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I assent.

(L.S.)

**GEORGE VELLA**  
**President**

2nd August, 2019

**ACT No. XXVI of 2019**

*AN ACT to amend various financial services laws.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

**1.** The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2019.

**PART I**  
**AMENDMENTS TO THE BANKING ACT**

Amendments to  
the Banking  
Act.  
Cap. 371.

**2.** This Part amends the Banking Act and it shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as "the principal Act".

3. Sub-article (1) of article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) immediately before the definition "Additional Tier 1 instruments" there shall be added the following new definitions:

"account information service" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act; Cap. 376.

"account information service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act; Cap. 376.

"account servicing payment service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;"; Cap. 376.

(b) immediately after the definition "Additional Tier 1 instruments" there shall be added the following new definition:

"Arbiter" means the Arbiter for Financial Services appointed under article 14 of the Arbiter for Financial Services Act;"; Cap. 555.

(c) immediately after the definition "EEA State" there shall be added the following new definition:

"electronic money institution" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;"; Cap. 376.

(d) immediately after the definition "own funds" there shall be added the following new definition:

"PAD" means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as may be amended from time to time and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;"; and

(e) immediately after the definition "parent undertaking" there shall be added the following new definitions:

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Cap. 376. " "payment account" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "payment initiation service" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "payment initiation service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "payment institution" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "payment service" means any business activity set out in the Second Schedule to the Financial Institutions Act;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

Cap. 376. "payment service user" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;".

Amendment of article 3 of the principal Act.

**4.** Sub-article (1) of article 3 of the principal Act shall be amended as follows:

(a) in paragraph (e) thereof, for the words "or EU Regulation." there shall be substituted the words "or EU Regulation;"; and

(b) immediately after paragraph (e) thereof, as amended, there shall be added the following new paragraphs:

"(f) transpose, implement and, or give effect to the requirements of the PAD, and in so doing may also establish or maintain measures alternative to those referred to in Article 10(2) to (6) of the PAD, provided that:

(i) it is clearly in the interest of the consumer;

(ii) there is no additional burden for the consumer; and

(iii) the switching as defined in Article 2(18) of the PAD is completed within, as a maximum, the same overall time-frame as that indicated in Article 10(2) to (6) of the PAD;

(g) set up a specific mechanism to ensure that consumers who do not have a payment account as defined in Article 2(3) of the PAD in their territory, and who have been denied access to such a payment account for which a fee is charged by credit institutions, will have effective access to a payment account with basic features in terms of the PAD, free of charge;

(h) regulate products and services offered by credit institutions."

**5. Article 4 of the principal Act shall be amended as follows:**

Amendment of article 4 of the principal Act.

(a) in sub-article (7) thereof, for the words "may make, amend or revoke Banking Rules as may be required for the purpose of implementing any guidelines, recommendations and individual decisions issued by the EBA under Articles 16, 17(3) and 18(3) of Regulation (EU) No. 1093/2010." there shall be substituted the words "may issue, amend or revoke Banking Rules for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the EBA, as may be required.";

(b) in sub-article (8) thereof, for the words "may make, amend or revoke Banking Rules as may be required for the purpose of implementing any opinions and recommendations issued by the ECB under Articles 127(4) and 132(1) of the Treaty on the Functioning of the European Union." there shall be substituted the words "may issue, amend or revoke Banking Rules for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the ECB, as may be required.".

**6. In sub-article (3) of article 7 of the principal Act, for the words "if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal." there shall be substituted the words "if it refuses an application it shall inform the applicant, in**

Amendment of article 7 of the principal Act.

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writing, of the reasons for the refusal within the time-frames referred to in sub-article (2).".

Amendment of article 9 of the principal Act.

**7.** In sub-article (5) of article 9 of the principal Act, for the words "shall specify a period in which" there shall be substituted the words "shall specify a period, being a period not less than forty-eight hours and not longer than thirty calendar days, in which".

Amendment of article 17B of the principal Act.

**8.** Sub-article (4) of article 17B of the principal Act shall be deleted.

Amendment of article 19A of the principal Act.

**9.** Article 19A of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Where a credit institution intends to outsource its material services or activities, it shall first inform the competent authority accordingly."; and

(b) in sub-article (2) thereof, for the words "the recognition of the outsourcing service provider" there shall be substituted the words "the information to be submitted regarding the outsourcing service provider".

Addition of articles 19B, 19C and 19D to the principal Act.

**10.** Immediately after article 19A of the principal Act there shall be added the following new articles:

"Access to accounts maintained with a credit institution.

**19B. (1)** Credit institutions shall grant payment institutions, electronic money institutions and account information service providers access to a credit institution's payment account services on an objective, non-discriminatory and proportionate basis.

(2) The access referred to in sub-article (1) shall be sufficiently extensive as to allow payment institutions, electronic money institutions and account information service providers to provide payment services in an unhindered and efficient manner.

(3) In the event that a credit institution does not allow a payment institution, an electronic money institution, or an account information service provider, to have access to the credit institution's payment account services, such institution shall provide the competent authority with duly motivated reasons for any such rejection.

Management of  
operational and  
security risks.

(4) The competent authority shall, in case of an event as referred to in sub-article (3), notify the Central Bank of said event together with the reasons provided by the credit institution, without undue delay.

19C. (1) Credit institutions shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks, relating to the payment services they provide. As part of that framework, credit institutions shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Credit institutions shall provide to the Central Bank on an annual basis or at shorter intervals, as may be determined by the competent authority in co-operation with the Central Bank, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) The competent authority shall co-operate with the Central Bank in the assessment and processing of documents referred to in sub-article (2).

(4) The competent authority may issue, amend or revoke Banking Rules as may be required in order to better implement the provisions of this article.

Incident reporting.

19D. (1) In case of a major operational or security incident as referred to in article 19C and where Malta is the home Member State, credit institutions shall, without undue delay, notify the Central Bank. Upon receipt of such notification, the Central Bank shall promptly notify the competent authority.

(2) Where the incident has or may have an impact on the financial interests of its payment service users, the credit institution concerned shall, without undue delay, inform its payment service users of the incident and of all the measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receipt of the notification referred to in sub-article (1), the Central Bank shall, in co-operation with the competent authority, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

(4) The competent authority shall, in co-operation with the Central Bank, co-operate with the EBA and the ECB for the purposes of assessing the relevance of the incident and informing other relevant European Union and national authorities in accordance with Article 96(2) of the Payment Services Directive.

(5) Where the competent authority receives a notification of a major operational or security incident in accordance with sub-article (1), it shall where appropriate, upon the basis of that notification and in co-operation with the Central Bank, take all the necessary measures to protect the immediate safety of the financial system.

(6) Credit institutions shall, at least on an annual basis, provide to the Central Bank statistical data on fraud relating to different means of payment.

(7) The competent authority may issue, amend or revoke any Banking Rules as may be required to better implement the provisions of this article.

(8) For the purposes of this article, the terms "home Member State" and "host Member State" shall have the same meaning as that assigned to them under article 2(1) of the Financial Institutions Act."

Cap. 376.

Amendment of article 23 of the principal Act.

**11.** In the marginal note to article 23 of the principal Act, for the words "Suspected offences" there shall be substituted the words "Suspected breaches."

Amendment of article 24 of the principal Act.

**12.** In paragraph (b) of article 24 of the principal Act, for the words "into the suspected commission of any offence under this Act," there shall be substituted the words "into the suspected commission of any breach under this Act,".

Amendment of article 25 of the principal Act.

**13.** Immediately after the second proviso of sub-article (9) of article 25 of the principal Act there shall be added the following new sub-articles:

"(9A) The competent authority shall communicate to the EBA the names of the authorities or bodies that may receive information as described in sub-articles (8) and (9).

(9B) In order to implement sub-article (9), the authorities or bodies referred to in sub-article (8), shall communicate to the competent authority which disclosed the information, the names and responsibilities of the persons to whom it is to be sent."

**14.** Sub-article (8) of article 29 of the principal Act shall be deleted. Deletion of article 29 of the principal Act.

**15.** Paragraph (b) of article 30 of the principal Act shall be substituted by the following: Amendment of article 30 of the principal Act.

"(b) make available to the public, in paper or in electronic form,".

**16.** Article 34 of the principal Act shall be amended as follows: Amendment of article 34 of the principal Act.

(a) the first proviso of sub-article (4) thereof shall be substituted by the following:

"Provided that the said officers, auditors or experts may divulge such information for the purpose of the performance of their duties, or the exercise of their functions, only in summary and collective form as specified in sub-article (4), or when lawfully required to do so, by any court or under a provision of any law:";

(b) sub-article (8) thereof, shall be substituted by the following:

"(8) The competent authority, when processing personal data for the purposes of the Act and any regulations and, or Banking Rules issued thereunder, shall do so in accordance with any applicable legislation on data protection.".

**17.** Immediately after article 34 of the principal Act, as amended, there shall be added the following new article: Addition of article 34A to the principal Act.

"Data protection. **34A.** (1) Credit institutions may, when necessary to safeguard the prevention, investigation and detection of payment fraud, process personal data.

(2) The provision of information to individuals about the processing of personal data, the processing of such personal data and any other processing of personal data for the purposes of this Act and any regulations and, or Rules issued thereunder shall be carried out in accordance with any applicable data protection legislation.

(3) Unless otherwise permitted under other provisions of this Act and under applicable legislation, credit institutions shall only access, process and retain personal data necessary for the provision of their services with the explicit consent of those making use of their services.".



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Addition of articles 37 and 38 to the principal Act.

**18.** Immediately after article 36 of the principal Act there shall be added the following new articles:

"Complaints.

Cap. 378.

Cap. 555.

Transitory provisions relating to the Payment Services Directive.

37. Any complaints made by any person making use of a payment service provided by a credit institution or by other interested third parties, including consumer associations within the meaning of the Consumer Affairs Act, in relation to any alleged infringements of the provisions of this Act transposing the Payment Services Directive by a credit institution licensed in terms of this Act, or an agent or a branch established in Malta under the right of establishment of a credit institution in another Member State, shall be submitted to the Arbiter in terms of the Arbiter for Financial Services Act.

38. (1) Credit institutions that, before 12 January 2016, have performed in Malta activities of payment initiation service providers and account information service providers shall not until eighteen months after the date of entry into force of the regulatory technical standards referred to in Article 98 of the Payment Services Directive, be prohibited from continuing to perform such activities in Malta in accordance with the currently applicable regulatory framework.

(2) Until credit institutions acting as account servicing payment service providers comply with the regulatory technical standards referred to in Article 98 of the Payment Services Directive, such credit institutions shall not block or obstruct the use of payment initiation services or account information services for the accounts that they are servicing."

## PART II AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

Amendments to the Financial Institutions Act. Cap. 376.

**19.** This Part amends the Financial Institutions Act and it shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as "the principal Act".

Substitution of article 2 of the principal Act.

**20.** Article 2 of the principal Act shall be substituted by the following:

"Interpretation.

