

I assent.

(L.S.)

GEORGE ABELA  
President

24th December, 2013

**ACT No. XX of 2013**

*AN ACT to make provision with respect to company service providers and to provide for matters ancillary or incidental thereto, and 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:-

**PART I**

1. (1) The short title of this Act is the Company Service Providers Act, 2013. Short title and scope.

(2) The purpose of this Act is to implement Article 36 of Directive 2005/60/EC of the European Parliament and of the Council of 29 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in so far as the said article applies to company service providers.

(3) For the purposes of Article 36 of Directive 2005/60/EC referred to in sub-article (2), the Malta Financial Services Authority established in terms of article 3 of the Malta Financial Services Authority Act shall be the competent authority responsible for the registration and supervision of company service providers. Cap. 330.

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Interpretation.

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

"approved jurisdiction" means an EEA State or an EU Member State or any other jurisdiction which has an equal or comparable level of regulation regarding company service providers to that in Malta;

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"the Authority" means the Malta Financial Services Authority established in terms of the Malta Financial Services Authority Act;

"company service provider" means any natural or legal person which, by way of business, provides any of the following services to third parties:

(a) formation of companies or other legal entities;

(b) acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;

(c) provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity;

"Minister" means the Minister responsible for finance;

"operating in or from Malta" includes the existence of an office, branch, or other centre of professional or commercial activities of a regular nature in Malta, and does not include one or more unconnected and sporadic acts;

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"overseas regulatory authority" means an authority in any country or territory outside Malta which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the Authority as defined in the Malta Financial Services Authority Act;

"prescribed" means prescribed by regulations made under this Act;

"registered person" means a person in relation to whom a registration to act as a company service provider has been issued by the Authority in terms of this Act.

(2) Any reference in this Act to any law, or provision thereof, shall be construed as a reference to that law or provision as from time to time in force, and shall include a reference to any enactment replacing such law or provision, and to any subsidiary legislation made thereunder.

(3) Words and expressions used in this Act with reference to any other law shall, so far as necessary to give effect to this Act and consistently with the provisions thereof, have the same meaning as they have in the law with reference to which they are used in the Act.

(4) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

3. (1) Any person resident or operating in or from Malta who acts as a company service provider by way of business, shall apply for registration with the Authority in terms of this Act:

Requirement of registration for company service providers.

Provided that the following persons shall not be required to be registered with the Authority in terms of this Act:

(a) a person in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant; and

(b) a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act. Cap. 331.

(2) A person in possession of another licence, authorisation or recognition in terms of the Investment Services Act who intends providing company services by way of business shall apply for registration and, in such case, the Authority shall consider any due diligence process already carried out by it. Cap. 370.

(3) The persons referred to in sub-article (1)(a) and (b) shall notify the Financial Intelligence Analysis Unit established under the Prevention of Money Laundering Act, that they are acting as company service providers by way of business and that they are not required to register with the Authority under this Act. Cap. 373.

(4) In the event of reasonable doubt as to whether the carrying out of a particular activity would be subject to registration in terms of this Act, the matter shall be conclusively determined by the Authority.

(5) (a) Any person having a licence or registration to provide company service, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to registration under this Act, provided that such person notifies the Authority, in writing, of its intention to provide company service in Malta at least forty-five days prior to commencing such activities in Malta and that such person receives from the Authority a confirmation in writing that it does not object thereto.

(b) A notification under this sub-article shall outline the proposed activities and shall be accompanied by such information as may be required by the Authority from time to time.

(c) To the extent that the Authority lays down any restrictions or conditions for such activities, on initial response to a notification or at any other time, such restrictions and conditions shall come into effect as stated in the response or by subsequent notice of the Authority.

Application for registration.

**4.** An application for registration as a company service provider in terms of article 3 shall be made to the Authority and shall:

(a) contain or be accompanied by such information and particulars and be in such form as the Authority may require;

(b) be verified in the manner and to the extent required by the Authority;

(c) indicate the address in Malta for service on the applicant for registration, of any notice or other document required or authorised to be served on him in terms of this Act; and

(d) be accompanied by a non-refundable application fee, as may be prescribed, irrespective of whether the registration is granted or not by the Authority.

