

**MALTA**

**A Guide to Banking,  
Electronic Money  
and  
Financial Institutions**



Mdina - Malta

**MFSA**

---

MALTA FINANCIAL SERVICES AUTHORITY

# Contents

<b>1.0 INTRODUCTION .....</b>	<b>2</b>
<b>2.0 THE BANKING ACT, 1994 .....</b>	<b>4</b>
2.1 Application, registration and detailed prudential requirements .....	5
2.2 Banking Directives .....	5
2.3 Fees .....	6
<b>4.0 THE FINANCIAL INSTITUTIONS ACT, 1994 .....</b>	<b>6</b>
<b>3.0 TAXATION .....</b>	<b>8</b>
<b>5.0 THE MALTA FINANCIAL SERVICES CENTRE ACT, CAP. 330 .....</b>	<b>9</b>
<b>6.0 SETTING UP A BANKING OPERATION IN MALTA: THE REGULATORY, BUSINESS.....</b>	<b>10</b>
<b>AND SOCIAL ENVIRONMENT .....</b>	<b>10</b>
6.1 Logistical and physical characteristics.....	10
6.2 Legislation .....	11
<b>APPENDIX A .....</b>	<b>12</b>
APPLICATION FOR AUTHORISATION OF LICENCES – BANKING ACT, 1994.....	12
<b>APPENDIX B.....</b>	<b>14</b>
LICENCE FEES PAYABLE BY CREDIT INSTITUTIONS AUTHORISED UNDER THE .....	14
BANKING ACT, 1994. (SECTION 5(3) AND LN 42 OF 1995). .....	14
<b>APPENDIX C .....</b>	<b>15</b>
LICENCE FEES PAYABLE BY INSTITUTIONS AUTHORISED UNDER THE FINANCIAL .....	15
INSTITUTIONS ACT, 1994. (SECTION 3(3))......	15
<b>APPENDIX D .....</b>	<b>16</b>
APPLICATION FOR AUTHORISATION OF LICENCES–FINANCIAL INSTITUTIONS ACT, 1994 .	16
<b>APPENDIX E DOUBLE TAXATION AGREEMENTS .....</b>	<b>18</b>

(last updated May 2005)

## 1.0 Introduction

Banking business in Malta is regulated by the **Banking Act, 1994**, which came into force on 15 November, 1994 and amended during 2002. The law, which replaced the Banking Act, 1970 has adopted European Union directives as the main reference for the regulatory concepts and supervisory practices which it introduced.

The Banking Act, 1994 has introduced a modern regulatory regime with all the flexibility necessary in a modern and dynamic banking environment. To achieve this flexibility, the Act has provided for the appointment of a competent authority responsible to administer the provisions of the Act, particularly as regards regulation and supervision of banks. The **Malta Financial Services Authority (MFSA)**, as the competent authority, is empowered to issue directives to credit institutions to monitor risks and establish other regulatory requirements.

The **Financial Institutions Act, 1994** regulates non-bank financial institutions, that is institutions which do not fund their activities through the taking of deposits. The activities of financial institution amongst other activities include lending, financial leasing, venture or risk capital and foreign exchange dealing. The Act authorizes the competent authority so appointed to issue directives to financial institutions for supervisory, regulatory and prudential purposes.

The **Malta Financial Services Authority Act, Cap. 330** among other provisions, include those that cover the regulation of the remaining offshore banking business which Malta, has stopped registering in 1994. The licenses of banks operating under this regime will expire by September 2004.

This Guide has been designed to assist organisations considering setting up banking and non-bank, financial institution business operations in Malta and to obtain an overview of the rules that exist in this area.

Readers interested in obtaining more information about the establishment of banks or other financial institutions in Malta or about any related topic are invited to make contact with the MFSA.

