|  |  |
| --- | --- |
|  |  |
| MALTA FINANCIAL SERVICES AUTHORITY |
| **Authorisation Forms** |
|  |

|  |
| --- |
| **Form AA109: Electronic Communications Exclusion Notification Form** |
|  |
| **High Level Guidelines** |
|  |
|  |
| 1. General

This form, Form **AA109:** **Notification Form relating to the Electronic Communications Exclusion** (‘Notification), shall be duly filled in by service providers availing themselves of the exemption set out under Article 3(2A)(l) of the Financial Institutions Act(Chapter 376 of the Laws of Malta)(hereinafter referred to as the ‘Electronic Communications Exemption’. In this respect, the Applicant shall to the best of its knowledge, provide information, which is truthful, accurate and complete. The Applicant shall notify the MFSA immediately if the information provided changes in any respect either prior to or subsequent to authorisation.The Applicant shall note that it is a criminal offence, under Article 22(1)(c) & (d) of the Act, to furnish information or to make a statement which one knows to be inaccurate, false or misleading in any material respect, or to recklessly furnish information or to make a statement which is inaccurate, false or misleading in any material respect, pursuant to any of the provisions of this Act or of any Regulations made or of any Rules issued thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid.The Applicant is required to make reference, and where applicable comply with, the Act, the Regulations made, or Rules issued thereunder during the completion of the Application. The Applicant shall also refer to the respective National and/or European Regulatory Frameworks or other binding regulation as may be applicable.The Applicant shall not tamper with, or modify in any manner, this Notification or its respective Annexes. Should it transpire that the documents were tampered with, or modified in any manner, the Authority shall consider the Notification to be invalid. Any potential improvements should be communicated to the MFSA for consideration.The Authority may at its sole discretion request from the Applicant further information/ documentation.1. Definitions

For the purposes of this Application, the definitions identified below should be read in conjunction with the provisions of the Act and other respective national or European regulatory frameworks or other binding regulation as may be applicable.In the event that any of the definitions contained hereunder conflict with a definition under the Act, the definitions set out in the Act or in any other such law shall prevail, unless otherwise specified herein.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **‘Act’** | means the Financial Institutions Act (Chapter 376 of the Laws of Malta) |
|  |  |
| **‘Applicant’** | means any person submitting a notification in relation to the Electronic Communications Exemption |
|  |  |
| **‘Authority’** | means the Malta Financial Services Authority established by the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta) |
|  |  |

1. Instructions

The Applicant is required to complete all the respective sections of the Application, as follows:* + Section 1 – Applicant Details
	+ Section 2 – Applicant Structure and Regulatory History
	+ Section 3 – Business Model, Strategy and Activity
	+ Declaration Form

Applicants are to note that further instructions in relation to the Notification may be found on the Guidelines to the Authorisation Forms ([link](https://www.mfsa.mt/wp-content/uploads/2021/05/AG01-Applications-Guidelines.pdf)). It is noted that the Notification should reflect the Applicant’s structure and method of operations at time of authorisation.Following submission of the Notification via the LH Portal, the Declaration Form should be printed and sent, originally signed, to the Authority. In the printed Declaration Form, the Applicant is reminded to enter the Application ID, which is provided automatically through the LH Portal upon on-line submission of the Application. It is to be noted that only this Declaration Form should be sent physically to the Authority, , unless it is signed using a valid qualified signature in accordance with the circular issued by the MFSA on the use of electronic signatures dated 15 November 2022. Further instructions can be found in the Declaration Form itself.In order for the Notification to be considered complete, the Applicant is required to have submitted, along with a duly filled Application, all the required documentation as identified within this Notification.1. Privacy Notice

The MFSA ensures that any processing of personal data is conducted in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation), the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant European Union and national law. For further details, you may refer to the MFSA Privacy Notice available on the MFSA webpage <https://www.mfsa.mt/privacy-notice/>. 1. Disclaimer