Power of the Authority to refuse or grant a registration.

**5.** (1) The Authority may register or refuse an application for registration made under this Act. Such registration may be general or may be restricted to particular specified activities. The Authority shall not, without prejudice to article 3, grant a registration applied for under this Act unless it is satisfied that:

(a) the applicant is a fit and proper person to provide the services concerned and that the applicant will comply with and observe the requirements of this Act and any rules made thereunder and which are applicable to him;

(b) where the applicant is a natural person, such person is resident or operating in Malta;

(c) where the applicant is a company or other type of legal entity:

(i) its objects include acting as company service provider and carrying on activities ancillary or incidental thereto, and do not include objects which are not

compatible with the services of a company service provider;

(ii) its actual activities are compatible with its objects in terms of sub-paragraph (i);

(iii) the directors of the company are not less than two in number and are individuals who are fit and proper persons;

(iv) every person who directly or indirectly owns or controls 25% or more of the shares or voting rights in the company, or otherwise exercises control over the management of the company, is a fit and proper person;

(v) the name of the company is not inconsistent with its activities as outlined in sub-paragraphs (i) and (ii); and

(vi) where the company is not formed and registered in Malta, it is formed, constituted or incorporated in a reputable jurisdiction. For the purposes of this sub-paragraph, reputable jurisdiction shall have the meaning assigned to it in the Prevention of Money Laundering and Funding of Terrorism Regulations. S.L. 373.01.

(2) When considering whether to grant or refuse to grant a registration under this Act, the Authority shall, in particular, have regard to:

(a) the protection of investors and the general public;

(b) the protection of the reputation of Malta taking into account Malta's international commitments;

(c) the promotion of competition and choice.

(3) In granting registration, the Authority may subject the applicant to such conditions as it may deem appropriate. After having granted registration, the Authority may, from time to time, vary or revoke any condition so imposed or otherwise impose new conditions.

(4) The Authority shall notify any applicant of its decision whether to grant or refuse registration applied for, within six months from the receipt of a complete application, accompanied by the prescribed application fee and made in accordance with the applicable provisions of this Act and any rules made thereunder.

(5) Any person to whom a registration has been granted in terms of this Act shall be subject to a registration fee as may be prescribed, which is payable on the date on which such registration is granted and, thereafter, to a supervisory fee, as may be prescribed, which is payable annually upon the anniversary of the date of such registration.

(6) A register of all company service providers to whom registration has been granted in terms of this Act shall be established by the Authority. The register shall be publicly available on the Authority's website and shall indicate the names of the persons to whom such registration has been granted, as well as their contact details, and it shall be updated on a regular basis.

(7) A company service provider shall notify the Authority of any change or circumstance which would have a bearing upon its status as a registered person and, in the case of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, or any change of its directors or members, such changes shall not be effective until they are notified and approved by the Authority.

Power of the  
Authority to  
cancel  
registration.

**6.** (1) The Authority may, at any time, cancel a registration granted in terms of this Act where:

(a) the registered person is no longer deemed to be a fit and proper person;

(b) the registered person has contravened any of the provisions of this Act or any rules made thereunder or has failed to satisfy or comply with any obligation or condition to which such registered person or the registration is subject by virtue of this Act and any rules issued thereunder;

(c) the registered person or someone acting on behalf of such registered person has knowingly supplied the Authority with information that is false, inaccurate or misleading;

(d) the registered person has ceased to act as a company service provider;

(e) the cancellation of such registration is considered desirable for the protection of the general public or the reputation of Malta;

(f) the registered person has so requested; or

(g) there are other circumstances under which the

Authority would have been precluded from granting registration under this Act or where the Authority would have otherwise refused the granting of such registration.

(2) The Authority shall make public the fact that the registration of a company service provider has been cancelled.

(3) Any person whose registration has been cancelled shall, within sixty days from the date of the cancellation of the registration, ensure that the services he had been providing to companies or other legal persons in terms of its registration are transferred to another person which is duly registered in terms of this Act.