2. (1) In this Act, unless the context otherwise requires:

"account information service" means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

"account information service provider" means a payment service provider that has been registered in accordance with this Act or that holds an equivalent registration in another country in terms of the Payment Services Directive to provide solely account information services;

"account servicing payment service provider" means a payment service provider providing and maintaining a payment account for a payer;

"acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions that result in a transfer of funds to the payee;

"agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule, other than issuing electronic money;

"Arbiter" means the Arbiter for Financial Services appointed under article 14 of the Arbiter for Financial Services Act;

"authentication" means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;

"average outstanding electronic money" means the average total amount of financial liabilities related to the electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month, and applied for that calendar month;

"body corporate" means a body of persons having a legal personality distinct from that of its members;

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"branch" means a place of business other than the head office which is a part of a financial institution not having a legal personality and which carries out directly some or all of the transactions as licensed or registered, inherent in the business of a financial institution; all the places of business set up in Malta by a financial institution with a head office in another Member State shall be regarded as a single branch;

Cap. 204. "Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;

"close links" shall have the same meaning as that assigned to it in paragraph (38) of Article 4(1) of the CRR;

"Commission Delegated Regulation (EU) No. 241/2014" means Commission Delegated Regulation (EU) No. 241/2014 of 7 January 2014 supplementing Regulation (EU) No. 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, as may be amended from time to time;

"Common Equity Tier 1 capital" shall have the same meaning as that assigned to it in Article 50 of the CRR;

Cap. 386. "company" means a limited liability company constituted in Malta in accordance with the Companies Act or any law which may from time to time be in force;

Cap. 330. "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

Cap. 204. "consumer" means a natural person who in payment service contracts covered by the provisions of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act, is acting for purposes other than his or her trade, business or profession;

"control" in relation to a body corporate means the power to determine in any manner the financial and operating policies of the body corporate;

"controller" means a person who alone or together with others exercises control in relation to a body corporate;

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"credit facility" means the lending of a sum of money by way of an advance, overdraft or loan, or any other line of credit, including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances, bills of exchange endorsed *pour aval* and financial leasing;

"credit institution" shall have the same meaning as that assigned to it in the Banking Act;

"credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider that holds the payer's payment account, based on an instruction given by the payer;

"CRR" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"digital content" means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and that do not include in any way the use or consumption of physical goods or services;

"Directive 86/635/EEC" means Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Directive 2002/21/EC" means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Directive 2004/39/EC" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Directive 2008/48/EC" means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"director" includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director; and in respect of a company registered or incorporated outside Malta, includes a member of

a local board or agent or representative of that company;

"direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider, or to the payer's own payment service provider;

"EBA" means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC, as may be amended from time to time;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993, and as amended by any subsequent acts;

"electronic communications network" means a network as defined in paragraph (a) of Article 2 of Directive 2002/21/EC;

"electronic communications service" means a service as defined in paragraph (c) of Article 2 of Directive 2002/21/EC;

"electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and that is accepted by a person other than the financial institutions that issued the electronic money;

"Electronic Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"electronic money institution" means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money;

"equity release financial products" means products consisting of equity release credit agreements where the creditor:

- (a) grants on loan a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and

- (b) will not seek repayment of the credit until the occurrence of the death of the consumer or his move to long-term care or any one or more other specified life events of the consumer as may be defined by the competent authority, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement:

Provided that the creditor cannot commence proceedings, judicial or otherwise, for the sale or other transfer of the property securing the equity release financial product for a period of at least thirty six (36) months from the death of the consumer or his move to long-term care:



Provided further that, in the case of a move into long-term care, the creditor and the consumer may agree to retain the equity release financial product even after the lapse of such thirty six (36) month period, for so long as such agreement subsists, until the death of the consumer;

and any such other product as may be defined as an equity release financial product by the competent authority from time to time;

"European regulatory authority" means a body that is in another Member State and is empowered by law or regulation to supervise payment institutions, electronic money institutions and, or account information service providers;

"European right" means the right of establishment and, or the freedom to provide services;

"financial institution" means any person who regularly or habitually undertakes the carrying out of any activity listed in the First Schedule for the account and at the risk of the person carrying out the activity and who is licensed or registered under this Act:

Provided that any person offering equity release financial products shall be considered a financial institution irrespective of whether such equity release financial products are offered on a regular or habitual basis, or otherwise;

"Financial Institutions Rules" means a Rule issued by the competent authority to regulate financial institutions in terms of the powers under this Act, and "Rule" shall be read accordingly;

"Financial Services Tribunal" or "Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act;

"framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and that may contain the obligation and conditions for setting up a payment account;

Cap. 373.

"funding of terrorism" has the same meaning as that assigned to it by the Prevention of Money Laundering Act, as may be amended from time to time;

"funds" means banknotes and coins, scriptural money and electronic money;

"group" means a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU or undertakings as defined in Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No. 241/2014 that are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of the CRR;

Cap. 386.

"holding company" or "parent company" has the same meaning as that assigned to the term "parent company" in the Companies Act;

"home Member State" means either of the following:

(a) the Member State in which the registered office of the payment service provider is situated; or

(b) if the payment service provider has no registered office under its national law, the Member State in which its head office is situated;

"host Member State" means the Member State other than the home Member State in which a payment service provider has an agent or a branch, or provides payment services;

"initial capital" means paid up capital and reserves as defined in a Financial Institutions Rule;

"issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;

"licence" means a licence granted under this Act to provide any of the activities listed in the First Schedule;

"Member State" means a Member State of the European Union and includes an EEA State;

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Cap. 373.

"the Minister" means the Minister responsible for the regulation of Financial Services;

"money laundering" has the same meaning as that assigned to it by the Prevention of Money Laundering Act, as may be amended from time to time;

"money remittance" means a payment service where funds are received from a payer without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee and, or where such funds are received on behalf of and made available to the payee;

"officer", in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"outsourcing" means the use of a third party (the outsourcing service provider) by a financial institution to perform activities and, or operational functions that would normally be undertaken by the financial institution;

"outsourcing service provider" means a supplier of goods, services or facilities, and which may be an affiliated entity within a corporate group or an entity that is external to the group;

"overseas regulatory authority" means an authority that in a country or territory outside Malta exercises any function corresponding to the functions of the competent authority under this Act;

"own funds" means funds as defined in paragraph 118 of Article 4(1) of the CRR where at least 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 capital is equal to or less than one third of Tier 1 capital;

"PAD" means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as may be amended from time to time and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"payee" means a person who is the intended recipient of funds that have been the subject of a payment transaction;

"payer" means a person who holds a payment account and allows a payment order from that payment account or where there is no payment account, a person who gives a payment order;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment initiation service" means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

"payment initiation service provider" means a payment service provider that has been licensed under this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive to provide payment initiation services;

"payment institution" means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive to provide and execute payment services throughout the European Union;

"payment instrument" means any personalised device and, or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;

"payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

"payment service" means any business activity set out in paragraph 2 of the Second Schedule;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"payment service provider" means:

(a) credit institutions, including branches thereof as defined in article 2(1) of the Banking Act where such branches are located in the European Union, irrespective of whether the head offices of those branches are located within the European Union or, in accordance with Article 47 of the CRD and national law, if they are located outside the European Union;

(b) electronic money institutions, being companies that have been granted authorisation under Title II of the Electronic Money Directive to issue electronic money, including branches thereof, in accordance with Article 8 of that Directive and national law, where such branches are located within the European Union and their head offices are located outside the European Union, in so far as the payment services provided by those branches are linked to the issuance of electronic money;

(c) post office giro institutions that are entitled under national law of any Member State to provide payment services;

(d) payment institutions;

(e) account information service providers;

(f) the ECB and national central banks when not acting in their capacity as monetary authority or other public authorities; or

(g) Member States or their regional or local authorities when not acting in their capacity as public authorities;

"payment service user" means a person making use of a payment service in the capacity of payer, payee or both;

"payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and, or settlement of payment transactions;

"payment transaction" means an act, initiated by the payer or on his behalf by the payee, of placing, transferring, or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

"personalised security credentials" means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;

"qualifying shareholding" shall have the same meaning as that assigned to it in paragraph (36) of Article 4(1) of the CRR:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account:

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Provided further that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis in terms of paragraph 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition;

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"reconstruction" has the same meaning as that assigned to it by the Companies Act;

"registration" means a registration granted under this Act to provide solely account information services in terms of this Act;

"Regulation (EC) No. 1606/2002" means Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"Regulation (EU) No. 1093/2010" means Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010, establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

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"subsidiary" shall have the same meaning as that assigned to "subsidiary undertaking" in the Companies Act;

"third country" means a country that is not a Member State or an EEA State;

"Tier 1 capital" shall have the same meaning as that assigned to in Article 25 of the CRR;

"Tier 2 capital" shall have the same meaning as that assigned to it in Article 71 of the CRR;

"trade bills" means bills of exchange and promissory notes.

(2) In case of any conflict between the English and the Maltese texts of this Act, the English text shall prevail.

S.L. 378.12. (3) The provisions of this Act shall be without prejudice to the provisions of Directive 2008/48/EC as transposed in the Consumer Credit Regulations, other relevant European Union law or national measures regarding conditions for granting credit to consumers not harmonised by the Payment Services Directive that comply with European Union Law."

**21.** Immediately after article 2 of the principal Act, the heading "LICENSING REQUIREMENTS" of the principal Act shall be substituted by the following:

Substitution of the heading 'Licensing Requirements' of the principal Act.

"LICENSING AND REGISTRATION REQUIREMENTS."

**22.** Article 3 of the principal Act shall be substituted by the following:

Substitution of article 3 of the principal Act.

"Activities carried out by financial institutions.

3. (1) No activities listed under the First Schedule of this Act, other than account information services, shall be transacted regularly or habitually, in or from Malta, except by a company that is in possession of a licence granted under this Act by the competent authority:

Provided that the activities listed under the First Schedule of this Act, other than account information services, may also be transacted in or from Malta, by a legal person that is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive and the Electronic Money Directive.



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(1A) No account information services shall be transacted regularly or habitually in or from Malta, except by a natural person or a company in possession of a registration granted under this Act by the competent authority:

Provided that account information services may also be transacted in or from Malta, by a natural or legal person in possession of a registration granted by another Member State under the Payment Services Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive:

Provided further that a financial institution licensed in terms of article 4(1) shall not require a registration in accordance with this sub-article, in order to provide account information services.

(2) For the purposes of sub-article (1) and subject to the provisions of sub-article (3), a person shall not be deemed to be a financial institution by reason of the fact that the person either:

(a) belongs to a group and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to companies which are not banks or financial institutions and that belong to the same group;

(b) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to other undertakings, which are not banks or financial institutions, and all such undertakings are controlled directly or indirectly by the same person;

(c) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to a person which is not a bank or financial institution, that directly or indirectly controls it; or

(d) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due:

Provided that for the purposes of this sub-article, a person shall be deemed to control an undertaking if such person:

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(i) is a "parent company" as defined in article 2(2)(a) of the Companies Act; or

(ii) has all of the following characteristics:

(aa) power over the undertaking, based on the current ability to direct the relevant activities which significantly affect returns;

(bb) exposure, or right to variable returns from its involvement with the undertaking; and

(cc) the ability to use its power over the undertaking to affect the amount of the person's returns.

For the purposes of this sub-article:

"person" means a natural person or an undertaking; and

"undertaking" means a body corporate or incorporate which carries on a trade or business.

(2A) Sub-article (1) shall not apply to persons that carry out any of the following activities:

(a) payment transactions effected exclusively in cash directly by the payer to the payee, without any intermediary intervention;

(b) payment transactions effected by the payer to the payee through a commercial agent authorised by means of an agreement to negotiate or conclude the sale or purchase of goods or services, exclusively on behalf of the payer or the payee;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just prior to the execution of the payment transaction, by means of a payment for the purchase of goods or services;

(f) cash-to-cash currency exchange operations, where the funds are not held on a payment account;

(g) payment transactions based on any of the following documents drawn on the payment service provider with the scope of placing funds at the disposal of the payee:

(i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(ii) paper cheques similar to those referred to in sub-paragraph (i) and governed by the laws of Member States that are not a party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(iv) paper-based drafts similar to those referred to in sub-paragraph (iii) and governed by the laws of Member States that are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(v) paper-based vouchers;

(vi) paper-based travellers' cheques;

(vii) paper-based postal money orders as defined by the Universal Postal Union;

(h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and, or central banks and other participants of the system and payment service providers, without prejudice to Article 35 of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act;

(i) payment transactions related to securities asset servicing including dividends, income or other distributions, redemption or sale carried out by persons referred to in paragraph (h), by investment firms, credit institutions, collective investment undertakings, or asset management companies providing investment services and, or any other entities allowed to have the custody of financial instruments;

(j) services provided by technical service providers that support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;

(k) services based on specific payment instruments that can be used only in a limited way, provided they meet one of the following conditions:

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer, or within a limited network of service providers under a direct commercial agreement with a professional issuer;

(ii) instruments that can be used only to acquire a very limited range of goods or services;

(iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes, to acquire specific goods or services from suppliers having a commercial agreement with the issuer:

Provided that service providers carrying out either of the activities referred to in sub-paragraphs (i) and (ii) or both, for which the total value of payment transactions executed over the preceding twelve months exceeds the amount of one million euro (€1,000,000), shall send an annual notification to the competent authority containing a description of the services offered, specifying under which exclusion referred to in sub-paragraphs (i) and (ii) the activity is considered to be carried out:

Provided further that, on the basis of such a notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in this paragraph where the activity does not qualify as a limited network, and shall inform the service provider accordingly;

(l) payment transactions by a provider of electronic communication networks or services, provided in addition to electronic communication services for a subscriber to the network or service:

(i) for 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; or

(ii) performed from or by means of an electronic device and charged to the related bill within the framework of a charitable activity, or for the purchase of tickets:

Provided that the value of any single payment transaction referred to in sub-paragraphs (i) and (ii) does not exceed fifty euro (€50), and:

- the cumulative value of payment transactions for an individual subscriber does not exceed three hundred euro (€300) per month; or

- where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed three hundred euro (€300) per month:

Provided further that service providers carrying out an activity referred to in this paragraph shall send a notification to the competent authority and provide the competent authority with an annual audit opinion, testifying that the activity complies with the limits set out in this paragraph;

(m) payment transactions carried out between payment service providers, their agents or branches for their own account;

(n) payment transactions and related services between a parent undertaking and its subsidiary, or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider, other than an undertaking belonging to the same group; and, or

(o) cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issuers, that are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as referred to in the Second Schedule:

Provided that any person providing such cash withdrawal service shall abide by any requirements, as may be specified in a directive issued by the Central Bank under the Central Bank of Malta Act, transposing Article 3(o) of the Payment Services Directive.