*Further information can be obtained from:*

**The Director  
Banking Unit  
Malta Financial Services Authority  
Attard  
Malta**

**Tel: +356 21 441155  
Fax: +356 21 449234  
e-mail: [bu@mfsa.com.mt](mailto:bu@mfsa.com.mt)**

## 2.0 The Banking Act, 1994

The Act introduced the concept of a “competent authority” as the principal banking supervisory body. Between 1994 and 2001, the role of the competent authority was assigned to the Central Bank of Malta. Following the issue of Legal Notice 325 of 2001, the Minister of Finance appointed the MFSA as the competent authority under the Banking Act 1994.

The Banking Act also reproduced the concept of a credit institution from the then First and Second European Union Banking Coordination Directives, and makes provision for authorization procedures relating to the opening of branches and representative offices of foreign banks in Malta.

The minimum paid up capital for a credit institution is Lm2 million (about USD 5.5 million), and the adequacy of own funds is measured on a risk-weighted asset basis. Changes have also been effected to those provisions in the previous law relating to prohibited transactions. In fact the Banking Act recognizes the importance of measuring and monitoring concentration of risk through the concept of establishing and limiting large exposures in relation to a bank’s own funds.

The Banking Act contains provisions relating to cooperation with foreign supervisory authorities and the establishing of relationships with a credit institution’s external auditors. Prior approval is required in the case of persons intending to acquire at least 5% of the share capital of a credit institution; and there are other stages of ownership, such as acquiring a qualifying holding or control, that likewise require approval.

All decisions taken by the MFSA as the competent authority in terms of the Banking Act are subject to appeal to the Financial Services Tribunal set-up in terms of the Malta Financial Services Authority Act. The tribunal serves as a body of appeal in the eventuality of grievances arising from the decisions taken by the MFSA. Recourse to the Court of Appeal solely in relation to questions of law related to decisions of the Tribunal is also possible.

Apart from the above, the Malta Financial Services Authority Act provides for the setting up of a Supervisory Council that replaces the Joint Banking Committee. The Supervisory Council comprises the Director Banking, Director Insurance, Director Company Compliance, Director Investment Services and is chaired by a Director General who co-ordinates the regulatory function with the Authority.

Last but not least the amended Banking Act 1994 introduced the concept of electronic money and electronic institutions. Although credit institutions were already given the opportunity to undertake the business of banking electronically, this possibility has now been extended to ‘stand alone’ institutions. As such, prospective Electronic Money Institutions now have regulatory parameters and a licensing framework in place. A new directive in line with the new provisions of the Banking Act 1994 and the EU Directive 2000/46/EC on the Electronic Money Institutions, has also been issued.

## **2.1 Application, registration and detailed prudential requirements**

These are regulated by the relevant provisions of law and by a licensing Directive which was issued in terms of the Banking Act, 1994. A summary of these requirements is included in Appendix A to this Guide under the heading: *Application for authorization of licences – Banking Act, 1994.*

## **2.2 Banking Directives**

The ten Directives under the Banking Act 1994 regulating and supervising credit institutions are as follows:

- BD/01 - *Application Procedures and Requirements for Authorisation of Licences for Banking Activities.*
- BD/02 - *Large Exposures of Credit Institutions.*
- BD/03 - *Own Funds of Credit Institutions*
- BD/04 - *Solvency Ratio of Credit Institutions.*
- BD/05 - *Liquidity Requirements of Credit Institutions.*
- BD/06 - *Statutory Financial Information to be submitted by Credit Institutions.*
- BD/07 - *Publications of Audited Financial Statements of Credit Institutions.*
- BD/08 - *Capital Adequacy of Credit Institutions*
- BD/09 - *Credit and Country Risk Provisioning of Credit Institutions*
- BD/10 - *Supervision on a Consolidated Basis of Credit Institutions*

BD/11 - *Extension of the Applicability of the “Arms Length” Principle by Credit Institutions*

## 2.3 Fees

In terms of the Banking Act, the competent authority may determine the annual fees payable by a licensed bank. The fee structure for licensed credit, electronic money and financial institutions is shown in **Appendix B**.