7. (1) Where the Authority intends -

Notification of proposed refusal or cancellation of registration.

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

(b) to refuse an application for the registration or to cancel a registration,

it shall give the applicant or the registered person, as the case may be, a notice in writing of this intention, setting out the reasons for such decision.

(2) A notice given under sub-article (1) shall state that the recipient of the notice may, within such reasonable period of time after receipt thereof as may be stated in such notice, being a period of not less than forty-eight hours and not longer than thirty days, make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a decision.

(3) The Authority shall, as soon as practicable, notify its final decision in writing to the applicant or the registered person, as the case may be.

8. (1) The Authority may issue rules applicable to company service providers as may be required, for the carrying into effect of this Act and may, in particular, but without prejudice to the generality of the foregoing, by such rules:

Power of the Authority to issue rules.

(a) lay down requirements, conditions and criteria for the carrying out of activities by company service providers;

(b) lay down the conduct, duties and obligations of company service providers;

(c) lay down the responsibilities of company service providers towards the Authority and provide for the form of applications, returns, statements or notices to be made or given to the Authority;

(d) lay down the criteria which the Authority shall take into account when determining whether a person is a fit and proper person for the purpose of this Act, including an indication of the type and nature of academic qualifications and experience as well as the additional areas of expertise which would be acceptable to the Authority when determining whether a person qualifies to be a fit and proper person;

(e) lay down the criteria as to when a person shall be deemed by the Authority to be carrying on the activities of a company service provider by way of business;

(f) provide for any other matters as the Authority may consider appropriate in relation to company service providers and the conduct of their activities.

(2) Such rules shall be binding on company service providers.

Administrative  
penalties and  
other measures.

9. (1) Where the Authority is satisfied that a registered person's conduct amounts to a breach of any of the provisions of this Act or of the rules issued thereunder, including failure to cooperate in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on the registered person and, or any other person, as the case may be, an administrative penalty which may not exceed twenty-five thousand euro (€25,000) for each infringement or failure to comply, as the case may be.

(2) An administrative penalty imposed in terms of sub-article (1) may be imposed in the form of a fixed penalty, a daily penalty or both:

Provided that when an administrative penalty in terms of sub-article (1) is imposed on a daily cumulative basis, such accumulated penalty shall not exceed twenty-five thousand euro (€25,000).

(3) The imposition by the 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.

(4) The Authority shall, by means of a public statement, disclose the name of the person sanctioned, the particular breach of

the provision of this Act or the rules, and the penalty or administrative measure imposed.

## REGULATORY AND INVESTIGATIVE POWERS

**10.** (1) Notwithstanding any other provision of this Act, the Authority may, by notice in writing, require any person who is or who was acting, or who appears to be or to have been acting, as a company service provider or who was providing services which require registration according to this Act, and any other person who appears to be in possession of relevant information, to do all or any of the following:

Power to require information.

(a) to furnish to the Authority, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such activities as aforesaid;

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

(c) to attend before the 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 with respect to any such activities as aforesaid.

(2) The Authority may take copies of any documents furnished or provided under this article.

(3) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the Authority where, to the best of his knowledge, that information or documentation is, and the Authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation, as well as against any person to whom they relate.

(5) Without prejudice to that provided in article 642(1) of the Criminal Code and in article 588(1) of the Code of Organization and Civil Procedure, the provisions of this article shall apply to all information or documentation, notwithstanding the provisions of the Professional Secrecy Act.

Cap. 9.

Cap. 12.

Cap. 377.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the Authority has appointed a person under sub-article (1)(c), such person shall, for the purposes of carrying out the functions in relation to such appointment, have all the powers conferred on the Authority by this article and a requirement made by such appointed person shall be deemed to be and have the same force and effect as a requirement of the Authority.

Power to issue directives.

**11.** (1) Without prejudice to any of the powers conferred on it by this Act, the Authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances. 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.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any person having functions of a company service provider be removed or replaced by another person acceptable to the Authority;

(c) require a company service provider to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered company service provider.

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

(4) Where the 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.

**12.** (1) In relation to company service providers, the provisions of article 17 of the Malta Financial Services Authority Act shall apply *mutatis mutandis*.

