2006/48/EC and repealing Directive 97/5/EC also referred to as the Payment Services Directive, which was transposed in the Financial Institutions Act during 2010.
- 2.3. The relevant Bill with the proposed amendments to the Financial Institutions Act is expected to be published shortly in the Government Gazette.

3. The proposed draft Financial Institutions Rule FIR/03

- 3.1. The proposed amendments to the Financial Institutions Act are further being supplemented by the issue of a new Financial Institutions Rule 3 of 2011 [FIR/03/2011] on the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money under the Financial Institutions Act. This Rule is being issued in terms of Article 13(2) of the Financial Institutions Act which enables the competent authority to make Financial Institutions Rules as may be required to carry into effect any of the provisions of the Act.
- 3.2. In particular the Authority would like to draw the attention of licence holders and other interested parties on Paragraphs 26 – 33 of the proposed FIR/03 concerning small e-money issuers.
- 3.3. Paragraph 28 of the proposed FIR/03 deals with the initial capital requirements for small e-money issuers. In this regard, the authority considers that, for prudential reasons, an initial capital figure needs to be held by small electronic money issuers. Such figure should be reasonable and proportional to the risk profile of such small electronic money issuers. In this respect, the Authority invites comments on this aspect with a view of establishing an appropriate initial capital figure.

4. Consultation Documents

- 4.1. Licence holders and other interested parties are being informed of the circulation of the proposed amendments to the Financial Institutions Act and the proposed FIR/03.
- 4.2. Interested parties are kindly asked to submit any comments which they may have in relation to the aforementioned documents in writing, to Dr. Isabelle Agius – Regulatory Development Unit on iagius@mfsa.com.mt by not later than **Monday 11th April 2011**. Similarly, do not hesitate to contact the undersigned for any queries or clarifications.

We thank you for your cooperation.

Communications Unit
25th March 2011