## 2.4 Electronic Money Institutions Directive

The directive, which based on the EU Directive 2000/46/EC on Electronic Money Institutions, applies to companies wishing to undertake the activity of issuing electronic money. Through the amendments to Banking Act 1994, prospective stand-alone electronic money institutions would be authorised to undertake the activity of issuing electronic money through a licence issued in terms of the Banking Act 1994.

The directive on electronic money institutions sets out the regulatory framework of these institutions. Unlike credit institutions, they are not allowed to carry out lending and other bank related activities and can only invest in very liquid marketable assets.

Prospective applicants have to provide the documentation listed under point 4 in Appendix A of this Guide and have to complete the Electronic and Internet Banking questionnaire included as Appendix 1 to the Banking Licensing Directive BD/01. This requirement is apart from other documentation related to the application process.

The minimum paid up capital for an electronic money institution has been set at Lm500,000 (about USD 1.5 million).

### 3.0 The Financial Institutions Act, 1994

This law complements the spectrum of regulation of financial services activity, other than that regulated under the Banking Act 1994 or Investment Services Act, 1994. The business of financial institutions includes fund raising other than from the public and activities such as financial leasing, money broking, foreign exchange, other money market activities and the regular and habitual acquisition of holdings. The competent authority under the Financial Institutions Act is empowered to issue directives to provide for the better management of the Act. It is suggested that contact be established at an early stage with the Malta Financial Services Centre, Banking Unit in order to discuss these requirements. A summary of these requirements is included in **Appendix D of this Guide**, under the heading *Application for authorization of licences – Financial Institutions Act, 1994*.

In terms of the Financial Institutions Act, the competent authority may determine the annual fees payable by a licensed financial institution. The current fee structure for licensed financial institutions is shown in **Appendix C of this Guide**.

## 4.0 Taxation

Malta has a network of double taxation agreements and a number of treaties are under negotiation or in the process of being concluded. Through these treaties, the unilateral relief and the flat-rate foreign tax credit provisions in Malta's international taxation system, the incidence of double taxation is substantially mitigated in most conceivable circumstances. The list of treaties currently in force is presented as **Appendix E**.

Where income is derived from a non-treaty country, the unilateral relief provisions may be applied. Furthermore, a resident company in receipt of foreign dividend may claim relief for the underlying tax suffered on the profits distributed by the foreign company.

A bank may operate the foreign income account provided its deposits are at least 95% sourced from non-residents. This test is also extended to banking groups. In such cases, that part of the bank's profits resulting from investments, assets or liabilities situated outside Malta is eligible for inclusion in its foreign income account. Income allocated to this account benefits from the flat rate foreign tax credit provisions. These provisions are especially attractive to banks where all or part of their income is sourced from overseas. Such banks will be in a position to avail themselves of the credit where other reliefs are not available.

A non-resident shareholder receiving a dividend payment out of the foreign income account is entitled to a tax refund of two-thirds of the Malta tax paid by the bank in respect of the relevant profits allocated to its foreign income account.

Interest paid to non-residents is exempt from withholding tax. Residents are subject to a 15% withholding tax on bank interest received with the consequence of not having to declare such income in the annual income tax declaration. However, they may opt to receive such interest without deduction of tax, in which case they would have to declare the interest for tax purposes.

Taxation laws enable companies to submit their tax returns and pay tax in the currency in which their share capital denominated. Refunds of tax are made in the same currency thus eliminating risks on exchange.

Tax on profits which stand to be allocated to a foreign income account is payable within 18 months after the end of the accounting period or when a dividend is paid, if earlier. This reduces problems of liquidity.

Advance revenue rulings may be obtained as regards the tax treatment of transactions involving financial instruments and international business. These rulings apply for 5 years and may be renewed for a further 5 years. They also survive, for a maximum period of two years, any change in legislation.