Exchange of information and collaboration.  
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(2) The Authority may exercise the powers granted to it by virtue of this Act at the request of, or for the purposes of, assisting an overseas regulatory authority:

(a) where the assistance is required by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta's international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request under a memorandum of understanding concluded with the Authority.

**13.** (1) Any officer, employee or agent of the Authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under this Act 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 upon it.

Right of entry.

(2) Where any officer, employee or agent of the Authority 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, even though a notice in terms of sub-article (1) has not been served, on producing, if required, evidence of his authority, enter 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 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 offences and the enforcement of law and order.

**14.** (1) The Minister may, on the advice of the Authority, make regulations for the better carrying out of any of the provisions of this Act, and may, in particular, but without prejudice to the

Power to make regulations.

generality of the foregoing, by any such regulations:

(a) further regulate the activities of company service providers as well as the services provided and activities carried on or in conjunction therewith or in relation thereto, providing for any matter deemed expedient;

(b) exempt any activities or classes of persons from the requirements of articles 3 and 4 and impose conditions deemed fit for eligibility for exemption;

(c) provide for and regulate the payment by any person, as the case may be, of application, registration or supervisory fees and such other charges payable to the Authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(d) transpose, implement and 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 relating to corporate service providers and others as may be specified therein or to any other matter falling within the terms of this Act;

(e) provide that any provision in any other law shall not apply to matters falling under the regulations;

(f) prescribe any matter that may be or is to be prescribed.

(2) Regulations made under the provisions of this Act may be made in the English language only.

## SANCTIONS AND APPEALS

Offences.

**15.** (1) Any person who contravenes or fails to comply with any of the provisions of this Act, or contravenes or fails to comply with any registration, condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any rules or regulations made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any

material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(4) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

(5) Any person who acts or purports to act as a company service provider in Malta without being registered to do so by the Authority, when so required in terms of this Act, shall be guilty of an offence.

(6) Any person who is guilty of an offence under sub-articles (1), (2), (3), (4) and, or (5) and saving any higher punishment which may be provided under any other law, shall be liable, on conviction, to a fine (*multa*) not exceeding four hundred and sixty-six thousand euro (€466,000) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

(7) Where an offence in terms of sub-articles (1) to (5) is committed by a body or other association of persons, be it corporate or unincorporated, every person who at the time of the commission of the offence was a director, manager or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(8) Without prejudice to sub-article (7), where the offence is committed by a body or other association of persons, be it corporate or unincorporated, or by a person within and for the benefit of that body or other association of persons, such body or association, these shall also be liable to an administrative penalty which may not exceed twenty-five thousand euro (€25,000).

**16.** (1) In this article, the Financial Services Tribunal means the tribunal established under article 21 of the Malta Financial Services Authority Act. Appeals. Cap. 330.

(2) Subject to the provisions of this Act, an appeal shall lie to the Financial Services Tribunal with respect to:

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(a) any failure to inform an applicant or a registered company service provider of the refusal of its application or of the cancellation of its registration in terms of article 7;

(b) any administrative penalty imposed under article 9 and article 15(8);

(c) any refusal of an application for registration or cancellation of registration in terms of articles 5 and 6;

(d) any directive given under article 11 or under article 16(2)(b) of the Malta Financial Services Authority Act;

(e) the variation of any condition or the imposition of any new condition in terms of article 7.

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(3) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Financial Services Tribunal in terms of this article.

#### DISQUALIFICATION AS A COMPANY SERVICE PROVIDER

Persons not qualified to act as company service providers.

**17.** A person shall not qualify for registration as a company service provider if such person:

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(a) is subject to any of the disqualifications under article 142(1) of the Companies Act;

Cap. 330.  
Cap. 370.  
Cap. 371.  
Cap. 376.  
Cap. 487.  
Cap. 345.  
Cap. 403.  
Cap. 476.  
Cap. 373.  
Cap. 331.