It is noted that the submission of this Notification and/or its determination of ‘completeness’ shall not be construed as a granting of an exemption by the MFSA. The sole purpose of the Notification Form is for the MFSA to determine whether the service provider in question remains eligible for the limited network exemption.  |

| * 1. Applicant Details
 |
| --- |
|  | Applicant Person Type |
|  | Person Type | Select item |
|  | **Applicant – General and Identification Details**  |
|  | **Identification** |
|  | Status of Applicant | Select item |
|  | Registered Name*(If not yet Formed, provide proposed name)* | Enter text |
|  | Registered Number | Enter text |  | Date of Registration | Enter date |
|  | Name of Registry | Enter text |  | Country of Registration | Select country |
|  | LEI Code *(if applicable)* | Enter text |
|  | **Addresses** |
|  | **Registered Address***If Formed, indicate registered address as indicated on the Registration Document.**If not yet Formed, indicate proposed registered address.* |
|  | Number/Name | Enter text |  | Street/Road | Enter text |
|  | City/Town/Village | Enter text |  | Region/State*(if applicable)* | Enter text |
|  | Post Code | Enter text |  | Country | Select country |
|  | **Primary Business Address** |
|  | Is the Primary Business Address different than the Registered Address?*If ‘Yes’, indicate the Primary Business Address:* | Select item |
|  | Number/Name | Enter text |  | Street/Road | Enter text |
|  | City/Town/Village | Enter text |  | Region/State*(if applicable)* | Enter text |
|  | Post Code | Enter text |  | Country | Select country |
|  | **Representation** *Indicate the details of the external / internal representatives of the Applicant and their contact details, as applicable.* |
|  | **External Representative** |
|  | Is the Applicant represented by an external party?*If ‘Yes’: Indicate the details of the external representative:*  | Select item |
|  | Representative Entity Name *(if applicable)* | Enter text |
|  | Position | Enter text |
|  | Title | Select item |
|  | Name | Enter text |  | Surname | Enter text |
|  | Representative’s Business Email Address | Enter text |
|  | Representative’s Business Direct Number | Enter text |
|  | **Internal Representative** |
|  | Position | Select item |  | If *‘Other’*: Specify Position | Enter text |
|  | Title | Select item |
|  | Name | Enter text |  | Surname | Enter text |
|  | Representative’s Business Email Address | Enter text |
|  | Representative’s Business Direct Number | Enter text |

| * 1. Applicant Structure and Regulatory History
 |
| --- |
| * + 1.
 | **Regulatory History***Note – For the purposes of this section, Authorisation as Type of Regulatory History shall mean: “any type of official recognition (such as Licencing, Registration, Recognition, etc) by a Regulatory Body”. (An indicative list of regulating bodies is provided).* |
|  | **Applicant Regulatory History**This sub-section relates to Applications submitted to, and/or Authorisations held with, the MFSA and/or any other Regulatory Authority by the Applicant |
|  | Is the Service Provider authorised and regulated by a national competent authority to provide payment or electronic money services or other financial services? If yes, please provide details. | Select item |
|  |

|  |
| --- |
| * 1. Applicant – Regulatory History
 |
| Type of Regulatory History | Select item |
| Type of Activity | Select item | If ‘*Other*’:Type of Activity | Enter text |
| Name of Regulatory Body | Select item |
| If ‘*Other*’: Name of Regulatory Body | Enter text |
| *If ‘Application’, provide respective details:* |
| Status of Application | Select item |
| Application Submission Date | Enter date |
| Application Withdrawal / Refusal Date | Enter date |
| Reason for Withdrawal / Refusal | Enter text |
| *If ‘Authorisation’, provide respective details:* |
| Status of Authorisation | Select item |
| Authorisation Date | Enter date |
| Authorisation Suspension / Surrender / Revocation Date | Enter date |
| Reason for Suspension / Surrender / Revocation | Enter text |
|  |
| *(Add multiple as applicable)* |

 |

| 1. Business Model, Strategy and Activity
 |
| --- |
|  | **Information about the Specific Payment Instrument** |
|  | Have you obtained any legal advice confirming that the activity for which this notification is being submitted is considered within scope of the Electronic Communications Exclusion?  |
|  | Enter text |
| 3.1.2 | Have you submitted a notification pertaining to the Electronic Communications Exclusion to another competent authority in another Member State? | Select item |
| 3.1..3.1 | If ‘*Yes*’, please provide information on the competent authority to which the notification was sent as well as the date when such notification was sent.  |
|  | Enter text |
|  | **Description of the Electronic Communication Service(s)** |
| 3.2.1 | Describe what the instrument consists of (e.g. a payment card) and the name of the instrument as known/shown to user. |
|  | Select item  |
| 3.2.2 | If ‘*Other’* please provide details: |
|  | Enter text |
| 3.2.3 | Name of the service(s) that results in the payment transactions that are considered to fall within the scope of the electronic communications exclusion |
|  | Enter text |
| 3.2.1.5 | Are the payment transactions to which this notification relates for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill? |
|  | Select item |
| 3.2.1.6 | If yes, please provide a description of what those goods or services are under the relevant headings. |
|  | **Digital Content**Enter text |
|  | **Voice-based Services**Enter text |
| 3.2.2.1 | Are the payment transactions to which this notification relates performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in Malta or elsewhere? |
|  | Select item |
| 3.2.2.2 | If yes, please provide a brief description of what those goods or services are under the relevant headings. |
|  | **Charitable Activities**Enter text |
|  | **Tickets**Enter text |
| 3.2.2.4 | Is the Service Provider already providing the services? |
|  | Select item |
| 3.2.2.5 | If no, please specify the date on which it expects to begin providing the services. |
|  | Enter text |
| 3.2.2.7 | Please briefly set out the grounds on which the Service Provider is able to rely on the electronic communications exclusion (including details of the payment transactions that are carried out). This should also include confirmation that the €50 and €300 limits set out in the Financial Institutions Act are currently and will be met on an on-going basis. |
|  | Enter text |
| 3.2.3.6 | **Attachment | Annual audit opinion testifying that the activity complies with the limits set out in Article 3(2A)(l) of the Financial Institutions Act** |