Resident companies may benefit from group relief provisions whereby tax losses may be passed on to other members of the same group as defined in the Income Tax Act.

## **5.0 The Malta Financial Services Authority Act, Cap. 330**

The Malta Financial Services Centre Act (which came into force as the Malta International Business Act in 1989) had introduced the concept of a differentiated fiscal and regulatory regime for companies carrying on international business activities from Malta.

Banking offshore companies or as they are commonly known “offshore banks”, are one category of such companies. The Act was conceived and structured around a strict onshore-offshore divide, a distinction which – as originally intended – is now in the last stages of being phased out. In fact, the registration of offshore banks was discontinued on 31 December 1996. Offshore banks in existence at the time had been given up to 23 September 2004, at the latest, to deregister from the offshore regime.

## **6.0 Setting up a Banking operation in Malta: The regulatory, business and social environment**

### **6.1 Logistical and physical characteristics:**

- Malta is a sovereign state, politically and economically stable. It is a member of the Council of Europe, the Commonwealth and the United Nations. The Government of Malta is committed to establish the best possible relationship towards developing Malta's economy in partnership with the European Union.
- European time zone, centrally located in the Mediterranean and strategically situated to penetrate and cover the markets in Europe, North Africa and Near/Middle East.
- Pleasant climate, European environment yet a rich, cultural patrimony reflecting a cross-fertilisation of civilisations; an absence of ethnic, racial, religious or linguistic problems.
- The Maltese have a millennial services tradition which makes them dedicated, loyal and quality conscious. In addition they all speak Maltese and English while many also speak a third, usually European, language.
- Malta has a high educational standard at par with that in the best European systems; its University is 400 years old and has a fine reputation especially in the medical and human sciences. This track record is now being followed by the more recently set up faculties in management, accounting, banking, economics and finance. Malta also provides training facilities for the financial services industry through the Institute of Financial Services (Malta Branch) and the Mediterranean Insurance Training Centre.
- Professional services providers in Malta are capable and versatile, with many lawyers and accountants receiving training and exposure overseas. All international accounting firms are present and, particularly in recent years, financial services practitioners have built a wide network of international contacts in professional, legal and accounting services.
- Communications with and from Malta are at their best after years of heavy infrastructural investment. Telecommunications are very modern while airline connections are extremely convenient, making Malta a hub of commercial and tourist activity. Most European, North African and Near East cities are regularly connected to Malta by air. Scheduled routes include London, Frankfurt, Geneva, Dublin, Milan, Tel Aviv, Bahrain, Dubai and New York.

## 6.2 Legislation:

- The **Banking Act, 1994** incorporates the best supervisory practices and regulatory standards which are internationally accepted and enable Malta to be recognized as a serious jurisdiction committed to comprehensive regulation of its banks.
- There is adequate protection for the carrying on of legitimate and respectable business. Banking confidentiality is respected through the operation of the **Professional Secrecy Act, 1994** and the **Prevention of Money Laundering Act, 1994** safeguards the integrity of the banking system against misuse. For most serious banks it is now a primary consideration to operate in or from territories that have adequate preventive measures against illegal use of their financial systems.
- An established bank may consider various forms of entry in Malta – representative office, branch or subsidiary – all of which requiring different levels of authorization and entailing different types of prudential supervision.
- Opportunities which may be of interest are in the area of trade finance; group marketing for regional business activities (typical rep office operation); loan booking; as a regional centre for private banking business (Malta has developed knowledge in the use of offshore vehicles for this purpose; the Recognition of Trusts Act, 1994 enhances the possibilities in this regard); agents for other banking or treasury operations; trust business; investment banking and advice; fund management and custody services (opportunities significantly enhanced by the Investment Services Act, 1994); etc.
- A bank carrying on substantially international business is able to benefit from attractive tax arrangements, provided its deposit funding is at least 95% from non-residents. In such cases the bank's profit resulting from investments, assets or liabilities situated outside Malta is eligible to be allocated to the foreign income account and to a flat rate foreign tax credit in addition to any double-taxation relief.
- The legislative infrastructure put in place during 1994 has a synergistic effect in that it consolidates existing markets and creates new business opportunities. As Malta develops itself more as an international financial centre, the arrival of funds and international holding and trading companies will combine with the expanded overseas manufacturing sector in Malta to provide new and exciting opportunities for banks in particular, and financial services firms in general.