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(3) In the event of reasonable doubt as to whether an activity constitutes the business of a financial institution, or whether the business of a financial institution is being transacted or otherwise in or from Malta by any person, the matter shall be conclusively determined by the competent authority.

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(3A) (a) A person that is neither a payment service provider, nor is explicitly excluded from the scope of this Act, shall be prohibited from providing payment services.

(b) Notwithstanding paragraph (a) of this sub-article, the competent authority shall inform the EBA of the services notified pursuant to paragraphs (k) and (l) of sub-article (2A), stating under which exclusion the activity is carried out.

(c) The description of the activity notified under paragraphs (k) and (l) of sub-article (2A) shall be made publicly available in the public register referred to in article 8D and the electronic central register developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive.

(4) The granting of a licence or registration, as applicable, shall be subject to an annual fee as the competent authority may determine from time to time.

(5) A licensed or registered financial institution may not take deposits or other repayable funds from the public within the meaning of the Banking Act.

(6) Where a person is already licensed under the Banking Act or the Investment Services Act to carry out an activity listed in the First Schedule, such person shall not require a licence or registration for such an activity under this Act."

**23.** Article 3A of the principal Act shall be substituted by the following:

3A. (1) Notwithstanding the provisions of article 3, any entity, whether established or operating in Malta or otherwise, carrying out the activity of financial leasing in or from Malta, and all related transactions involving:

(a) an aircraft registered or to be registered in the National Aircraft Register as defined in the Aircraft Registration Act or registered in any other jurisdiction whatsoever and any aircraft engine; or

Substitution of article 3A of the principal Act.

"Exemption for financial leasing of ships and aircrafts.

Cap. 503.

Cap. 371.

Cap. 371.  
Cap. 370.

Cap. 234.

(b) a ship registered or to be registered in the register as defined in the Merchant Shipping Act or registered in any other jurisdiction whatsoever,

shall not require a licence from the competent authority for the purposes of this Act, where:

(i) such entity is owned and controlled, or is a subsidiary of, or exclusively funded by; and

(ii) any relevant financial leasing transaction, or the relevant underlying asset, being an aircraft, an aircraft engine, or a ship, is exclusively financed by persons or entities as described in Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, or persons or entities who are recognised as eligible counter-parties in accordance with Article 30 of such Directive 2014/65/EU:

Provided that in the interpretation and application of sub-paragraphs (i) and (ii) and in order to ensure compliance with their requirements, where the ownership of such entity as described in sub-paragraph (i), or of the entity financing the transaction indicated in sub-paragraph (ii), or its underlying assets is vested in a trustee, or is otherwise held by another intermediary on a fiduciary basis, the criteria described in Annex II of Directive 2014/65/EU shall apply by reference to the beneficial interests involved, and not to the said trustee or intermediary.

(2) The provisions of this article shall only apply to an entity where the business of such entity is limited to the financial leasing of aircrafts, aircraft engines, or ships as described in sub-article (1) and to activities that are ancillary thereto, to the exclusion of other types of assets and activities otherwise falling within the purposes of this Act."

**24.** Article 4 of the principal Act shall be substituted by the

Substitution of article 4 of the principal Act.



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following:

"Application for a licence or a registration.

4. (1) Any company with the intention of transacting, regularly or habitually, activities listed under the First Schedule of this Act in or from Malta, other than account information services, shall before regularly or habitually transacting any such activities, apply in writing to the competent authority for a licence under this Act:

Provided that a legal person that is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive, may exercise its European rights in accordance with the provisions of the Payment Services Directive and the Electronic Money Directive.

(1A) Any natural person or company with the intention of transacting, regularly or habitually, account information services shall, before regularly or habitually transacting any such services, apply in writing to the competent authority for a registration under this Act:

Provided that a natural or legal person that is in possession of a registration granted by another Member State under the Payment Services Directive, may exercise its European rights in accordance with the provisions of the Payment Services Directive.

(2) All applications for a licence or registration, as applicable, shall be in such form and accompanied by such information and shall conform to such conditions as shall be prescribed from time to time by any Financial Institutions Rule, and an application may only be withdrawn by written notice given to the competent authority at a time before the licence or registration being applied for has been granted or refused.

(3) The competent authority shall have the power to require any person to provide such information as it shall deem necessary, for the purposes of determining an application for a licence or a registration, as applicable.

(4) The competent authority shall only grant a licence or a registration if the information and evidence accompanying the application complies with all the requirements set out in the Financial Institutions Rule referred to in sub-article (2) and if the competent authority's overall assessment is favourable, after having scrutinised the application.

(5) The competent authority may, where relevant, before granting a licence or a registration, consult the Central Bank or other relevant public authorities.

(6) A licence to provide payment services or to issue electronic money and a registration to provide account information services, shall be valid in all Member States and shall allow the payment institution, the electronic money institution, or the account information service provider concerned, to provide the services that are covered by the licence or registration throughout the European Union, pursuant to a European right."

**25.** Article 5 of the principal Act shall be substituted by the following:

Substitution of article 5 of the principal Act.

"Granting of a licence or a registration.

5. (1) No company shall be granted a licence in terms of this Act unless:

(a) its initial capital whether in euro or in any other currency acceptable to the competent authority are equal to such amount, as may be established by the competent authority in any Financial Institutions Rule and as may be appropriate for the activities to be undertaken by the applicant;

(b) there are at least two individuals, or any other number of individuals as may be otherwise determined by the competent authority, who will effectively direct the business of the financial institution from Malta;

(c) the competent authority is satisfied that the company has sound and prudent management and has robust governance arrangements that include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the company, as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

(d) the competent authority is satisfied that taking into account the need to ensure the sound and prudent management of the company, shareholders having a qualifying holding, controllers and all persons who will effectively direct the business of the financial institution are suitable persons to ensure its sound and prudent management;

(e) the competent authority is satisfied that, where there are close links between the company and another person or persons, such links do not prevent it from the effective exercise of its supervisory functions;

(f) the competent authority is satisfied that where there are close links between the company and another person or persons, the laws, regulations or administrative provisions of a third country governing one or more persons with which the company has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions; and

(g) it satisfies any other conditions for the granting of a licence, as may be specified in a Financial Institutions Rule:

Provided that the company shall, after being licensed under this Act, inform the competent authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this sub-article on a continuous basis.

(1A) No natural person or company shall be granted a registration to carry out account information services unless:

(a) the competent authority is satisfied, where applicable, that qualifying shareholders, controllers and all persons who effectively direct the business of the account information service provider are suitable persons to ensure its sound and prudent management;

(b) the competent authority is satisfied that the natural person or company has sound and prudent management and has robust governance arrangements that include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the natural person or company, as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

(c) the competent authority is satisfied that where there are close links between the natural persons or the company and another person or persons, such links do not prevent it from the effective exercise of its supervisory functions;

(d) the competent authority is satisfied that where there are close links between the natural person or the company and another person or persons, the laws, regulations or administrative provisions of a third country governing one or more persons with which the company has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions; and

(e) the natural person or company satisfies any other conditions for the granting of a registration as may be specified in a Financial Institutions Rule:

Provided that the natural person or company shall, after being registered under this Act, inform the competent authority forthwith of any change in circumstances concerning the application, and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this sub-article on a continuous basis.

(1B) A natural person or a company who applies for a licence or a registration as applicable in terms of this article, to provide payment initiation services and, or account information services, shall as a condition for the granting of its licence or registration, as applicable, also be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability. With respect to an applicant who intends to provide payment initiation services, the required professional indemnity insurance or other comparable guarantee against liability, shall be required to ensure that it can cover its liabilities as specified in Articles 73, 89, 90 and 92 of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act. With respect to an applicant who intends to provide account information services, the required professional indemnity insurance or other comparable guarantee against its liability shall be required *vis-à-vis* the account servicing payment service provider or the payment service user resulting from the unauthorised or fraudulent access to, or the unauthorised or fraudulent use of payment account information:

Provided that the amount of the professional indemnity insurance or other comparable guarantee referred to in this sub-article shall be calculated in accordance with the method as may be established in a Financial Institutions Rule:

Provided further that any information required by the competent authority in order to calculate the amount of the professional indemnity insurance or other comparable guarantee required in terms of this sub-article shall be provided to the competent authority in terms of a Financial Institutions Rule.

(1C) Financial institutions required to hold a professional indemnity insurance or other comparable guarantee in accordance with sub-article (1B) shall review, and if necessary recalculate, the minimum monetary amount of their professional indemnity insurance or other comparable guarantee at least on an annual basis and as may be established in a Financial Institutions Rule.

(2) The competent authority shall determine each application for a licence or a registration within three months of receipt of the application or, in the event that the application does not comply with article 4(2) or additional information is required, within three months of compliance with the said sub-article or the submission of the information required, as the case may be, whichever is the later.

(3) The competent authority may grant or refuse to grant a licence or a registration applied for under this Act, and where it refuses an application, it shall inform the applicant in writing with the reasons for the refusal.

(4) (a) In granting a licence or a registration, the competent authority may subject a financial institution to such conditions as it may deem appropriate and having granted a licence, it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue and publish Financial Institutions Rules in terms of article 13.

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(5) Where the competent authority for any reason fails to determine an application for a licence or a registration within the time prescribed under sub-article (2), such fact shall be deemed to constitute a refusal to grant a licence or a registration, as applicable.

(6) Where a licensed or registered financial institution provides any of the services referred to in the First Schedule and at the same time intends to engage in activities other than those listed in the First Schedule, it shall not do so without the prior consent of the competent authority. The competent authority may require the establishment of a separate entity for the carrying out of the business for which the financial institution is licensed or registered, where the activities in which the financial institution is engaged or intends to engage and that are not listed in the First Schedule, impair or are likely to impair, either the financial soundness of the financial institution or the ability of the competent authority to monitor the financial institution's compliance with all obligations set out in this Act and any regulations and, or Rules issued thereunder.

(7) A financial institution licensed or registered in Malta shall have its head office and its registered office in Malta and shall carry out at least part of its licensable and, or registrable activities in Malta:

Provided that where a registered account information service provider is a natural person, such a natural person shall have its contact address in Malta."

Substitution of article 5A of the principal Act.

**26.** Article 5A of the principal Act shall be substituted by the following:

"Own funds.

5A. (1) Without prejudice to the minimum level of the capital requirements as may be set out in a Financial Institutions Rule, the own funds of a financial institution, other than an account information service provider, shall not fall below the amount of initial capital as may be set out in a Financial Institutions Rule, or the amount of own funds as calculated in accordance with a Financial Institutions Rule issued by the competent authority, whichever is the higher.

(2) Notwithstanding the initial capital requirements, financial institutions providing any of the services listed in the Second or the Third Schedule, except for payment initiation services and account information services, shall hold at all times own funds calculated in accordance with one or more, where applicable, of the methods as may be set out in a Financial Institutions Rule.

(2A) Where a payment institution or an electronic money institution belongs to the same group as another payment institution, electronic money institution, credit institution, investment firm, asset management company or insurance undertaking, or where a payment institution or an electronic money institution carries out activities other than providing payment services or issuing electronic money, as applicable, the multiple use of elements eligible for own funds shall be prohibited.

(2B) In the event that the conditions set out in Article 7 of the CRR are satisfied, the competent authority may choose not to apply sub-article (2) to payment institutions or electronic money institutions that are included in the consolidated supervision of the parent credit institutions pursuant to the CRD.

(3) Where the amount of own funds of a financial institution, other than an account information service provider, falls below the amount established under sub-articles (1) and (2), the competent authority shall require the financial institution to take the necessary measures to restore the level of own funds within such period as the competent authority may determine:

Provided that if the level of own funds of a financial institution, other than an account information service provider, is not restored within the determined period, the competent authority may, in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 6."

**27. Article 6 of the principal Act shall be amended as follows:**

Amendment of  
article 6 of the  
principal Act.

