

CREDIT SERVICERS RULE CSR/01

**APPLICATION PROCEDURES & REQUIREMENTS
FOR AUTHORISATION OF CREDIT SERVICERS
UNDER THE CREDIT SERVICERS & CREDIT
PURCHASERS ACT 2024**

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APPLICATION PROCEDURES AND REQUIREMENTS FOR AUTHORISATION OF CREDIT SERVICERS UNDER THE CREDIT SERVICERS & CREDIT PURCHASERS ACT 2024

Introduction

1. In terms of article 20 of the Credit Servicers and Credit Purchasers Act 2024 (Chapter 645 of the Laws of Malta) ('the Act'), the competent authority (the 'Authority') is empowered to make Credit Servicing Rules ('the Rules') as may be required for carrying into effect any of the provisions of the Act. The Authority may amend or revoke such Rules. The Rules and any amendments or revocation thereof shall be officially communicated to credit servicers and the Authority shall make copies thereof available to the public.
2. In terms of article 6(1) of the Act, no legal person shall act as a credit servicer in Malta unless it is duly authorised by the Authority or any other European Regulatory Authority as a credit servicer.
3. The Application Procedures and Requirements for Authorisation of Licences for Credit Servicing Activities Rule ('the Rule') provides applicants for a licence with the procedures and requirements of the Authority for the processing of applications. Potential applicants shall also be guided by Notices as may be issued by the Authority from time to time.
4. It should be emphasised, however, that the Rule does not substitute the Act and shall be read in conjunction with the Act and any other Regulations issued thereunder. The responsibility for observing the law rests entirely with the applicant and the individual persons concerned.

Scope and Application

5. The Rule applies to all legal persons established in Malta desirous of commencing credit servicing activities, as defined in article 2(1) of the Act, in or from Malta.
6. The Rule shall not apply to the instances listed in article 4 of the Act.
7. A licence to carry out credit servicing activities in Malta may be subject to fees.
8. The provision of credit servicing activities through the establishment of a branch in Malta by European credit servicers may be subject to fees.

Definitions

9. Unless it is otherwise specified, any reference in this Rule to the Malta Financial Services Authority ('the Authority') shall refer to the Authority acting as the National Competent Authority, as determined in accordance with article 5 of the Act.
10. Words and expressions which are used in this Rule shall have the same meaning assigned to them under the Act, any Regulations or Rules issued thereunder as well as the EBA Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167 (EBA/GL/2023/09) (the 'EBA Guidelines').

EU/EEA Credit Servicers benefitting from the right to "Passport"

11. A credit servicer authorised in another Member State to provide the credit service activities listed in Article 3(9) of Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (the 'Directive'), may provide the activities for which it has been authorised either through the establishment of a branch or the freedom to provide services in Malta. Such credit servicers shall satisfy the provisions laid down in the Credit Servicers and Credit Purchasers Act (Passporting) Regulations 2024.
12. In the event that the Authority holds adverse information relating to, but not limited to, the suitability, fit and properness of the credit servicer authorised in another Member State performing credit servicing activities in Malta, it shall advise the national competent authority of the Home Member State who may decide to impose appropriate remedial measures, including the prohibition of the provision of further activities of the said credit servicer, as applicable.

Application for Authorisation

13. Any entity interested in providing credit servicing activities shall submit to the Authority an application for authorisation to act as a credit servicer. The Authority must be satisfied that the criteria for authorisation, as set out under articles 7 and 8 of the Act, are fulfilled prior to granting a credit servicing licence.
14. Prior to submitting an application for authorisation, the applicant shall satisfy itself that:
 - (a) its proposed business model requires authorisation in terms of the Act; and