## APPENDIX A

### APPLICATION FOR AUTHORISATION OF LICENCES – BANKING ACT, 1994

#### 1. Definition of Business of Banking

- ◆ funding from public – deposits or other repayable instruments  
lending or investing on own account, ***provided that:***
    - ⇒ acceptance of money against issue of debentures;
    - ⇒ advance or part-payment on movables or immovables;
    - ⇒ borrowing and granting consumer credit or intergroup finance,
- on its own do not constitute the business of banking

#### 2. Statutory criteria for Authorisation

- ◆ initial own funds at two million Maltese Liri or equivalent
- ◆ “four-eyes” principle
- ◆ “fit and proper” persons
- ◆ applicant is a limited liability company.

#### 3. Minimum criteria for Authorisation

- ◆ prudent conduct
- ◆ integrity and professionalism
- ◆ adequate flows of information
- ◆ possibility of consolidated supervision.

#### 4. Accompanying documents

- ◆ copy of Memorandum & Articles of Association
- ◆ audited financial statements (if available)
- ◆ business plan
- ◆ identity of directors and officers as indicated in Form 3:
- ◆ curriculum vitae
- ◆ police good conduct certificate
- ◆ identity of qualifying shareholders
- ◆ identity of managing individuals.

#### 5. Branches of overseas institutions

- ◆ licence issued to bank
- ◆ consideration of home country supervisory level.

6. **Business to be conducted in prudent manner**
  - ◆ directors to include non-executive individuals
  - ◆ experience, responsibilities, qualifications of other officers
  - ◆ compliance with Banking Directives
  - ◆ maintains adequate provisions for bad and doubtful debts
  - ◆ maintains adequate accounting and other records.
  
7. **Other prudential and supervisory requirements**

Banking Directives issued under the Banking Act 1994 (see page 5).

## APPENDIX B

### FEES PAYABLE BY CREDIT INSTITUTIONS

**AUTHORISED UNDER THE BANKING ACT, 1994. (Section 5(3) and LN 42 of 1995 as amended by LN 218 of 2003).**

#### APPLICATION AND PROCESSING FEE

A Credit Institution applying for a licence shall upon submission of application pay a one time fee amounting to the sum of Lm3,000 as an application and processing fee.

#### LICENSING FEE

A Credit Institution which was been granted a licence shall pay a one time licensing fee of Lm5,000 upon the granting of such licence.

#### SUPERVISION FEE

A licensed Credit Institution shall pay an annual supervision fee equivalent to a percentage of its deposit liabilities. The amount payable by a credit institution by way of supervision fee shall not be less than Lm6,750.

#### ANNUAL FEE (Representative Office)

	<b><i>Lm</i></b>
Representative Office in Malta	1,000

---

#### Notes:

- (i) *Licence fees are payable on the date of the granting of a licence pro-rata to 31 December, and thereafter annually on 1 January;*
- (ii) *Licence fees are payable on a six monthly basis and are not refundable;*
- (iii) *Licence fees of representative offices are payable in terms of Legal Notice 42 of 1995 as amended by Legal Notice 218 of 2003, that is, on the date of granting of a licence and thereafter annually upon the anniversary of such date;*

## **APPENDIX C**

### **LICENCE FEES PAYABLE BY INSTITUTIONS AUTHORISED UNDER THE FINANCIAL INSTITUTIONS ACT, 1994. (Section 3(3) and LN 217 of 2003).**

#### **APPLICATION AND PROCESSING FEE**

A Financial Institution applying for a licence shall upon submission of application pay a one time fee amounting to the sum of Lm300 as an application and processing fee.