(a) the marginal note thereof shall be substituted by the following:

"Restriction, suspension and withdrawal of a licence or a registration.";



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(b) sub-article (1) thereof shall be substituted by the following:

"(1) The competent authority may withdraw, suspend or restrict a licence or registration issued to a financial institution where:

(a) the financial institution expressly renounces the licence or registration;

(b) the financial institution does not commence business pursuant to the licence or registration as applicable, within twelve months of its issue, or any later date as may be specified by the competent authority, or has ceased to engage in business for more than six months, or for such other period of time as may be determined by the competent authority;

(c) (i) the financial institution has obtained the licence or registration through false statements or any other irregular means; or

(ii) where any document or information accompanying an application for a licence or a registration or any information given in connection therewith is false in any material particular; or

(iii) where the financial institution conceals from, or fails to notify or submit to the competent authority, any document or information or change therein, which it was its duty to reveal or notify under this Act and any regulations and, or Rules issued thereunder;

(d) the financial institution no longer fulfils the conditions required for the granting of the licence or registration, or any conditions stipulated in any Financial Institutions Rule, or fails to inform the competent authority on major developments in this respect;

(e) the financial institution is declared bankrupt or goes into liquidation, or enters into a composition with its creditors or is otherwise dissolved;

(f) the financial institution has ceased to operate as a result of a merger with another financial institution;

(g) the financial institution is a branch of an institution incorporated outside Malta, and the overseas

regulatory authority in the country of incorporation withdrew the authorisation or registration of the institution;

(h) the financial institution would constitute a threat to the stability of the payment system by continuing its payment services or electronic money;

(i) the financial institution fails or is likely to fail to comply with any of the provisions of this Act and any regulations or Financial Institutions Rules issued thereunder or with the conditions under which the licence or registration is granted or any directive as may be issued by the Authority;

(j) the financial institution has insufficient assets to cover its liabilities; or

(k) the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability or integrity of the financial system.";

(c) sub-article (2) thereof shall be substituted by the following:

"(2) Where the competent authority withdraws, suspends or restricts a licence or registration, it shall inform the financial institution of the reasons for the withdrawal, suspension or restriction of the licence or registration.";

(d) sub-article (3) thereof shall be deleted;

(e) sub-article (4) thereof shall be substituted by the following:

"(4) Restrictions of a licence or a registration issued to a financial institution, that are imposed by the competent authority pursuant to sub-article (1), shall be such restrictions as the competent authority shall consider appropriate for the proper compliance by the financial institution with the provisions of this Act and any regulations and, or Rules issued thereunder, in addition to the conditions, if any, of its licence or registration and the protection of the integrity of the country's financial system, and may include:

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(a) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the First Schedule; or

(b) the requirement that the financial institution be permitted to undertake any transaction or transactions or any activity listed in the First Schedule only upon such terms and conditions, as the competent authority may prescribe.";

(f) immediately after sub-article (5) thereof there shall be added the following new sub-article:

"(5A) Where the competent authority varies or removes any restrictions imposed under this article, it shall inform the financial institution of the reasons for the variation or removal of any such restrictions.";

(g) sub-article (6) thereof shall be substituted by the following:

"(6) A licence granted to a branch of an institution incorporated outside Malta may only be withdrawn after consultation with the overseas regulatory authority of the country of incorporation, unless the competent authority decides that the matter is urgent, or that there are circumstances which make such prior consultation inappropriate.";

(h) sub-article (7) thereof shall be substituted by the following:

"(7) Upon the restriction or withdrawal of a licence or a registration of a financial institution incorporated in Malta, the competent authority shall inform the overseas regulatory authorities of the country in which the financial institution or its subsidiaries are carrying on any activity under the First Schedule or any other activity as the competent authority may deem complementary to the institution's activities in Malta.";

(i) sub-article (8) thereof shall be substituted by the following:

"(8) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make

public any restriction imposed under this article.";

(j) immediately after sub-article (8) thereof there shall be added the following new sub-article:

"(9) The competent authority shall publish any withdrawal or suspension of a licence or registration, including those in the public register referred to in article 8D, and in the electronic central register developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive.".

**28.** Article 7 of the principal Act shall be substituted by the following:

Substitution of article 7 of the principal Act.

"Notification of any variation, restriction, suspension or withdrawal of a licence or registration.

7. (1) Where the competent authority proposes:

(a) to vary any condition to which the licence or registration is subject, or to impose a condition thereon; or

(b) to withdraw, suspend or restrict, a licence or registration or to vary any restriction thereon,

it shall serve written notice of its intention on the financial institution and shall specify the grounds upon which the competent authority intends to take such action.

(2) Every notice given under sub-article (1) shall state that the financial institution concerned may, within such reasonable period after service thereof as may be stated in the notice, being a period of not less than forty-eight hours and not more than thirty days, make representations in writing to the competent authority giving reasons why such action should not be taken, and the competent authority shall consider any such representations before arriving to a final decision.

(3) Unless the competent authority considers that the matter is urgent, it shall not impose or vary any restriction or condition, or withdraw or suspend a licence or a registration before the expiry of the period as set out in sub-article (2).

(4) The competent authority shall, as soon as practicable, notify its final decision in writing to any financial institutions to whom notice has been served under sub-article (1)."

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Substitution of article 7A of the principal Act.

**29.** Article 7A of the principal Act shall be substituted by the following:

"Changes in information.

7A. A financial institution licensed or registered under this Act shall provide the competent authority with particulars of any changes in the information provided under this Act and any regulations and, or Rules issued thereunder, as soon as such financial institution becomes aware of such change."

Addition of articles 7B and 7C to the principal Act.

**30.** Immediately after article 7A of the principal Act, as substituted, there shall be added the following new articles:

"Power to issue directives.

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7B. (1) Without prejudice to any of the powers conferred under this Act, the competent authority may, in order to carry out the functions and duties prescribed by the Malta Financial Services Authority Act and by this Act and any regulations and, or Rules issued thereunder, whenever it deems necessary, give by notice in writing such directives as it may deem appropriate in the circumstances.

(2) Any person to whom a notice is given in accordance with sub-article (1) shall comply therewith and give effect to any such directive within the time and in the manner stated in the directive.

(3) The power to give directives under this article shall include the power to vary, alter, add or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

Information to be provided to customers or potential customers.

7C. A financial institution licensed or registered under this Act shall provide its customers or potential customers, including in any form or medium of marketing activity or communication disseminated to the public by means of all types of media, with a statement of the fact that the financial institution is licensed or registered, as applicable, by the competent authority, together with the address of the competent authority."

**31.** Immediately after article 7C of the principal Act, as added, the heading "OBLIGATIONS OF LICENCE HOLDERS AND OTHERS" of the principal Act shall be substituted by the following:

Substitution of the heading 'Obligations of Licence Holders and Others' of the principal Act.

"OBLIGATIONS OF FINANCIAL AND OTHER INSTITUTIONS".

**32.** Article 8 of the principal Act shall be amended as follows:

Amendment of article 8 of the principal Act.

(a) the marginal note thereof shall be substituted by the following:

"Opening of branches and subsidiaries.";

(b) sub-article (1) thereof shall be substituted by the following:

"(1) A financial institution, other than those exercising a European right, shall inform the competent authority in writing, before opening a new branch in Malta.";

(c) sub-article (2) thereof shall be substituted by the following:

"(2) A financial institution intending to open a branch or an office outside Malta to provide any of the activities listed in the First Schedule, with the exception of activities 4 or 10 thereof, and a financial institution intending to open a branch or office in a third country in order to provide any of the activities listed in the First Schedule, shall require the prior written approval of the competent authority.";

(d) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(2A) A financial institution intending to provide the activities listed in the Second or Third Schedules in another Member State in exercise of a European right, shall inform the competent authority in accordance with the procedure set out in Article 28 of the Payment Services Directive.

Opening of subsidiaries.

(2B) A financial institution intending to set up or acquire a subsidiary in or outside Malta shall require the prior written approval of the competent authority.";

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(e) sub-articles (3) to (6) thereof shall be deleted;

(f) immediately after sub-article (6) thereof there shall be added the following new sub-article:

"Information to customers and potential customers.

(7) Financial institutions shall ensure that branches acting on their behalf inform their customers and potential customers of this fact."

Substitution of article 8A of the principal Act.

**33.** Article 8A of the principal Act shall be substituted by the following:

"Agency distribution arrangements.

8A. (1) A financial institution intending to provide any of the activities referred to in the Schedules to this Act through an agent or, in the case of an electronic money institution intending to appoint a distributor to distribute or redeem electronic money, shall communicate the following information to the competent authority:

(a) the name and address of the agent and, or distributor;

(b) a description of the internal control mechanisms that will be used by the agent in order to comply with the obligations in relation to money laundering and the funding of terrorism under any anti-money laundering and combating the funding of terrorism legislation;

(c) the identity of directors and persons responsible for the management of the agent to be used in the provision of the activities referred to in the Schedules to this Act, and for agents other than payment service providers, evidence that they are fit and proper persons;

(d) the activities referred to in the Schedules to this Act that are carried out by the financial institution and for which the agent is mandated; and

(e) where applicable, the unique identification code or number of the agent or distributor:

Provided that a person who is appointed as agent of a financial institution shall only act as agent in respect of those activities for which the financial institution to which he will act as agent, is licensed or registered under this Act.

(1A) In the event of material changes to the particulars communicated to the competent authority at the initial notification pursuant to paragraph (b) of sub-article (1), the financial institution concerned shall provide the competent authority with the updated information without delay.

(2) An electronic money institution shall not issue electronic money through agents:

Provided that an electronic money institution may, subject to such conditions as may be established by the competent authority, distribute and redeem electronic money through agents and, or distributors.

(3) The competent authority may subject the person who will be appointed as agent to any of the obligations imposed on the financial institution under this Act.

(4) The competent authority shall, within two months of receipt of the information referred to in sub-article (1), communicate to the financial institution whether the agent has been entered in the public register referred to in article 8D:

Provided that, if the competent authority is not satisfied that the information provided is correct, it shall take further action to verify the information before entering the agent in the register:

Provided further that, if after taking action to verify the information, the competent authority is not satisfied that the information provided pursuant to sub-article (1) is correct, it shall refuse to enter the agent in the public register referred to in article 8D and shall inform the financial institution without undue delay.

(4A) An agent may only commence providing the relevant activities upon entry in the public register referred to in article 8D.

(4B) Where a payment institution or an electronic money institution intends to provide payment services in another Member State by engaging an agent or establishing a branch, it shall also follow the procedures set out in Article 28 of the Payment Services Directive.



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(5) Where a financial institution licensed or holding an equivalent authorisation in another Member State carries out the activities listed in any of the Schedules in Malta through a branch or by engaging an agent or distributor, the financial institution shall follow the procedures established in any Financial Institutions Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch, agent or distributor, money laundering or the funding of terrorism is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or the funding of terrorism, it shall inform the Member State in which the financial institution is established, and may refuse to register the branch or agent, or may withdraw the registration of the branch or agent.

(6) Financial institutions shall, without undue delay and in accordance with the procedure provided for in sub-articles (4) and (4A), communicate to the competent authority any changes regarding the use of agents or distributors, including additional agents or distributors.

(7) A financial institution intending to provide its activities through an agent in a third country shall require the prior written approval of the competent authority.

Information to customers and potential customers.

(8) Financial institutions shall ensure that agents or distributors acting on their behalf inform their customers and potential customers of this fact."

Substitution of article 8B of the principal Act.

**34.** Article 8B of the principal Act shall be substituted by the following:

"Outsourcing of operational functions.

8B. (1) Where a financial institution intends to outsource operational functions of its services it shall inform the competent authority accordingly:

Provided that the outsourcing of important operational functions, including IT systems, shall not be undertaken in such a way as to impair materially the quality of the financial institution's internal control and the competent authority's ability to monitor and retrace the financial institution's compliance with all of the obligations established in this Act and any regulations and, or Rules made thereunder.

(2) For the purpose of sub-article (1), an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a financial institution with the requirements of its licence or registration, its other obligations under this Act or any regulations and, or Rules issued thereunder, its financial performance, or the soundness or continuity of its services:

Provided that financial institutions that outsource important operational functions shall comply with the following conditions:

(a) the outsourcing shall not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the financial institution towards any person making use of its services under this Act and any regulations and, or Rules issued thereunder shall not be altered;

(c) the conditions with which the financial institution must comply with in order to be licensed and remain so in accordance with this Act and any of the regulations and, or Rules issued thereunder shall not be undermined; and

(d) none of the other conditions subject to which the financial institution's licence or registration was granted shall be removed or modified.

(2A) Financial institutions shall, without undue delay, communicate to the competent authority any changes regarding the use of entities to which activities are outsourced.

(3) The competent authority may issue a Financial Institutions Rule, laying down the requirements for outsourcing service providers and the provision of such outsourced services."

35. Article 8C of the principal Act shall be substituted by the Substitution of article 8C of the principal Act.

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following:

"Liability.

8C. (1) Where financial institutions rely on third parties for the performance of operational functions, those financial institutions shall take reasonable steps to ensure that the requirements of this Act and any regulations and, or Rules issued thereunder are complied with.

(2) Financial institutions shall remain fully liable for any acts of their employees, or any agent, branch or entity to whom or to which activities may have been outsourced."

Substitution of article 8D of the principal Act.

**36.** Article 8D of the principal Act shall be substituted by the following:

"Public register.

