



Practical Implications of Opening an Overseas Branch of a Maltese Bank

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Introduction:

Why would a Maltese bank want to open a foreign branch in an EU country ?

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Why would a Maltese bank want to open a foreign branch in an EU country ?

- A bank having a profitable business in Malta may wish to:
 - Increase scale
 - Broaden its customer base
 - Diversify its funding sources
 - Reduce geographical/country risk
- A bank may wish to achieve these goals by opening a branch in another EU country

The Application Process

The Application Process

- The European Passport Rights for Credit Institutions Regulations, 2011 regulate the application process to be followed by Banks to open a branch in another EU country
- To be able to open an EU branch a Maltese bank needs to satisfy the following requirements:
 - The Bank shall give the MFSA a notice of intention to establish a branch in accordance with the rules set out in these regulations

The Application Process

- The Bank's notice of intention should include:
 - The EU/EEA country where the Bank would like to open its branch
 - A programme of operations identifying the activities which the Bank seeks to carry on through the branch
 - The address of the proposed branch
 - The proposed organisational structure of the branch
 - The names of the proposed managers

The Application Process

- The MFSA is bound to give its consent notice to the European regulatory authority within 3 months of receipt of the Bank's notice of intention
- This consent notice:
 - Is given in accordance with the Capital Requirements Directive
 - Certifies that the Maltese Bank is authorised to act as such
 - Identifies the activities to which consent relates
 - Contains the information stated in the Bank's notice of intention
 - Indicates the amount of own funds and solvency ratio or capital adequacy ratio of the Maltese bank
 - Contains details of any deposit guarantee scheme intended to protect the branch's clients

The Application Process

- A branch of a Maltese bank cannot commence business unless:
 - The European regulatory authority notifies the Maltese bank of the applicable provisions, or
 - 2 months lapse from the date when the MFSA has given its consent notice without receipt of any communication from the European regulatory authority

Regulatory Challenges

Regulatory Challenges

- The regulators of both the home and host state must be comfortable with the applicant bank opening a branch in another EU/EEA state
- In the case of the Maltese regulator:
 - The MFSA remains the Bank's regulator except for liquidity and legal matters, particularly AML/CFT matters
 - Foreign depositors will have access to the Maltese depositor/investor compensation schemes
 - The MFSA may place certain restrictions onto the activity of the foreign branch of the Maltese bank

Regulatory Challenges

- The foreign/host regulator:
 - Needs to be comfortable with the liquidity position of the branch
 - Following some bank collapses some foreign regulators are not keen to allow foreign branches to open up in their jurisdiction for fear of repeat situations
 - May place certain restrictions onto the foreign branch, such as activity and marketing restrictions

Practical Issues Encountered

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- Organisational set-up:
 - Recruitment of key people
 - Correct reporting lines need to be established
- Appropriate systems and controls must be put in place
 - Audit arrangements for the branch, including internal audit
 - Anti money laundering and funding of terrorism arrangements
 - Controls over outsourcing and other arrangements with third parties

Practical Issues Encountered

- Knowledge of the regulatory and legal framework
- Mistrust by the public of the foreign branch, since it is not a Bank licenced by that EU state
- Limitations imposed, both by Malta and by the foreign jurisdiction, which would not be so imposed if the entity were to be licenced by the foreign jurisdiction

Conclusion

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- The EU legal framework is intended to facilitate the establishment of foreign branches of local banks.
- In practice, however, approval is not automatic and is the subject of discussions with the competent authorities of both Malta and of the foreign jurisdiction
- Each credit institution must assess all the relevant implications prior to embarking on this route.