#### **LICENSING FEE**

A Financial Institution which was been granted a licence shall pay a one time licensing fee of Lm500 upon the granting of such licence.

#### **SUPERVISION FEE**

A licensed Financial Institution shall pay an annual supervision fee equivalent to a percentage of the total of the items in the balance sheet. The amount payable by a financial institution by way of supervision fee shall not be less than Lm750.

---

#### **Notes:**

- (i) *Licence fees are payable on the date of the granting of a licence pro-rata to 31 December, and thereafter annually on 1 January;*
- (ii) *Licence fees are payable on a six monthly basis and are not refundable;*

## APPENDIX D

### APPLICATION FOR AUTHORISATION OF - LICENCES FINANCIAL INSTITUTIONS ACT, 1994

#### 1. Definition of Business of Financial Institutions

- ◆ any activity in the Schedule to the Act comprising:
  - Lending
  - Financial Leasing
  - Venture capital
  - Money transmission and means of payment
  - regular and habitual acquisition of holdings
  - Gurantees and commitments
  - Foreign exchange and other money market activities
  - Underwriting share issues
  - Money broking.
- ◆ financed by funds raised:
  - on the interbank market
  - through institutional investors
  - through shareholders' funds.

*provided that:*

- ⇒ such activity is not regulated under the Investment Services Act 1994
- ⇒ deposits or other repayable funds are NOT taken from the public.

#### 2. Statutory criteria for Authorisation

- ◆ initial own funds to be established on application
- ◆ initial own funds to be commensurate with line of activities
- ◆ “four-eyes” principle
- ◆ “fit and proper” persons
- ◆ applicant is a limited liability company or a partnership.

#### 3. Minimum criteria for Authorisation

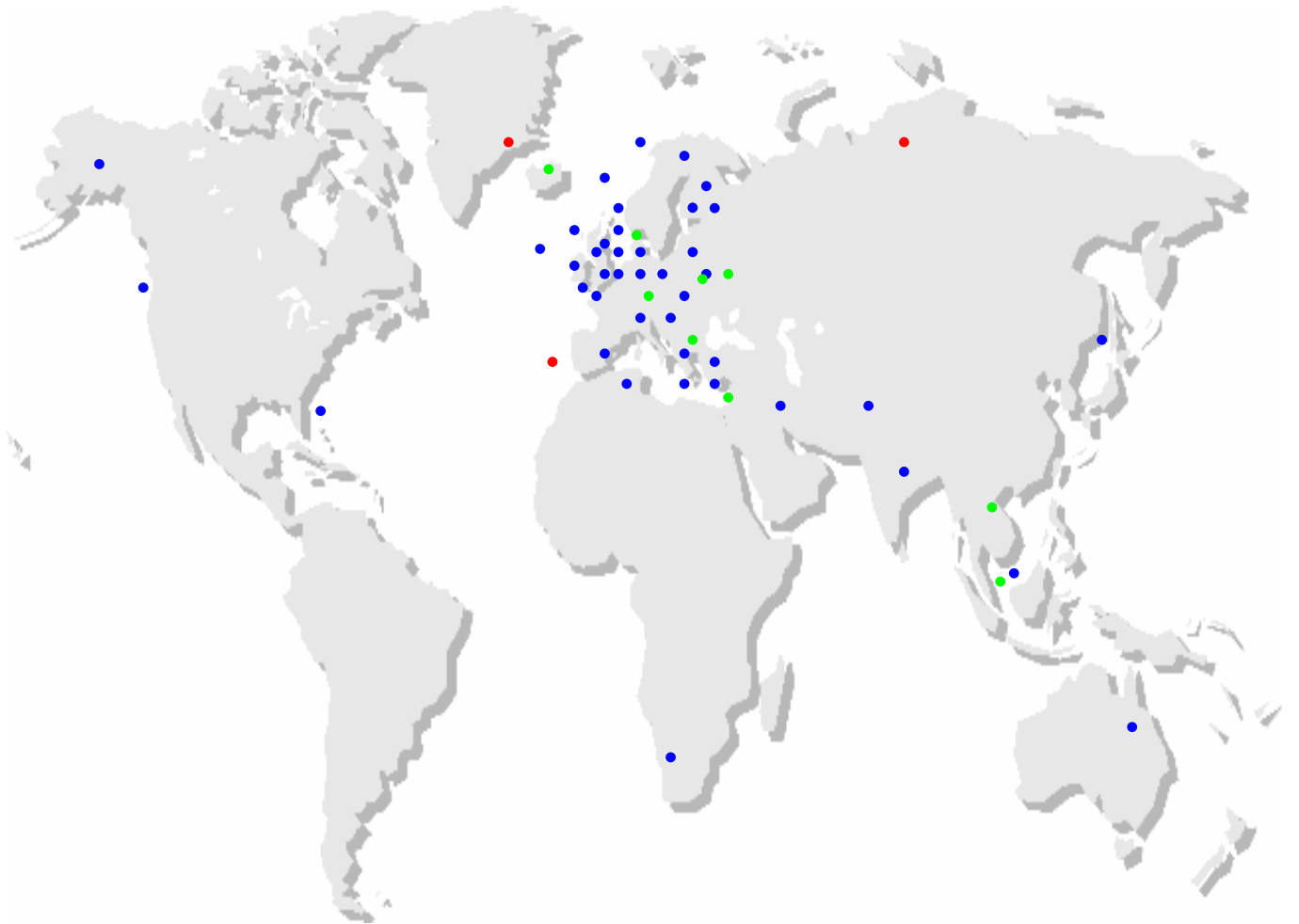
- ◆ prudent conduct
- ◆ integrity and professionalism
- ◆ adequate flows of information
- ◆ possibility of consolidated supervision.