(b) has been convicted of any of the offences under the Malta Financial Services Authority Act, the Investment Services Act, the Banking Act, the Financial Institutions Act, the Insurance Intermediaries Act, the Financial Markets Act, the Insurance Business Act, the Prevention of Financial Markets Abuse Act, the Prevention of Money Laundering Act, the Trusts and Trustees Act, and any regulations made thereunder;

(c) is a minor; or

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(d) is subject to a disqualification order under article 320 of the Companies Act.

#### TRANSITORY PROVISIONS

Transitory provisions.

**18.** (1) Any person who, on the date of the coming into force of this Act, is carrying out the services of a company service provider within the meaning of this Act, shall, within three months from the date of coming into force of this Act, apply to the Authority for registration in terms of article 4.

(2) The Authority shall accept all the applications referred to in sub-article (1) and shall process the said applications within six months from the receipt of a complete application, including receipt of all supporting documentation and fees as may be required by the Authority in processing such application.

## PART II

### AMENDMENTS TO THE MALTA FINANCIAL SERVICES AUTHORITY ACT

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

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

**20.** In sub-article (2) of article 4 of the principal Act, for the words "international organisations and other entities", there shall be substituted the words "international organisations, with the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and colleges of supervisors, the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board (ESRB) and other entities".

Amendment of article 4 of the principal Act.

**21.** Immediately after sub-paragraph (ii) of paragraph (a) of sub-article (2) of article 16 of the principal Act, there shall be added the following new proviso:

Amendment of article 16 of the principal Act.

"Provided that such Rules shall be binding on licence holders and others as may be specified therein;"

**22.** Article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

(a) in sub-article (2) thereof:

(i) paragraph (b) thereof shall be renumbered as paragraph (c); and

(ii) immediately after paragraph (a) thereof, there shall be added the following new paragraph:

"(b) local or overseas enforcement or regulatory authorities, bodies or other entities, or a network or grouping comprising such local or overseas enforcement or regulatory authorities, bodies or other entities, or both, for the purpose of preventing, detecting, investigating or prosecuting

the commission of acts that amount to or are likely to amount to a criminal offence under any law or to an offence or breach of a regulatory nature, whether in Malta or overseas;"

(b) sub-article (3) thereof shall be renumbered as sub-article (4);

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

"(3) The obligation of professional secrecy shall not prevent the Authority from exchanging or transmitting confidential information to the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and colleges of supervisors, to the European Insurance and Occupational Pensions Authority (EIOPA), or to the European Systemic Risk Board (ESRB), subject to conditions and restrictions emanating from European Union legislation."; and

(d) in sub-article (4) thereof, as renumbered, for the words "with overseas regulatory authorities shall be treated as confidential" there shall be substituted the words "with overseas regulatory authorities or other bodies as provided for in this article shall be treated as confidential".

Amendment of  
article 18 of the  
principal Act.

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

(a) for the marginal note "Communications with the Central Bank of Malta." there shall be substituted the words "Communications with the Central Bank of Malta and other bodies."; and

(b) in sub-article (2) thereof, for the words "disclose information to overseas central banks and other authorities responsible for monetary policy" there shall be substituted the words "disclose information to overseas central banks, the European System of Central Banks, the European Central Bank and other authorities responsible for monetary policy".

**PART III****AMENDMENTS TO THE FINANCIAL MARKETS ACT**

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

Amendments to the Financial Markets Act. Cap. 345.

**25.** 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 after the definition "EEA State" there shall be added the following new definitions:

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;" and

(b) immediately after the definition "overseas regulatory authority" there shall be added the following new definition:

" "Prospectus Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

**26.** In the marginal note to article 4 of the principal Act, for the words "Application for recognition." there shall be substituted the words "Application for authorisation."

Amendment of article 4 of the principal Act.

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

Amendment of article 8 of the principal Act.

(a) in sub-article (2) thereof, for the words "the recognition order", there shall be substituted the words "the authorisation order"; and

(b) immediately after sub-article (4) thereof, there shall

be added the following new sub-article:

"(5) The competent authority shall notify ESMA of any revocation order."

Addition of new article to the principal Act.

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

"Competent authority to draw up list when it is the home Member State of a regulated market.

10B. The competent authority shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States, EEA States and ESMA. A similar communication shall be effected in respect of each change to that list."