8D. (1) The competent authority shall establish and maintain a public register in which the following are entered:

(a) financial institutions licensed or registered in terms of this Act;

(b) agents of financial institutions in Malta or in another Member State;

(c) branches of financial institutions, established in or outside Malta, if those branches provide services in another Member State;

(d) branches in Malta of payment institutions authorised in another Member State;

(e) branches in Malta of account information service providers authorised in another Member State;

(f) account information service providers registered under this Act exercising their European right to provide services in another Member State;

(g) account information service providers authorised in another Member State exercising their European right to provide services in Malta;

(h) the institutions referred to in paragraphs (4) to (23) of Article 2(5) of the CRD that are entitled under national law to provide payment services;

(i) branches in Malta of electronic money institutions authorised in another Member State;

(j) payment institutions and electronic money institutions licensed under this Act exercising their European right to provide services in another Member State;

(k) payment institutions and electronic money institutions authorised in another Member State exercising their European right to provide services in Malta;

(l) service providers carrying out services based on specific payment instruments that can be used only in a limited way, provided they satisfy any of the following conditions:

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer, or within a limited network of service providers under direct commercial agreement with a professional issuer;

(ii) instruments that can be used only to acquire a very limited range of goods or services; and

(m) service providers carrying out payment transactions by a provider of electronic communication networks or services provided in addition to electronic communication services for a subscriber to the network or service:

(i) 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; or

(ii) performed from or by means of an electronic device and charged to the related bill within the framework of a charitable activity, or for the purchase of tickets.

(2) The register referred to in sub-article (1) shall identify the services for which the financial institution is licensed or registered and it shall be publicly available for consultation, accessible online and updated without delay.

(3) Payment institutions shall be listed in the register separately from account information service providers.

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(4) The competent authority shall enter in the public register any withdrawal of a licence or registration.

(5) The competent authority shall notify the EBA of the reasons for the withdrawal of any licence or registration.

(6) The competent authority shall, without delay, notify the EBA of the information entered in the public register.

(7) The competent authority shall be responsible for the accuracy of the information specified in sub-article (6) and for keeping that information updated."

Substitution of article 8E of the principal Act.

**37.** Article 8E of the principal Act shall be substituted by the following:

"Opening of branches having their head office outside the European Union.

8E. (1) In the assessment of an application for the opening of a branch by an electronic money institution having its head office outside the European Union, the competent authority may not apply provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the European Union.

(2) The competent authority shall notify the European Commission of all authorisations for branches of electronic money institutions having their head office outside the European Union as stated in sub-article (1)."

Substitution of article 8F of the principal Act.

**38.** Article 8F of the principal Act shall be substituted by the following:

"Issuance and redeemability of electronic money.

8F. (1) Electronic money institutions shall issue electronic money at par value on the receipt of funds.

(2) Upon request by the electronic money holder, electronic money institutions shall redeem at any moment and at par value the monetary value of the electronic money held without delay.

(3) For the better carrying out of the provisions of this article and to better transpose the provisions of the Electronic Money Directive, the competent authority may, from time to time, issue, amend or revoke Financial Institutions Rules that shall be binding on electronic money institutions as specified therein."

Addition of article 8G to the principal Act.

**39.** Immediately after article 8F of the principal Act, as

substituted, there shall be added the following new article:

"Record-keeping. 8G. Without prejudice to any anti-money laundering or combating the funding of terrorism legislation, or other relevant European Union Law, financial institutions other than account information service providers, shall keep all appropriate records for the purposes of this Act and any regulations and, or Rules issued thereunder for at least five years."

40. Article 9 of the principal Act shall be substituted by the following: Substitution of article 9 of the principal Act.

"Notification of new or variation in participation or control. 9. (1) If:

(a) any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution, or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights, or of the share capital held by that person in that financial institution reaches, exceeds or falls below twenty per centum, thirty per centum or fifty per centum, or so that the financial institution becomes or ceases to be the subsidiary of such person; or

(b) any financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital, or effect any material change in voting rights,

without obtaining the prior approval of the competent authority or, if after having obtained such approval it subsequently appears to the competent authority that any of these actions, or the influence exercised by the person who intends to take such action, is operating or is likely to operate to the detriment of the prudent and sound management of the financial institution, without prejudice to the provisions of article 22, the competent authority shall express its opposition and shall have the power to take appropriate measures to rectify the situation.

(1A) The appropriate measures referred to in sub-article (1) may include:

(i) restraining the person or financial institution from taking or continuing the action;

(ii) declaring the action to be null and void;

(iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attached to the shares acquired;

(v) restraining the person or financial institution from taking any similar action, or any other action within the categories set out in paragraphs (a) and (b) of sub-article (1); and, or

(vi) suspending the exercise of the voting rights attached to the shares held by the shareholders or members of the financial institution in question.

(2) If as a result of an acquisition of shares in a financial institution, the financial institution in which a person proposes to acquire the shareholding would become a subsidiary or be subject to the control of the person acquiring those shares, it shall be within the discretion of the competent authority to consider whether any request made by such person for the approval of the competent authority under the provisions of this article constitutes a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act and any regulations and, or Rules issued thereunder.

(3) Sub-article (1) shall apply whether or not any of the relevant shares are listed on a regulated market in terms of the Financial Markets Act, or on an equivalent market in a third country.

(4) (a) Where a person intends to take any action as set out in sub-article (1)(a) or (b), such person shall notify the competent authority in writing of any such decision in advance, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may, by a Financial Institutions Rule, require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person.

(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the said authority shall, regardless of any other administrative penalty or other supervisory measure that may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast, or the possibility of annulling those votes.

(c) Where a person fails to comply with the obligation to provide prior information in accordance with paragraph (a) of this sub-article, the competent authority shall have the power to take appropriate measures in accordance with sub-article (1A).

(5) (a) A financial institution shall notify to the competent authority, in writing, the full particulars of any person who is proposed to become a controller or director of the financial institution or any person who is proposed to cease to be a controller or director of the financial institution.

(b) If the competent authority is of the opinion that any person who is or is proposed to become a controller or director of a financial institution is not a suitable person to be a controller or director, the competent authority may make an order requiring such a person to cease to be a controller or director, or restraining such a person from becoming a controller or director.

The competent authority may also issue, amend or revoke any Financial Institutions Rule as may be required in order to better implement the provisions of this article."

41. Article 10A of the principal Act shall be substituted by the
- Substitution of article 10A of the principal Act.



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following:

"Prohibition of interest.

10A. The granting of interest or of any other benefit related to the length of time during which an electronic money institution holds electronic money shall be prohibited."

Substitution of article 10B of the principal Act.

**42.** Article 10B of the principal Act shall be substituted by the following:

"Safeguarding requirements.

10B. (1) A payment institution providing payment services as referred to in paragraphs 2(a) to (f) of the Second Schedule and an electronic money institution shall safeguard all funds received from any person making use of its services, or received through another payment service provider for the execution of payment transactions, or in exchange for electronic money that has been issued.

(2) For the better carrying out of the provisions of this Act on safeguarding requirements, the competent authority may, from time to time, issue, amend or revoke any Financial Institutions Rule which shall be binding on financial institutions as specified therein."

Substitution of article 11 of the principal Act.

**43.** Article 11 of the principal Act shall be substituted by the following:

"Financial institutions unable to meet obligations.

11. Notwithstanding any investigation provided for in this Act:

(a) where a financial institution considers that it has failed to comply with, or that it is likely to fail to comply with any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the competent authority and the Central Bank in writing;

(b) where the competent authority becomes aware that a financial institution has failed to comply with, or that it is likely to fail to comply with any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the Central Bank in writing;

(c) where the Central Bank becomes aware that a financial institution has failed to comply with, or that it is likely to fail to comply with, any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the competent authority in writing."

44. Immediately after article 11 of the principal Act, as substituted, there shall be added the following new article:

Addition of article 11A to the principal Act.

"Management of operational and security risks.

11A.(1) Payment institutions, electronic money institutions and account information service providers shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide. As part of that framework, payment institutions, electronic money institutions and account information service providers, shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Payment institutions, electronic money institutions and account information service providers shall provide to the Central Bank, on an annual basis or at shorter intervals as may be determined by the competent authority in co-operation with the Central Bank, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide, and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) The competent authority shall co-operate with the Central Bank in the assessment and processing of documents referred to in sub-article (2).

(4) The competent authority may issue, amend or revoke Financial Institutions Rules as may be required in order to better implement the provisions of this article."

45. Immediately after article 11A of the principal Act, as added, there shall be added the following new article:

Addition of article 11B to the principal Act.

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"Incident  
reporting.

11B. (1) In the case of a major operational or security incident and where Malta is the home Member State, payment institutions, electronic money institutions and account information service providers shall notify the Central Bank, without undue delay. Upon receipt of such notification, the Central Bank shall promptly notify the competent authority.

(2) Where the incident has or may have an impact on the financial interests of its payment service users, the payment institution, electronic money institution or the account information service provider concerned shall, without undue delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receipt of the notification referred to in sub-article (1), the Central Bank shall, in co-operation with the competent authority, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

(4) The competent authority shall, in cooperation with the Central Bank, cooperate with the EBA and the ECB for the purpose of assessing the relevance of the incident to other relevant European Union and national authorities in accordance with Article 96(2) of the Payment Services Directive.

(5) Where the competent authority receives a notification of a major operational or security incident in accordance with sub-article (1), it shall, where appropriate upon the basis of that notification and in cooperation with the Central Bank, take all of the necessary measures to protect the immediate safety of the financial system.

(6) Payment institutions, electronic money institutions and account information service providers shall, at least on an annual basis, provide to the Central Bank statistical data on fraud relating to different means of payment.

(7) The competent authority may issue, amend or revoke any Financial Institutions Rule, as may be required, in order to better implement the provisions of this article."

Substitution of  
article 12 of the  
principal Act.

**46.** Article 12 of the principal Act shall be substituted by the

following:

"Powers and duties  
of the Minister.

12. (1) The Minister, acting on the advice of the competent authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

- (a) amend any of the Schedules to this Act;
- (b) exempt any person from any one or more provisions of this Act, including an exemption from requiring a licence or a registration under this Act, subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;
- (c) transpose, implement and give effect to the requirements of the Electronic Money Directive and the Payment Services Directive:

Provided that, when any of the options referred to in Article 107(1) of the Payment Services Directive are made use of, the Minister shall inform the European Commission of the use of any such options as well as of any subsequent changes thereof;

- (d) transpose, implement and give effect to the provisions, requirements, obligations and commitments relating to the regulation of payment institutions and electronic money institutions arising out of membership in, affiliation or relationship with international or regional organisations, or groupings of countries, or arising out of any treaty, convention or other international agreement whether bilateral, regional or multilateral to which Malta is a party;

- (e) provide that any other law or any provision thereof, shall not apply to matters falling under the regulations and in particular, may exempt activities as may be designated from the application of any article or provision of the Civil Code;

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(f) transpose, implement and, or give effect to the requirements of the PAD, and in so doing may also establish or maintain measures alternative to those referred to in Article 10(2) to (6) of the PAD:

Provided that:

(i) it is clearly in the interest of the consumer;

(ii) there is no additional burden for the consumer; and

(iii) the switching as defined in Article 2(18) of the PAD is completed within, as a maximum, the same overall time frame as that indicated in Article 10(2) to (6) of the PAD;

(g) set up a specific mechanism to ensure that consumers who do not have a payment account as defined in Article 2(3) of the PAD in their territory, and who have been denied access to such a payment account for which a fee is charged by credit institutions, will have effective access to a payment account with basic features in terms of the PAD, free of charge;

(h) transpose, implement and, or give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating, but not limited to licence holders as may be specified therein; any such regulations strictly related to transposition or implementation as aforesaid, may contain provisions which are inconsistent with the provisions of this Act or any other law, and for this purpose may provide that any provision in this Act or in any other law shall not apply to matters falling under the regulations and in case of such inconsistency, the provisions in any such regulations shall prevail;

(i) regulate products and services offered by financial institutions.

(2) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provisions for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may be specified.

(3) Where regulations have been issued in terms of this article the competent authority may issue, amend or revoke any Financial Institutions Rule within the meaning of this Act to better carry out and implement the provisions of the regulations."