#### 4. Accompanying documents:

- ◆ copy of Memorandum & Articles of Association
- ◆ audited financial statements (if available)
- ◆ business plan
- ◆ identity of directors and officers as indicated in Form 3:
  - i) curriculum vitea
  - ii) police good conduct certificate

- ◆ identity of qualifying shareholders
  - ◆ identity of managing individuals.
- 5. Branches of oversea institutions**
- ◆ licence issued to applicant institution
  - ◆ consideration of home country supervisory level.
- 6. Business to be conducted in a prudent manner**
- ◆ directors to include non-executive individuals
  - ◆ experience, responsibilities, qualifications of other officers
  - ◆ compliance with Financial Institutions Directives
  - ◆ maintenance of adequate provisions for bad and doubtful debts
  - ◆ maintenance of adequate accounting and other records.
- 7. Other prudential and supervisory requirements**
- ◆ institutions subject to off-site supervision
  - ◆ application of provisions of Banking Directives as appropriate in respect of:
    - Large Exposures
    - Liquidity
    - Own Funds
    - Solvency Ratio
    - Submission of Statutory Information
    - Publication of Audited Financial Statements
    - Credit and Country Provisioning
    - Capital Adequacy
    - Consolidated Supervision.

## APPENDIX E DOUBLE TAXATION AGREEMENTS



- **In force:** Albania, Australia, Austria, Barbados, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Hungary, India, Italy, Kuwait, Republic of Korea, Republic of Latvia, Lebanon, Libya, Lithuania, Luxembourg, Malaysia, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Slovakia, South Africa, Sweden, Switzerland\*, Syria Arab Republic, Tunisia, United Kingdom, United States of America\*.

*\* Agreement limited to profits derived from the operation of ships or aircraft in international traffic.*

- **Signed but not yet in force:** Iceland, Morocco, Russia.
- **Awaiting Signature:** Greece, Ireland, Jordan, San Marino, Singapore, Thailand, Turkey, United Arab Emirates, Ukraine.