| **Declaration Form** |
| --- |
| *Following submission of the Application, this Declaration Form should be printed and sent, originally signed, to the attention of* ***Authorisations, Fintech Supervision Function, MFSA****. It is to be noted that only this form should be sent physically to the Authority and that should the Applicant submit the entire Notification, only the version submitted via the LH Portal shall be maintained and used for the purposes of the MFSA’s authorisation processes.**Where the Applicant is a natural person, this Declaration Form is to be signed by the individual. On the other hand, where the Applicant is a not a natural person, this Declaration Form should be signed by the two signatories vested with legal representation of the Applicant.* |
| The undersigned, on behalf of Applicant, declare that:1. Application Submission and Authorisation Requirements
	1. the Applicant has resolved to submit this Notification with the MFSA for the activities provided for within this Notification;
	2. the Applicant has duly authorised the undersigned to complete and submit this Notification to the MFSA;
	3. the Applicant is aware of the requirements under the provisions of the Act and other respective national or European Regulatory Frameworks or other binding regulation as may be applicable; and
	4. the Applicant shall at time of notification, be in adherence with the obligations stipulated under point 1 (c) above.
2. Information Provided to Authority
	1. the information given in answer to the questions within the Notification is complete and accurate to the best of our knowledge, information and belief and that there are no other facts relevant to this Notification of which the Authority should be aware;
	2. the Applicant has not tampered with, or modified in any manner, this Notification or its respective Annexes, and understands that such tampering with, or modification in any manner of these documents will result in a refusal of this Notification;
	3. there are no inconsistencies between the provisions of the Constitutional Documents, the documents submitted with this Notification (where applicable) and the information given in answer to the questions within the Notification;
	4. the MFSA will be notified immediately if the information given in answer to the questions within the Notification changes and/or affects the completeness or accuracy the Notification either prior to or subsequent to authorisation should this be granted; and
	5. this Declaration Form corresponds to the Notification submitted to the Authority via the LH Portal bearing the following ID:

|  |  |
| --- | --- |
| **Application ID***This ID is provided automatically by the MFSA through the LH Portal and is not required for the on-line submission of the Application. In this respect, following submission of this Application via the LH Portal the Application ID will be available on the submission page and also within the acknowledgement email.*  | Enter text |

* 1. the following documentation as indicated in the below have been submitted together with this Application:

|  |
| --- |
| Checklist of Documentation to be Submitted with the Application |
|  | Annual audit opinion testifying that the activity complies with the limits set out in Article 3(2A)(l) of the Financial Institutions Act | Select item |

1. Representatives and Disclosure
	1. the MFSA is hereby being authorised to make such enquiries as it may consider necessary in connection with this Notification; and
	2. the MFSA is hereby being authorised to contact any or all of the above-named or any other person considered by the Authority to be relevant, both at the date of notification and at any time in the future unless and until I/we rescind this authority in writing.

 1. Privacy Notice
	1. I/we have read and understood the [MFSA Privacy Notice](https://www.mfsa.mt/privacy-notice/)[[1]](#footnote-2) and the terms and conditions included therein.
 |
| Signature 1 |  |  |
| Name  | Enter text | Surname | Enter text |
| Position | Enter text |
| Date  | Enter date |
|  |
| Signature 2 |  |
| Name  | Enter text | Surname | Enter text |
| Position | Enter text |
| Date  | Enter date |

1. For further information visit: <https://www.mfsa.mt/privacy-notice/> [↑](#footnote-ref-2)