47. Article 13 of the principal Act shall be amended as follows:

Amendment of  
article 13 of the  
principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and any regulations and, or Rules issued thereunder and to ensure that financial institutions carrying out business in or from Malta comply with this Act, any regulations and, or Rules issued thereunder and with the conditions of their licence or registration. In carrying out such functions, the competent authority shall ensure that the controls exercised for checking continued compliance in terms of this Act, and any regulations and, or Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed. The said functions consist, *inter alia*, of the following:

(a) to require the financial institution, in terms of article 14, to provide any information needed to monitor compliance specifying the purpose of the request as appropriate and the time limit by which the information is to be provided;

(b) to carry out on-site inspections at the financial institution, at any agent or branch thereof providing services under the responsibility of the financial institution, or at any entity to which activities are outsourced;

(c) to withdraw, suspend or restrict any licence or registration pursuant to article 6; and

(d) to issue non-binding recommendations

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and guidelines, Rules within the meaning of this article and binding administrative provisions in terms of this Act and any regulations and, or Rules issued thereunder.";

(b) immediately after sub-article (1) thereof there shall be added the following new sub-articles:

"(1A) Notwithstanding the requirements of article 5A(1), (2A) and (2) and Articles 7 and 9 of the Payment Services Directive, the competent authority may take steps as referred to in sub-article (1) to ensure sufficient capital for the activities carried out by a financial institution and, or to ensure compliance with Article 5(1B), in particular where the activities of a financial institution other than those listed in the Schedules impair or are likely to impair the financial soundness of the financial institution concerned.

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(1B) Without prejudice to the procedures for the withdrawal of a licence or a registration, or to article 22, or to national provisions of criminal law and to any other power granted to the competent authority under the provisions of this Act and any regulations and, or Rules issued thereunder or under the provisions of the Malta Financial Services Authority Act, where the competent authority is satisfied that a financial institution's conduct amounts to a breach of any of the provisions of this Act or any regulations and, or Rules issued thereunder, or of any directive, restriction and, or suspension imposed, or of any other request or order made by the competent authority pursuant to the provisions of this Act or any regulations and, or Rules issued thereunder, or the Malta Financial Services Authority Act, or a licence condition, or a condition required for the granting of a licence or a registration; the competent authority may adopt or impose on any such financial institution and, or on those who effectively control the business of such financial institution, any measures as it may deem appropriate aimed specifically at ending observed breaches or the causes of such breaches.

(1C) The competent authority shall possess all powers and adequate resources necessary for the performance of its duties and shall guarantee independence from economic bodies and avoid conflicts of interest.";

(c) sub-article (2) thereof shall be substituted by the following:

"(2) The competent authority may issue, amend or revoke any Financial Institutions Rule as may be required for carrying into effect any of the provisions of this Act and any regulations and, or Financial Institution Rules issued thereunder. The said Rules may establish additional requirements and conditions in relation to activities of financial institutions, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters, as the competent authority may consider appropriate.";

(d) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(2A) The competent authority may issue, amend or revoke any Financial Institutions Rule as may be required for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the EBA, as may be required.

(2B) A Financial Institutions Rule shall be binding on financial institutions and others as may be specified therein.";

(e) sub-article (3) thereof shall be substituted by the following:

"(3) A Financial Institutions Rule and any amendment or revocation thereof shall be officially communicated to all financial institutions and the competent authority shall make copies thereof available to the public, upon request.";

(f) sub-article (5) thereof shall be deleted;

(g) immediately after sub-article (5) thereof there shall be added the following new sub-articles:

"(6) The competent authority shall, as soon as possible, notify the European Commission that it has been designated in part, to ensure and monitor the effective compliance with the Payment Services Directive. The competent authority shall inform the European



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Commission of the provisions of the Payment Services Directive for which it is responsible. The competent authority that has been designated in part, to ensure and monitor effective compliance with the Payment Services Directive, shall immediately notify the European Commission of any subsequent change concerning its designation and competence.

(7) Nothing in this Act shall be taken to imply that the competent authority is required to supervise activities of financial institutions other than for the provision of the services listed in the Schedules to this Act.

(8) The powers, functions and duties conferred upon the competent authority in this Act and any regulations and, or Rules issued thereunder transposing Title II of the Payment Services Directive, shall be vested in the competent authority when the competent authority is the home Member State.

(9) The competent authority shall ensure that financial institutions do not derogate to the detriment of their customers, from the provisions of this Act and any regulations and, or Rules issued thereunder, except where explicitly provided for therein:

Provided that financial institutions may, without prejudice to article 10, decide to grant more favourable terms to their customers."

Addition of article 13A to the principal Act.

**48.** Immediately after article 13 of the principal Act, as amended, there shall be added the following new article:

"Reasons and communication.

S.L. 376.05.

13A. Any measure taken by the competent authority, or by the competent authority in collaboration with the Central Bank as applicable, pursuant to the European Passport Rights for Financial Institutions Regulations and article 23(1) involving administrative penalties or restrictions on the exercise of a European right shall be properly justified and communicated to the payment institution, the electronic money institution or the account information service provider concerned."

Amendment of article 14 of the principal Act.

**49.** Article 14 of the principal Act shall amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) A financial institution shall submit to the competent authority such information and documentation as the competent authority may require either on a periodic and, or on an *ad hoc* basis, in the discharge of its duties under this Act and any regulations and, or Rules issued thereunder or any other law, and the competent authority may enquire into and ask for clarification of any information submitted.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) All periodic information and documentation required under sub-article (1) shall be submitted in such form and at such periods as the competent authority may from time to time prescribe by any Financial Institutions Rules and, or at such periods as the competent authority may require in writing.";

(c) sub-article (3) thereof shall be deleted;

(d) sub-article (4) thereof shall be substituted by the following:

"(4) The provisions of this article shall also apply to all branches, agencies or offices in Malta of a financial institution which are not incorporated in Malta.";

(e) sub-article (5) thereof shall be substituted by the following:

"(5) A financial institution shall submit to the Central Bank such information as the said Bank may require in the discharge of its duties and the Central Bank may enquire into and ask for clarifications on any information so submitted.";

(f) sub-article (6) thereof shall be substituted by the following:

"(6) The competent authority may, by notice in writing, require a financial institution or any of its officers to do all or any of the following:

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require and of such description as may be so

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specified in the notice;

(b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify; and, or

(c) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation as the competent authority may reasonably require, for the performance of its functions under this Act and any regulations and, or Rules issued thereunder.";

(g) sub-article (7) thereof shall be substituted by the following:

"(7) The competent authority may retain copies of any documents submitted in terms of this article.".

Amendment of  
article 15 of the  
principal Act.

**50.** Article 15 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The competent authority may, whenever it deems necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs, nature, conduct or state of a financial institution's business or any particular aspect of it, or to report on the ownership or control of the financial institution.";

(b) immediately after sub-article (3) thereof the following new sub-articles shall be added:

"(4) Any investigation being carried out pursuant to sub-articles (1) and (2) shall be notified in writing to the person under investigation.

(5) It shall be the duty of every person who is or was an officer, employee, agent, or auditor of a person under investigation in terms of this Act and any regulations and, or Rules issued thereunder, or any person appointed to draw up a report in respect of that person under this Act and any regulations and, or Rules issued thereunder and any person who has a qualifying shareholding in, or is a controller the said person under investigation:

(a) to produce to the inspector or inspectors appointed under sub-article (1), within such time and at such place as may be required by the inspector or inspectors concerned, all the documents relating to the person under investigation which are in his custody or power;

(b) to attend before the inspector or inspectors at such time and place as the inspector or inspectors may require; and, or

(c) otherwise to give to the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give, and the inspector or inspectors concerned may retain copies of or extracts from, any documents produced to them under paragraph (a).

(6) An inspector exercising powers by virtue of an appointment under this article shall, if so required, produce evidence of his authority.

(7) No person shall:

(a) without any lawful excuse fail to produce any document which it is his duty to produce under sub-article (5);

(b) without any lawful excuse fail to attend before an inspector or inspectors appointed under sub-article (1), when required to do so; or

(c) without any lawful excuse fail to answer any question which is put to him by an inspector or inspectors appointed under sub-article (1) with respect to any person who is under investigation.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this article may be used as evidence against him."

**51.** Article 16 of the principal Act shall be substituted by the following:

Substitution of article 16 of the principal Act.

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"Right of entry.

16. (1) Any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), may on producing evidence of his authority, if required to do so, enter into premises occupied by a person on whom a notice has been served under article 14, or whose affairs are being investigated under article 15, for the purpose of obtaining the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with, or that any documents to which it could relate would be removed, tampered with or destroyed, such person may on producing evidence of his authority, if required to do so, enter into any premises referred to in sub-article (1) for the purpose of obtaining any information or documents specified in the authority, being information or documents that could have been required under such notice, as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of criminal offences and the enforcement of law and order:

Provided that where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall not take place between nine in the evening and five in the morning."

Addition of article 16A to the principal Act.

**52.** Immediately after article 16 of the principal Act, as substituted, there shall be added the following new article:

"Suspected  
breaches.

16A. (1) Where the competent authority has reasonable grounds for suspecting that a person has contravened or has failed to comply with any of the provisions of this Act and any regulations and, or Rules issued thereunder, it may, by notice in writing, require that person or any other person:

(a) to provide at such place as may be specified in the notice, and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected contravention or failure to comply;

(b) to produce, at such place as may be specified in the notice, and either forthwith or at such time as may be so specified, such documents or documents of such description as may be specified therein, which it may reasonably require for that purpose; and, or

(c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention or failure to comply has occurred.

(2) The competent authority or their duly authorised officer, employee or agent may retain copies of or extracts from any documents submitted in terms of this article.

(3) Any officer, employee or agent of the competent authority may between five o'clock in the morning and nine o'clock at night, on producing, if required, evidence of his authority, enter into any premises occupied by a person on whom a notice has been served under sub-article (1), for the purpose of obtaining the information or the documents required by the notice, asking the questions referred to in paragraph (c) of sub-article (1) and, or exercising the powers conferred by sub-article (2).

(4) No person shall without any lawful excuse fail to comply with a requirement imposed on him under this article or intentionally obstruct a person in the exercise of the rights conferred by sub-article (3).

(5) A statement made by a person in compliance with a requirement imposed by virtue of this article may be used as evidence against him."

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Addition of  
article 16B to  
the principal  
Act.

**53.** Immediately after article 16A as added to the principal Act there shall be added the following new article:

"Obstruction.

16B. No person who knows or suspects that an investigation is being or is likely to be carried out under this Act, or an investigation is being or is likely to be carried out into the suspected commission of any breach under this Act and any regulations and, or Rules issued thereunder may falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of documents that he knows or suspects are, or would be relevant to such an investigation, unless he proves that he had no intention of concealing facts disclosed by such documents from persons carrying out such an investigation."

Substitution of  
article 17 of the  
principal Act.

**54.** Article 17 of the principal Act shall be substituted by the following:

"Power of the  
competent  
authority to take  
control of financial  
institutions.

17. (1) If, whether from any report made under article 14 or 15 or otherwise, it appears to the competent authority that any of the circumstances indicated in article 6(1) apply, the competent authority may, without prejudice to the powers of the said authority to impose restrictions, or to withdraw or suspend a licence or a registration under the provisions of article 6(1):

(a) require the financial institution forthwith to take such steps as the competent authority may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to advise the financial institution in the proper conduct of its business;

(c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;

(d) appoint a competent person to take over the business of the financial institution, either to carry on that business, or to carry out such other function or functions in respect of such business or part thereof, as the competent authority may direct;

(e) require the financial institution to wind up its business or to wind up its business in Malta;

(f) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the financial institution; and, or

(g) determine the remuneration to be paid by the financial institution to any competent person appointed under this sub-article.

(2) Upon receipt of a report or information otherwise received as is mentioned in sub-article (1), the competent authority shall inform the Central Bank.

(3) Where a competent person is appointed by the competent authority:

(a) under sub-article (1)(b), the financial institution shall act in accordance with the advice given by such person, unless and until the competent authority otherwise directs;

(b) under sub-article (1)(c), the financial institution shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the financial institution in respect of those assets, whether exercisable by the company in the general meeting or by the board of directors, or by any other person, including the legal and judicial representation of the financial institution, shall be exercisable by and vested in him to the exclusion of the financial institution; and, or

(c) under sub-article (1)(d), the financial institution shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business, or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the financial institution, whether exercisable by the company in the general meeting or by the board of directors, or by any other person, including the legal and judicial representation of the financial institution in all matters shall be exercisable by and vested in him, to the exclusion of any other person.