Amendment of article 11 of the principal Act.

**29.** Article 11 of the principal Act shall be amended as follows:

(a) in paragraph (e) thereof, for the words "Takeover Bids Directive.", there shall be substituted the words "Takeover Bids Directive;"; and

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

"(f) to cooperate with ESMA for the purposes of the Prospectus Directive, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010."

Amendment of article 16 of the principal Act.

**30.** Immediately after sub-article (9) of article 16 of the principal Act there shall be added the following new sub-article:

"(10) The Listing Authority shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the applicant, and shall provide ESMA with a copy of such prospectus and any supplement thereto."

Amendment of article 17 of the principal Act.

**31.** In paragraph (c) of sub-article (1) of article 17 of the principal Act, for the words "and inform the European regulatory authorities", there shall be substituted the words "and inform ESMA and the European regulatory authorities".

Addition of new articles to the principal Act.

**32.** Immediately after article 21 of the principal Act, there shall be added the following new articles:

"Cooperation with other European regulatory authorities.

21A. The Listing Authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties and exercising its powers under the Prospectus Directive and the Transparency Directive. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory or supervisory function.

Reference of cases to ESMA.

21B. The Listing Authority may refer to ESMA cases where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Obligation of professional secrecy.

21C. The obligation of professional secrecy shall not prevent the Listing Authority from exchanging confidential information or from transmitting confidential information to other European regulatory authorities, ESMA or ESRB, subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No 1095/2010 and Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board respectively. Information exchanged between the Listing Authority and other European regulatory authorities, ESMA or the ESRB shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authority receiving the information are subject.

Notification to ESMA.

21D. The Listing Authority shall notify ESMA of any cooperation agreements it enters into providing for the exchange of information with the regulatory authorities or bodies enabled by their respective legislation to carry out tasks under the Transparency Directive."

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Amendment of  
article 49 of the  
principal Act.

**33.** Sub-article (1) of article 49 of the principal Act shall be amended as follows:

(a) in paragraph (e) thereof, for the words "including any implementing measures that have been or may be issued thereunder and relating to credit rating agencies, regulated markets and, or the admissibility to listing of financial instruments thereon and others as may be specified therein or to any other matter falling within the terms of this Act.", there shall be substituted the words "including any implementing measures that have been or may be issued thereunder, and including those relating to credit rating agencies, regulated markets, commodities markets, central counterparties, central securities depositories, market making, short selling, transactions in OTC derivatives, trade repositories and, or the admissibility to listing of financial instruments thereon and others as may be specified therein or to any other matter falling within the terms of this Act;"; and

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

"(f) to regulate the operation and, or registration of central counterparties operating in or from Malta."

#### **PART IV**

#### **AMENDMENTS TO THE INVESTMENT SERVICES ACT**

Amendments to  
the Investment  
Services Act.  
Cap. 370.

**34.** This Part amends and shall be read and construed as one with the Investment Services Act, hereinafter in this Part referred to as "the principal Act".

Amendment of  
article 2 of the  
principal Act.

**35.** Article 2 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) immediately before the definition "collective investment scheme" there shall be added the following new definitions:

" "Alternative Investment Fund or AIF" means a collective investment scheme, including subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS

Directive;

"Alternative Investment Fund Manager or AIFM" means a legal person whose regular business is the management of one or more AIFs;

"AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(ii) for the definition "competent authority" there shall be substituted the following:

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

(iii) immediately after the definition "competent authority" there shall be inserted the following new definitions:

" "the 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 amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"the 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 amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

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

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;"

(v) immediately after the definition "European investment firm", there shall be added the following new definition:

" "European management company" has the same meaning assigned to it in regulations made under this Act;"

(vi) for the definition "European regulatory authority", there shall be substituted the following:

" "European regulatory authority" means the body or bodies designated by a Member State or EEA State other than Malta in accordance with Article 44 of the AIFM Directive, Article 48 of the MIFID Directive and Article 97 of the UCITS Directive to carry out each of the duties provided for under the different provisions of the said Directives;"

(vii) immediately after the definition "regulated market", there shall be added the following new definition:

" "Regulation (EU) No 1095/2010" refers to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC; and

(viii) immediately after the definition "subsidiary", there shall be added the following new definition:

" "UCITS" means undertakings for collective investment in transferable securities in terms of the UCITS Directive as defined herein"; and

(b) in sub-article (3) thereof, for the words "implement the provisions of the MIFID Directive and the UCITS Directive", there shall be substituted the words "implement the provisions of the AIFM Directive, the MIFID Directive and the UCITS Directive, and any EU Regulations or Directives on financial services".