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- (b) it is capable of complying with the authorisation requirements and can adhere to all ongoing supervisory and regulatory requirements.
15. It is recommended that applicants seek legal professional advice if they are unsure on how to comply with the authorisation requirements and/or how to compile the necessary documentation.
16. As guidance for the application process, prospective applicants shall refer to the MFSA **Authorisation Process Service Charter** and other relevant documentation, which can be accessed through the MFSA Authorisations webpage.
17. Before submitting an application, a prospective applicant shall submit to the Authority a Statement of Intent. The Statement of Intent shall be assessed and reviewed by the Authority, which may request the applicant to provide further information and documentation and/or to schedule a preliminary meeting. Upon conclusion of its review, the Authority may provide its no objection to the prospective applicant to submit their application. Detailed information on the submission of the Statement of Intent can be found in the dedicated MFSA Authorisations webpage.
18. An applicant shall not submit an application to the Authority if it has not yet determined with reasonable certainty the scope of the activities which it intends to carry out, including its business and operational model. There shall be no significant changes made to the applicant's application for authorisation during the course of the application process. In cases where such significant changes are made, the applicant may be required to submit a new application.
19. The Authority reserves the right to refuse an application if this does not satisfy the application criteria as stipulated under this Rule.
20. The Authority requires that all applications for a licence shall be filed in accordance with its official application forms as applicable, which can be found in the MFSA Authorisations webpage, and shall be accompanied by:
- (a) copies of the certificate of registration and of the Memorandum and Articles of Association of the company;
 - (b) the address of the applicant's head office;
 - (c) the identity of statutory auditors and audit firms;
 - (d) audited financial statements for the last three years, as applicable;
 - (e) the business plan including the structure, organisation, management systems, governance arrangements and internal control systems of the prospective credit servicer which demonstrates that these

arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate to the proposed business model. The business plan shall delineate the internal governance and the assessment of the prospective credit servicer compliance function and procedures with a view of ensuring that the prospective credit servicer will have a full system of governance, compliance and internal controls in place to prevent the materialisation of legal, AML and conduct risks. This shall include an overview of the internal organisation (including devoted budgetary and human resources) of the compliance function, the risk management function, the internal audit function, the identity of the persons responsible for the internal control functions and a description of the prospective credit servicer's compliance, internal control and risk management systems and procedures and of the reporting lines to the management body;

- (f) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
- (g) an outline of the policies and procedures as follows:
 - (i) policy ensuring compliance with rules for the protection and the fair and diligent treatment of borrowers;
 - (ii) policy ensuring respect for borrower rights and compliance with the laws governing a creditor's rights under a credit agreement, or the credit agreement itself, and with the GDPR;
 - (iii) complaints recording and handling policy;
 - (iv) policy promoting diversity of the management body;
 - (v) policy and procedure in relation to Anti-Money Laundering and Counter Terrorist Financing. This shall include an outline of the systems in place for assessing and managing these risks and the procedures that have been put in place to counter these risks;
 - (vi) policies and procedures in relation to Technology, ICT and Security Risk Management, and Outsourcing Arrangements. In this regard, applicants shall, taking into account their size, nature, scale and complexity of their operations, refer to the [MFSA Guidance Document](#) as may be amended from time to time;

- (vii) a detailed report generated and verified by an auditor, independent within or from the applicant and with sufficient knowledge, skills and expertise in ICT and security risks, following the conduct of a gap analysis against the applicable provisions of the MFSA Guidance Document referred to in point (vi) of paragraph 19(g) of this Rule which are based on the EBA Guidelines on ICT and security risk management (EBA/GL/2019/04) and the EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02);
 - (viii) the systems and controls which the applicant has or will put in place to ensure their policies and procedures indicated above remain up to date, effective and relevant.
- 21. Applicants shall also provide specific information on the segregation of funds, outsourcing and business model as follows:
 - (a) where relevant, evidence of the existence of a separate account in a credit institution as provided for in article 7(3)(j) of the Act;
 - (b) any outsourcing agreement as referred to and in accordance with all requirements prescribed in article 13 of the Act; and
 - (c) where the applicant does not intend to receive and hold funds from borrowers as part of its business model, a statement to that effect as per article 7(3)(l) of the Act.
- 22. The application shall set out the following on the ownership and management of the applicant:
 - (a) the identity of all directors, controllers and managers of the prospective credit servicer;
 - (b) the identity of the individuals who will effectively be directing the business of the prospective credit servicer; and
 - (c) the identity of all shareholders with a qualifying shareholding.