(4) Where a person is appointed under sub-article (1)(c) or (d):



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(a) any function, power or duty exercisable by any other person, including the curator of a bankrupt, or any other person appointed by or under any other law and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall unless or until the competent authority otherwise directs, or an express provision of the law specifically provides otherwise, cease to be so exercisable;

(b) the person appointed under either of the paragraphs aforesaid shall in respect of such property, partnerships, firms or other business as the competent authority may specify, and in which the financial institution has an interest, whether directly or indirectly, including any interest arising from advances or loans made, or credit facilities given, or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the competent authority may direct, and any such power, function or duty shall be exercisable by and vested in such person, to the exclusion of any other person:

Provided that:

(i) the competent authority shall have the power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the competent authority may specify and unless and until the competent authority otherwise directs, the powers, functions and duties to which the direction of the competent authority applies shall be exercisable by and vested in such other person appointed for the purpose, to the exclusion of all others;

(ii) where the competent authority is of the opinion that the financial institution has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done, or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;

(iii) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may deem necessary to carry out any of the powers, functions or duties under this article;

(iv) the provision of law relating to bankruptcy and in particular Part III of the Commercial Code shall cease to apply to, and shall cease to operate in respect of any property, partnership, firm or other business specified by the competent authority under paragraph (b), unless and until, or except to the extent that the competent authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the competent authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;

(v) any person appointed by the competent authority under any of the provisions of this article shall submit six monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions, audited by an independent auditor, to the Minister who will place such reports and accounts on the Table of the House of Representatives within fifteen days.

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(5) Where a person is appointed under sub-article (1)(f), such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(6) The provisions of this article shall have effect notwithstanding any other provision of any enactment, and notwithstanding any deed, contract, instrument or other document whatsoever.

(7) The foregoing provisions of this article vesting exclusive powers of representation in a person appointed by the competent authority thereunder shall apply also to any act or proceedings commenced or instituted before such representation is vested as aforesaid, and in respect of any such act or proceedings, any other person acting or purporting to act, or in respect of whom action is taken in that capacity shall cease to be a party to and shall be excluded from any such act or proceedings.

(8) No person shall in any way obstruct a person appointed under sub-article (1) in the performance of any of his functions, powers or duties under this article."

Substitution of the heading 'Auditors' of the principal Act.

**55.** Immediately after article 17 of the principal Act, the heading "AUDITORS" shall be substituted by the following:

"ACCOUNTING, STATUTORY AUDIT AND AUDITORS".

Addition of article 17A to the principal Act.

**56.** Immediately after article 17 and the subsequent heading of the principal Act, as substituted, there shall be added the following new article.

"Accounting and statutory audit.

17A. (1) Directive 86/635/EEC, Directive 2013/34/EU and Regulation (EC) No. 1606/2002 shall, *mutatis mutandis*, apply to financial institutions.

(2) Unless exempted under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC, the annual accounts and consolidated accounts of financial institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, as amended from time to time.

(3) Payment institutions and electronic money institutions shall provide to the competent authority separate accounting information for payment services and for the activities referred to in paragraphs 3(a), (b) and (c) of the Second Schedule, that shall be subject to an auditor's report, as may be stipulated in a Financial Institutions Rule.

(4) The auditor's report referred to in sub-article (3) shall be prepared, where applicable, by the statutory auditors or an audit firm."

**57.** Immediately after article 17A, as added to the principal Act, there shall be added the following new article:

Addition of article 17B to the principal Act.

"Publication of audited financial statements.

17B. Every financial institution shall, not later than four months from the closing of its financial year or at any other time as may be authorised in writing by the competent authority:

(a) forward to the competent authority, and

(b) make available to the public, in paper or in electronic form,

a copy of its audited financial statements or consolidated financial statements, as may be applicable, drawn up and published in such manner as may be specified in accordance with a Financial Institutions Rule."

**58.** Article 18 of the principal Act shall be amended as follows:

Amendment of article 18 of the principal Act.

(a) sub-article (1)(a) thereof shall be substituted by the following:

"(1) (a) Every financial institution shall each year appoint an approved statutory auditor or audit firm whose duty shall be to audit the annual accounts and consolidated accounts of the financial institution in accordance with article 17A.";

(b) sub-article (6) thereof shall be substituted by the following:

"(6) If, in his capacity as an auditor of a financial institution, or due to a direct request by the competent authority under article 14 or 15, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the

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financial institution, or a branch or office in Malta of a financial institution not incorporated in Malta, or the integrity of the financial system in Malta, he shall immediately inform the competent authority through the financial institution's management, or if circumstances so warrant, inform directly the competent authority.";

(c) immediately after sub-article (6), as substituted, there shall be added the following new sub-articles:

"(6A) In his capacity as an auditor of a financial institution, or due to a direct request by the competent authority, an auditor shall promptly notify the competent authority of any fact or decision concerning that financial institution of which that auditor has become aware while carrying out his tasks, that is liable to:

(a) constitute a material breach of this Act and of any regulations and, or Rules issued thereunder which set out the licensing or registration conditions, or which specifically govern the activities of financial institutions;

(b) affect the ongoing functioning of the financial institution; or

(c) lead to refusal to certify the accounts or to the expression of reservations:

Provided that an auditor shall also have the duty to report any fact or decision of which that auditor becomes aware in the course of carrying out his tasks, in an undertaking having close links resulting from a control relationship with the financial institution within which he is carrying out that task.

(6B) Any disclosure in good faith to the competent authority pursuant to sub-article (6A) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not expose such persons to any liability. Unless there are compelling reasons not to do so, such disclosure shall be made simultaneously to the board of directors of the financial institution.

**59.** Article 19 of the principal Act shall be substituted by the following: Substitution of article 19 of the principal Act.

"Communication by auditors and other persons with the competent authority.

19. No duty, including professional secrecy, to which:

(a) an auditor of a financial institution may be subject shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that institution and that is relevant to any functions of the competent authority under the provisions of this Act, or is required to be communicated by virtue of this Act and, or any regulations or Rules issued thereunder; and

(b) a person appointed to make a report under article 14 or 15 may be subject shall be regarded as contravened by reason of communicating in good faith to the competent authority any matter which relates to the business or affairs of the financial institution in relation to which the report is made."

**60.** Article 20 of the principal Act shall be amended as follows: Amendment of article 20 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Without prejudice to sub-article (1A) and on the basis of international agreements or upon reciprocity agreements, the competent authority may, in the case of a financial institution or branch operating in Malta, which is totally or partially owned by a foreign person, or in the case of a financial institution totally or partially owned by Maltese residents that is operating abroad, share its supervisory duties with an overseas regulatory authority.";

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) The competent authority shall co-operate with European regulatory authorities and, where appropriate with the ECB, the Central Bank and the national central banks of the other Member states, the EBA and other

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relevant authorities designated under European Union, or national law applicable to payment service providers.";

(c) sub-article (2) thereof shall be substituted by the following:

"(2) The competent authority may further exchange information with the following:

(a) overseas regulatory authorities responsible for the licensing and, or registration, and for the supervision of payment institutions, electronic money institutions and, or account information service providers, solely for their supervisory and regulatory purposes and, or for such other purposes as may be specifically agreed upon with the competent authority;

(b) the ECB, other Member States' central banks and the Central Bank, in their capacity as monetary and oversight authorities and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) other relevant authorities designated under the Payment Services Directive, Directive 2015/849, and other European Union law applicable to payment service providers, such as laws applicable to money laundering and funding of terrorism; and, or

(d) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in paragraph (a) of Article 1(5) of Regulation (EU) No. 1093/2010.

(d) sub-article (4) thereof shall be substituted by the following:

"(4) The competent authority shall notify the relevant European regulatory authority whenever it intends to carry out an on-site inspection in the territory of the latter:

Provided that the competent authority may upon agreement delegate to the relevant European

regulatory authority the task of carrying out on-site inspections of the institution concerned.";

(e) sub-article (5) thereof shall be substituted by the following:

"(5) The competent authority shall further, upon a request in writing, disclose to the ECB and, or to the Central Bank any information in the possession of or accessible to the competent authority that is required for the discharge of the duties of the ECB and, or the Central Bank under the law."

**61.** Immediately after article 20 of the principal Act there shall be added the following new article:

Addition of article 20A to the principal Act.

"Settlement of disagreements between the competent authority and European regulatory authorities.

20A. (1) Where the competent authority considers that in a particular matter, cross-border co-operation with European regulatory authorities referred to in Articles 26, 28, 29, 30 or 31 of the Payment Services Directive does not comply with the relevant conditions set out in those provisions, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No. 1093/2010.

(2) Where the competent authority has referred the matter to the EBA and requested its assistance in accordance with sub-article (1), or where a European regulatory authority has referred a matter to the EBA and requested its assistance in accordance with Article 27(1) of the Payment Services Directive, it shall defer its decision pending resolution by the EBA under Article 19 of Regulation (EU) No. 1093/2010."

**62.** Immediately after article 20A of the principal Act, as added, there shall be added the following new article:

Addition of article 20B to the principal Act.

"Collaboration with the Central Bank and the Arbiter.

20B. In ensuring and monitoring effective compliance with the provisions of this Act and any regulations and, or Rules issued thereunder transposing the Payment Services Directive, the competent authority shall collaborate closely with the Central Bank and with the Arbiter as may be required, in order to ensure that every authority may discharge its respective duties effectively."

**63.** Article 21 of the principal Act shall be substituted with the following:

Substitution of article 21 of the principal Act.



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"Appeals. 21. Any person who is aggrieved by a directive, decision and, or measure taken by the competent authority pursuant to the Act and any regulations or Rules issued thereunder, may appeal to the Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act."

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Amendment of article 22 of the principal Act.

**64.** Article 22 of the principal Act shall be amended as follows:

(a) the marginal note thereof shall be substituted by the following:

"Criminal offences.";

(b) sub-article (1) thereof shall be substituted by the following:

"(1) Any person who:

(a) fails to comply with any directive issued by the competent authority under this Act;

(b) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act and any regulations and, or Rules issued thereunder;

(c) furnishes information or makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts;

(d) recklessly furnishes information or recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive;

(e) fails to comply with any lawful order or requirement of the Financial Services Tribunal; or

(f) contravenes or fails to comply with any of the provisions of articles 3(1), 3(1A), 9, 16A(4), 16B, 24A(b), 25(2) and (4),

shall be guilty of a criminal offence.";

(c) sub-article (2) thereof shall be deleted;

(d) sub-article (4) thereof shall be substituted by the following:

"(4) A person guilty of a criminal offence under the provisions of this article shall be liable on conviction to a fine (*multa*) not exceeding five hundred thousand euro (€500,000) or to a term of imprisonment not exceeding three years, or to both such fine and imprisonment.";

(e) sub-article (5) thereof shall be substituted by the following:

"(5) No criminal proceedings for a criminal offence against this Act shall be commenced without the consent of the Attorney General.".

**65.** Article 23 of the principal Act shall be substituted by the following:

Substitution of article 23 of the principal Act.

"Administrative penalties and their publication.

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23. (1) Without prejudice to the procedures for the withdrawal, suspension or restriction of a licence or a registration and to any other power granted to the competent authority under the provisions of this Act and any regulations and, or Rules issued thereunder, or under the provisions of the Malta Financial Services Authority Act, where any person fails to comply with any of the conditions imposed in a licence and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act and of any regulations and, or Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be, aimed specifically at ending such breaches or the causes of such breaches.

(1A) Any administrative penalty imposed by the competent authority under sub-article (1) shall be effective, proportionate and dissuasive, and shall be imposed in accordance with this article.

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(1B) The Minister may, acting on the advice of the competent authority, make regulations as shall be deemed appropriate to provide for the establishment and imposition of administrative penalties and other administrative measures on licence holders or others as may be specified therein.

(2) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person, and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

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(3) The provisions of article 16(4) of the Malta Financial Services Authority Act shall, *mutatis mutandis*, apply with reference to a "notice" therein being construed as a reference to a notice as referred to in sub-article (1) of this article.

(4) The competent authority may, unless such disclosure would seriously jeopardise the financial markets, or cause disproportionate damage to the parties involved, publish any administrative penalty imposed in terms of this article and, or in terms of this Act:

Provided that in cases where, in terms of article 21, an appeal has been filed by the person on whom such administrative penalty or penalties have been imposed, the competent authority shall, without undue delay, also publish on its official website and through any other means it considers appropriate, information on the status of the appeal and the outcome thereof."

Amendment of  
article 24 of the  
principal Act.

**66.** Paragraph (a) of article 24 of the principal Act shall be substituted by the following:

"24. No person:

(a) who has been adjudged bankrupt, or has made a composition with his creditors, or has been an officer of a financial institution which has had its licence or registration withdrawn under article 6(1) and who has not

been exempted in writing by the competent authority from the provision of this article; or".

**67.** Immediately after article 24 of the principal Act, as amended, there shall be added the following new article:

Addition of article 24A to the principal Act.

"Duties of officers. 24A. Every officer of a financial institution shall take all reasonable steps:

(a) to secure compliance by the financial institution with all of the provisions of this Act and any regulations and, or Rules issued thereunder, and with the conditions of its licence or registration; and

(b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence.".

**68.** Article 25 of the principal Act shall be amended as follows:

Amendment of article 25 of the principal Act.

