

Dos and don'ts when applying for a license as a financial institution

A licensing procedure is the art of bringing a previously unlicensed company into regulation and thereby further developing and promoting the operational success of the company. The challenges for a licensing procedure have recently been increased step by step by the supervisory authorities throughout Europe, thus significantly raising the thresholds for a successful license application. Legal advice helps the applying company to use these requirements to their advantage and to lower the obstacles; thus ensuring that the license, once it has been granted, is in fact a success factor for the company.

The most important element in applying for a license is to speak the language of the competent authority. It is essential to communicate as little as possible but as much as necessary. This is also appreciated by regulators as it contributes to the efficiency of the application process, in turn allowing the applicant to obtain the permission as quickly as possible. A procedure may be considered successful time-wise if the period between application and granting of the license is approximately six months. It is therefore particularly important to set the right priorities. The most relevant topics should be dealt with and submitted to the authority before tackling the less important issues. In this respect, we recommend submitting a preliminary inquiry to the authority regarding the reliability and professional suitability of the planned management board. If the authorities express doubts about the intended managing directors, it is time consuming to seek new managers with the necessary qualifications. The issue should, therefore, be addressed as soon as possible. The right leadership is key to the success of an application because, from the authorities' point of view, it stands for the quality and sustainability of the documents to be submitted. As part of the preliminary inquiry, the business model must be described in detail, based upon which the correct permissions must be applied for. In our experience, the vast difference between a good and a mediocre application is already discernible at this preliminary inquiry stage.

When applying for permission, unlicensed companies have to deal with many new issues which may be challenging in themselves. These

consist in developing a risk-based compliance system, appropriate risk management and an efficient organizational structure with clear competencies and procedures. We help companies tackle these challenges and use them to improve their business and, most importantly, reduce risk. As a result, investors are more willing to invest because regulation can significantly contribute to the sustainable success of the company. In other words, customers and investors actually appreciate the security provided by ongoing internal and external regulatory control. The prerequisite for this success is that a sustainable business plan has been developed, which is a key factor for the success and viability of the company. Therefore, in our experience with start-ups, it makes sense to test the business model using fronting solutions, i.e. the cooperation with a license holder who provides the liability and regulatory framework, which is a tried and tested business model in Germany and in all other EU member states. Passporting allows licensed (fronting) banks and other financial institutions to expand their business on a European level. A fronting solution may, in our experience, outperform a sandbox as offered in some EU member states, as the entire regulatory set of rules will eventually need to be complied with. The cost for this compliance entails will hence also eventually incur. The advantage of a fronting solution is that the company need not start from scratch, but can bring in already existing business relationships, which significantly shortens both the route to market and to breaking even, which in turn virtually excludes the uncertainty on the part of those involved and the

associated financial risks of failure. In addition, the company has already learned how a regulated business works. With sound preparation, it does not come as a surprise when customers must be identified as part of a KYC or contracts must be in

writing in compliance with regulatory rules. As a result, there are fewer unknowns on the road to establishing a successful business model and a successful (own) licensing procedure.



1 Business Case keep it short and simple!

The license allows you to develop exciting new products for customers. However, if these new ideas are all introduced during the licensing procedure, it may be challenging to describe all products in sufficient detail and coherence. As a result, regulators might raise additional questions and the ensuing clarifications take time. From our experience, it is usually more efficient to focus on a few structured core products (maybe and ideally just one). This applies both to the business case as well as to compliance and risk management.

2 Shareholders and Senior Management get their buy-in early on in the process

If there are shareholders and senior management (e.g. global group management), it makes sense to discuss how they must be involved early on in the process. After all, it may be necessary to get their approval. Regulators might require guarantees concerning own funds and future funding. Equally important, it may be necessary that a qualifying holdings procedure with regard to shareholders and senior group management is completed, which may require personal information from shareholders and senior management. In some cases, it makes sense to review shareholder agreements and other corporate documents to see if there are any red flags from a regulatory perspective (e.g. group guarantees which may affect eligibility of own funds).

3 Organizational Aspects know your team

Becoming licensed means that the organization of a licensed entity has to be established. Policies and procedures for the license must be developed and implemented. External advice can help you with the initial process design. However, it will be a daily requirement to ensure regulatory compliance. The employees with a function of the licensed entity must be up to the task and have sufficient time and resources available to them. Ideally, the entire team is already involved in the license application.

4 Resources and timing be realistic

Depending on your products and team, the license application may be more or less complex. Preparing a license application takes some time and effort as the business model has to be developed and contracts, policies and procedures have to be drafted. From our experience, time invested in a thorough license application pays off eventually as the actual licensing procedure is more efficient. Rushing into the license application will typically cause regulators to ask more questions which then have to be addressed during the licensing procedure and may even affect the business plan (e.g. requirements to implement certain compliance checks).



5 Documentation

document your decisions and regulatory set-up

Last but not least and irrespective of your eventual licensing application, documenting your regulatory assessment which led to the conclusion that a regulatory license is required (or may indeed not be required) makes sense for a number of reasons. First, the assessment can be used for the license application (e.g. to describe the business model). Second, it also helps to convince current and potential investors who prefer a well-documented regulatory setup.



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