Such individuals are required to complete and submit to the Authority a Personal Questionnaire in order for the Authority to conduct suitability assessments. In this respect, applicants shall refer to the dedicated MFSA webpage which provides detailed information and guidance on the process and the required supporting documentation.

23. An applicant for a licence must satisfy the Authority that the persons who hold qualifying holdings in the applicant within the meaning of point (36) of Article 4(1) of Regulation (EU) 575/2013 and all members of the management or administrative organ of the credit servicer are suitable, fit and proper persons. These criteria go beyond the question of suitability of the individuals but entail the observance by the institution of the highest professional, ethical and business standards in conducting its activities in a prudent manner.
24. When applying for authorisation and before commencing activities, applicants shall ensure that the management or administrative organ, as a whole, possesses adequate knowledge and experience to perform their duties at all times and to conduct business in a competent and responsible manner. In this respect, applicants shall comply with the EBA Guidelines (EBA/GL/2023/09) in their entirety, including the assessment of the organ's individual members' adequacy in terms of knowledge and experience.
25. Once the Authority has granted a licence to carry out the business of credit servicing, the licensed entity shall also comply with the EBA Guidelines (EBA/GL/2023/09) when there are material changes that can lead to a reassessment of the previous results. Such material changes may include the following situations:
 - (a) when appointing new members of the management or administrative organ;
 - (b) when members have left the management or administrative organ; and
 - (c) when changes are made to the business model, underlying legal provisions or technologies used.
26. When assessing the adequate knowledge and experience of the management or administrative organ of credit servicers, the Authority shall also be guided by the EBA Guidelines.
27. The Authority cannot complete its assessment in an adequate manner unless the applicant and other relevant parties provide all the information and documentation necessary as outlined in this Rule.
28. It is expected that an applicant for a licence notifies the Authority immediately of any subsequent additions or alterations with respect to any of the documents or information submitted under this section of the Rule, even after licensing.

Determination of an Application for a Licence

29. Article 7 of the Act prescribes that the Authority shall, within forty-five (45) days of receipt of the application, assess whether that application is complete by ensuring that the required information and documentation have been submitted. Where the application is not complete, the Authority may set a deadline by which the applicant is to provide the missing information. If the said application remains incomplete after the deadline, the Authority may refuse to review the application. In such an event, should an applicant still intend to apply for a credit servicer licence, the Authority may request the applicant to submit a fresh application.
30. Where the Authority deems the application as complete, it shall notify the applicant thereof. Subsequent to such notification, the Authority shall assess the information submitted and shall determine an application for a licence within 90 days of the receipt of the complete application. An application for a licence is deemed to be determined by the Authority by:
 - (a) granting a licence without condition;
 - (b) granting a licence subject to conditions it may deem appropriate; or
 - (c) refusing to grant a licence, providing reasons for refusal.

Additional Activities

31. A credit servicer intending to extend its business to additional services not foreseen at the time of the granting of the authorisation under the Act shall submit a request in writing for the extension of its licence to the Authority by complementing and, or updating the information and documentation referred to in this Rule, as deemed applicable by the Authority.
32. The carrying out of any activity other than credit servicing activities is prohibited unless so authorised by the Authority. Such authorisations are without prejudice to the credit servicer obtaining any other appropriate licence that it might require under any other law.

Appeals Against Decisions of the Authority

33. Any person who feels aggrieved by a decision of the Authority in terms of the Act or any rules and regulations made thereunder, may appeal against such decision to the Tribunal within such period and under such conditions as laid down in article 21 of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta).

Confidentiality

34. The Professional Secrecy Act 1994 and the Malta Financial Services Authority Act 1989 prohibit the Authority, its staff and others from disclosing information received by them under or for the purposes of the Act except in certain restricted circumstances.
35. Furthermore, information obtained by the competent authority shall be treated as confidential and protected by duty of secrecy in line with article 31 of the Act, except for cases listed in the same article.
36. Article 32 of the Act prescribes that the processing of personal data for the purposes of the Act, any regulations, Credit Servicing Rules or Conduct of Business Rules issued thereunder shall be carried out in accordance with the Data Protection Act, GDPR and Regulation (EU) 2018/1725.

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