(a) sub-article (2) thereof shall be substituted by the following:

"(2) No person, including past and present officers of a financial institution or of a branch thereof, and agents of a financial institution, shall disclose any information relating to the affairs of that institution or of a customer of that institution which he has acquired in the performance of his duties or in the exercise of his functions under this Act and any regulations and, or Rules issued thereunder except:

(a) when authorised to do so under any of the provisions of this Act;

(b) for the purpose of the performance of his duties or in the exercise of his functions;

(c) when lawfully required to do so by any court or under a provision of any law.";

(b) sub-article (3) thereof shall be substituted by the following:

"(3) Where an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in any anti-money laundering and combating the funding of terrorism legislation and such disclosure shall not constitute a breach of

confidentiality.";

(c) sub-article (4) thereof shall be substituted by the following:

"(4) Without prejudice to the provisions of article 20, persons who work or who have worked for the competent authority, as well as experts acting on behalf of the competent authority, without prejudice to cases falling within the ambit of criminal law, are bound by the duty of professional secrecy. The said persons and experts shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties and which is governed by the duty of professional secrecy, unless such disclosure of information be done in summary or collective form, so as not to enable the identity of the financial institution, to whom such information relates, to be ascertained:

Provided that the said officers, auditors or experts may divulge such information, for the purpose of the performance of their duties, or the exercise of their functions, or when lawfully required to do so by any court or under a provision of any law.";

(d) sub-article (5) thereof shall be substituted by the following:

"(5) Notwithstanding the provisions of any other law, a financial institution may, if circumstances so warrant, communicate any information which is in its possession and which relates to the affairs of a customer, to other members of the group of which that financial institution forms part.";

(e) sub-article (6) thereof shall be substituted by the following:

"(6) For the purposes of sub-article (5), the term "group" shall include any body corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group, and that is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction to carry out any activity equivalent to the business of banking, or of the issuing of electronic money, or any of the activities referred to in the Schedule to the Banking Act.";

(f) immediately after sub-article (7) thereof the following new sub-articles shall be added:

"(8) Without prejudice to the provisions of article 20, any exchange of information between the competent authority and any European regulatory authority, the ECB, the Central Bank, national central banks of other Member States, the EBA or any other relevant authorities designated under European Union or national law applicable to payment services providers in accordance with article 20(1A) and (2) shall, in order to ensure the protection of individual and business rights, also be subject to the obligation of professional secrecy.

(9) The provisions of sub-articles (4) and (8) shall be applied taking into account, *mutatis mutandis*, Articles 53 to 61 of the CRD."

**69.** Immediately after article 25 of the principal Act, the heading "CONSUMER COMPLAINTS" of the principal Act shall be substituted by the following heading:

Substitution of the heading 'Consumer Complaints' of the principal Act.

"DATA PROTECTION".

**70.** Article 26 of the principal Act shall be deleted.

Deletion of article 26 of the principal Act.

**71.** Immediately after article 26 of the principal Act, as deleted, there shall be added the following new article:

Addition of article 26A to the principal Act.

"Data protection.

26A. (1) Financial institutions may, when necessary to safeguard the prevention, investigation and detection of payment fraud, process personal data.

(2) The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of data for the purposes of this Act and any regulations and, or Rules issued thereunder, shall be carried out in accordance with any applicable data protection legislation.

(3) Financial institutions shall only access, process and retain personal data necessary for the provision of their services with the explicit consent of those making use of their services."

**72.** Article 27 of the principal Act shall be substituted by the

Substitution of article 27 of the principal Act.

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following:

"Objective.

27. The objective of this Act is, in part, to implement the provisions of the Payment Services Directive, in particular Titles I, II, Chapter 4 of Title IV, Articles 95, 96, 100, 103 and 107 in part, Articles 109, 111 and 115, and the Annexes thereof and of the Electronic Money Directive and shall be interpreted and applied accordingly."

Addition of article 28 to the principal Act.

**73.** Immediately after article 27 of the principal Act there shall be added the following new article:

"Transitory provisions.

28. (1) Payment institutions that have been granted a licence to provide payment services as referred to in paragraph (7) of the Annex of Directive 2007/64/EC shall retain that licence for the provision of those payment services which are considered to be payment services as referred to in paragraph 2(c) of the Second Schedule where, by 13 January 2020, the competent authority has evidence that the requirements set out in paragraph (c) of Articles 7 and 9 of the Payment Services Directive are satisfied.

(2) Legal persons that, before 12 January 2016, have performed in Malta activities of payment initiation service providers and account information service providers, shall, until eighteen months after the date of entry into force of the regulatory technical standards referred to in Article 98 of the Payment Services Directive, not be prohibited from continuing to perform such activities in Malta in accordance with the applicable regulatory framework.

(3) Until individual account servicing payment service providers comply with the regulatory technical standards referred to in sub-article (2), account servicing payment service providers shall not block or obstruct the use of payment initiation services or account information services for the account that they are servicing.

(4) Financial institutions in possession of a licence on the entry into force of this Act are required to include a statement that the financial institution is licensed or registered, as applicable, by the competent authority, together with the address of the competent authority in any form or medium of marketing activity or communication disseminated to the public, by any other means considered appropriate within three months after the entry into force of this article."

**74.** The First Schedule to the principal Act shall be amended as follows: Amendment of the First Schedule to the principal Act.

(a) in item (1) thereof, for the words "commercial transactions including forfeiting);" there shall be substituted the words "commercial transactions including forfaiting);";

(b) in item (4) thereof, for the words "Payment services as defined" there shall be substituted the words "Payment services set out";

(c) in item (7)(e) thereof, for the words "transferable instruments" there shall be substituted the words "transferable securities".

**75.** The Second Schedule annexed to the principal Act shall be amended as follows: Amendment of the Second Schedule to the principal Act.

(a) the objective thereof shall be substituted by the following:

"Objective. The purpose of this Schedule is to set out the regulatory framework under which payment services as referred to in the First Schedule, may be carried out.";

(b) paragraph (1) thereof shall be deleted;

(c) paragraph (2) thereof shall be substituted by the following:

"List of Activities. 2. The following activities shall be considered as payment services:

(a) services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;



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(b) services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

(c) execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(d) execution of payment transactions where the funds are covered by a credit line for a payment service user:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(e) issuing of payment instruments and, or acquiring of payment transactions;

(f) money remittance;

(g) payment initiation services; and

(h) account information services.";

(d) paragraph (3) thereof shall be substituted by the following:

"3. Apart from the provision of payment services, payment institutions may engage in the following activities:

(a) The provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services strictly in relation to payment services, safekeeping activities, and storage and processing of data;

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(b) The operation of payment systems, without prejudice to Article 35 of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act;

(c) Without prejudice to any applicable European Union or national law, and without prejudice to the provisions of article 5(6), business activities other than the provision of payment services;

(d) Payment institutions may grant credit related to payment services referred to in paragraph (1)(d) or (e) of this Schedule only if the following requirements are met:

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction;

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months;

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

(iv) the own funds of the payment institution are at all times and, to the satisfaction of the competent authority, appropriate in view of the overall amount of credit granted.";

(e) immediately after paragraph (3) thereof there shall be added the following new paragraphs:

"4. When payment institutions engage in the provision of one or more payment services, they may only hold payment accounts used exclusively for payment transactions.

5. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2."

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Amendment of  
the Third  
Schedule to the  
principal Act.

**76.** Paragraph (1) of the Third Schedule to the principal Act shall be deleted.

**PART III  
AMENDMENTS TO THE MALTA FINANCIAL  
SERVICES AUTHORITY ACT**

Amendments to  
the Malta  
Financial  
Services  
Authority Act.  
Cap. 330.

**77.** This Part amends the Malta Financial Services Authority Act and it shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as "the principal Act".

Addition of  
article 2A to the  
principal Act.

**78.** Immediately after article 2 of the principal Act there shall be added the following new article:

"2A. In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail."

Amendment of  
article 3 of the  
principal Act.

**79.** Immediately after sub-article (2) of article 3 of the principal Act there shall be added the following new sub-articles:

"(3) Save as expressly provided for in this Act or in any other Act administered by the Authority, the Authority shall act independently and shall not seek or take instructions from any other body or person.

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(4) The provisions of article 72 of the Financial Administration and Audit Act shall not apply to the Authority."

Amendment of  
article 4 of the  
principal Act.

**80.** Immediately after paragraph (g) of sub-article (1) of article 4 of the principal Act there shall be added the following new paragraph:

"(gA) to provide and foster further training, knowledge and education on all matters relating to financial services;"

Amendment of  
article 7 of the  
principal Act.

**81.** In sub-article (1) of article 7 of the principal Act, the words "but in no case not less frequently" shall be substituted by the words "but in any case not less frequently".

Amendment of  
article 16 of the  
principal Act.

**82.** Article 16 of the principal Act shall be amended as follows:

(a) paragraph (b) of sub-article (2) thereof shall be substituted by the following:

"(b) issue a directive in writing requiring a person to do or to refrain from doing any act, including such prohibitions, restrictions and conditions as may be specified in the directive; and any person to whom or to

which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive;"

(b) immediately after paragraph (b) of sub-article (2) there shall be added the following new paragraph:

"(c) appoint a qualified person or otherwise require a person to appoint a qualified person, whenever it deems it necessary or expedient, to carry out such tasks under such terms and conditions as the Authority may direct. All fees and expenses to be charged by the qualified person in relation to, or incidental to such appointment, shall be paid by the person in relation to whom the qualified person is appointed, unless determined otherwise by the Authority. The Authority may issue Rules or guidelines laying down the procedures and requirements relating to such appointment; and such Rules may also lay down the powers, duties and obligations of the qualified person.";

(c) immediately after sub-article (2) thereof, as amended, there shall be added the following new sub-article:

"(2A) (a) Without prejudice to the powers conferred to the Authority under this Act or any other law, the Authority may appoint a skilled person to assist it in the fulfilment of any of its functions under this Act or any other law.

(b) Where a skilled person is appointed in terms of this sub-article, the following provisions shall apply:

(i) any person appointed as a skilled person shall be a person who, in the opinion of the Executive Committee, possesses the expertise necessary to provide the assistance required by the Authority in terms of his appointment;

(ii) the person in relation to whom the skilled person is appointed shall co-operate with the skilled person and provide any information and documentation, as may be required, by such skilled person in the fulfilment of his appointment;

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(iii) where such skilled person is appointed in relation to a particular person, the Authority may require such person to pay all fees and expenses charged by the skilled person;

(iv) the Authority may require the skilled person, *inter alia*, to provide it with a report relating to the assistance provided to the Authority in terms of his appointment; and

(v) a report drawn up by the skilled person in terms of sub-paragraph (iv) and endorsed by the Authority in writing, shall for all purposes have the same effect as a document drawn up by the Authority:

Provided that where a skilled person is appointed to draw up an independent report, this provision shall not apply with respect to such independent report."

#### **PART IV AMENDMENTS TO THE FINANCIAL MARKETS ACT**

Amendments to  
the Financial  
Markets Act.  
Cap. 345.

**83.** This Part amends the Financial Markets Act, and it shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as "the principal Act".

Addition of  
article 20A to  
the principal  
Act.

**84.** Immediately after article 20 of the principal Act, there shall be added the following new article:

"Power to issue  
directives.

20A. (1) Without prejudice to any of the powers conferred on it under this Act, the Listing Authority may, whenever it deems it necessary, give by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or subsequent directives.

(2) The power to issue directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue subsequent new directives.

(3) Where the Listing Authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

(4) Any person to whom or to which a directive is given under this article may appeal against such directive to the Tribunal in accordance with Part VI of this Act."

**85.** In sub-article (1) of article 42 of the principal Act, the words "under articles 4(11), 16(9), 17(3), 18(6), 20(4), 27A" shall be substituted by the words "under articles 4(11), 16(9), 17(3), 18(6), 20(4), 20A(4), 27A".

Amendment of article 42 of the principal Act.

## **PART V AMENDMENTS TO THE COMPANIES ACT**

**86.** This Part amends the Companies Act, and it shall be read and construed as one with the Companies Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Companies Act.  
Cap. 386.

**87.** In sub-article (2) of article 180 of the principal Act, the words "not be required to be sent to a debenture holder who is not entitled to receive notices of general meetings." shall be substituted by the words:

Amendment of article 180 of the principal Act.

"not be required to be sent to:

(a) a debenture holder who is not entitled to receive notices of general meetings; and

(b) members of a company who have been duly given notice of a general meeting of the company at which the company's annual accounts shall be laid in accordance with article 181, and where the company has made available to its members an electronic copy of such annual accounts, either on its website or otherwise, and has informed its members accordingly:

Provided that the company shall provide a printed copy of such annual accounts to any member upon written request."

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Passed by the House of Representatives at Sitting No. 248 of the  
10th July, 2019.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*