**36.** Article 2A of the principal Act shall be renumbered as sub-article (1) of the said article, and immediately after sub-article (1) there shall be added the following new sub-articles:

Amendment of article 2A of the principal Act.

"(2) The competent authority shall also carry out the duties as competent authority for all purposes of the AIFM Directive, the MIFID Directive and the UCITS Directive, and the Commission of the European Union, ESMA and European regulatory authorities shall be informed accordingly.

(3) Without prejudice to any other duty arising from this Act, the AIFM Directive, the MIFID Directive or the UCITS Directive, the competent authority shall:

(a) notify ESMA of the complaint and redress procedures which are available in Malta;

(b) notify the Commission of the European Union, ESMA and the other European regulatory authorities that it is the contact point in terms of article 17(1) and that it is the authority designated to receive requests for exchange of information or cooperation in terms of this Act;

(c) send to ESMA and to the Commission of the European Union, a list of the categories of bonds referred to in Article 54(1) of the UCITS Directive together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in Article 54 of the UCITS Directive. A notice specifying the status of the guarantees offered shall be attached to those lists;

(d) ensure that all information received under the third paragraph of Article 51 of the UCITS Directive aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of Regulation (EU) No 1095/2010, and ESRB in accordance with Article 15 of Regulation (EU) No 1092/2010 for the purpose of monitoring systemic risks at European Union level;

(e) subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, provide ESMA and the ESRB with aggregated information relating to the activities of AIFMs under their responsibility;

(f) provide ESMA and other European regulatory authorities with any information required for the purposes of carrying out its duties under the AIFM Directive."

Amendment of article 6 of the principal Act.

**37.** Immediately after sub-article (9) of article 6 of the principal Act, there shall be added the following new sub-article:

"(10) The competent authority shall notify ESMA whenever an investment services licence has been granted by the competent authority in terms of this article."

Amendment of article 7 of the principal Act.

**38.** Article 7 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof -

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

"(c) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading, or if the licence holder has obtained the licence by making false statements or by any other irregular means; or";

(ii) in paragraph (f) thereof, for the words "licence holder;", there shall be substituted the words "licence holder; and";

(iii) in paragraph (g) thereof, for the words "of such licence; and", there shall be substituted the words "of such licence."; and

(iv) paragraph (h) thereof shall be deleted; and

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

"(4) The competent authority shall notify ESMA of any cancellation of an investment services licence in terms of sub-article (1).".

**39.** Sub-article (1) of article 12 of the principal Act shall be amended as follows:

Amendment of  
article 12 of the  
principal Act.

(a) in paragraph (k) thereof, for the words "the MIFID Directive and the UCITS Directive;", there shall be substituted the words "the AIFM Directive, the MIFID Directive, and the UCITS Directive;";

(b) in paragraph (l) thereof, for the words "to transpose, implement and give effect to the provisions of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), as may be amended from time to time, and including any implementing measures issued thereunder;", there shall be substituted the words "to transpose, implement and give effect to the provisions of the CRD and the CRR, as may be amended from time to time, including the provision of implementing technical standards as specified therein; regulate the supervision on a consolidated basis, provide for the consultation, co-ordination, co-operation and the sharing and exchange of information with European regulatory authorities and other third country regulatory authorities as may be necessary; provide for the exchange of information with the European Systemic Risk Board, central banks which are members of the European System of Central Banks, including the Central Bank of Malta, exchange of information with the European Banking Authority and the European Securities and Markets Authority, and exchange of information with other departments of government administrations in other Member States responsible for law on the supervision of institutions, financial institutions and insurance undertakings and with inspectors acting on behalf of those departments; provide for the establishment of colleges of supervisors; provide for the exercise of powers by the Authority on investment firms, credit institutions, financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, as may be defined in the said regulations; provide for the establishment and imposition of

administrative penalties on licence holders or others as specified therein or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Financial Services Tribunal; provide for the obligations of the competent authority to report to the European Banking Authority, the European Commission and the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority as may be specified in the said regulations;"; and

(c) in paragraph (n) thereof, for the words "as may be specified therein or to any other matter falling within the terms of this Act and for this purpose to provide that any provision in any other law shall not apply to matters falling under the regulations, and, in particular, may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of the Companies Act, such provisions shall prevail, and the provisions of the Companies Act shall, to the extent of the inconsistency, not apply;", there shall be substituted the words "as may be specified therein; regulations made under this paragraph, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;".

Amendment of  
article 13 of the  
principal Act.

**40.** Sub-article (1) of article 13 of the principal Act shall be amended as follows:

(a) paragraph (v) thereof shall be renumbered as paragraph (vi); and

(b) immediately after paragraph (iv) thereof, there shall be added the following new paragraph:

"(v) an auditor of a licence holder; or".

Amendment of  
article 15 of the  
principal Act.

**41.** Sub-article (2) of article 15 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "or any other requirement," there shall be substituted the words "or any other requirement, including any requirement emanating from European Union legislation,";

(b) in paragraph (c) thereof, for the words "in relation to

the holder of a licence be removed or removed and replaced"; there shall be substituted the words "in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed or removed and replaced";

(c) paragraphs (f) and (g) thereof shall be renumbered as paragraphs (g) and (h) respectively;

(d) immediately after paragraph (e) thereof, there shall be inserted the following new paragraph:

"(f) require a licence holder to submit a financial recovery plan, as may be determined in the Investment Services Rules, if it considers that the interest of investors, consumers, creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the licence holder;"

(e) in paragraph (g) thereof, for the words "the implementation of the MIFID Directive and the UCITS Directive;", there shall be substituted the words "the implementation of the AIFM Directive, the MIFID Directive and the UCITS Directive;"

(f) in paragraph (h) thereof, as renumbered, for the words "of the Financial Markets Act.", there shall be substituted the words "of the Financial Markets Act."; and

(g) immediately after paragraph (h) thereof, there shall be inserted the following new proviso:

"Provided that in applying paragraphs (d) and (e), the competent authority may also appoint a competent person to act as liquidator for the purposes of winding up the affairs of a licence holder under this Act; and such person shall be the liquidator of the licence holder for all purposes of law to the exclusion of any other person."

**42.** Immediately after article 15 of the principal Act, there shall be inserted the following new article:

"Power of the competent authority to protect the public interest.

15A. (1) Without prejudice to the powers conferred to the competent authority under this Act, the competent authority may, where it is satisfied that sufficient circumstances exist, proceed to take any one or more of the following measures:

(a) appoint a person to advise the licence holder in the proper conduct of its business;

(b) appoint a person to take charge of the assets of the licence holder, or any portion of them, for the purposes of safeguarding the interests of investors, consumers, creditors or, if any, shareholders, of the licence holder;

(c) appoint a person to assume control of the business of the licence holder, 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;

(d) fix the remuneration to be paid by the licence holder to any person appointed under article 15 or under this article;

(e) do such other act as it may deem appropriate in the circumstances to give better effect to the implementation of the provisions of this article,

and having adopted any one or more of the measures aforesaid, the competent authority may further proceed in any one or more such measures, whether in addition thereto or in substitution therefor.

(2) Where a person is appointed by the competent authority -

(a) under sub-article (1)(a), it shall be the duty of the licence holder to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;

(b) under sub-article (1)(b), the licence holder shall deliver to such person all the assets, whether movable or immovable, of which he is placed in charge, and all the powers, functions and duties of the licence holder in respect of those assets, including, if such licence holder is a legal person, those exercisable by the legal person in a general meeting, or by the directors, or by any other person, including the legal and judicial representation of such legal person, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(c) under subarticle (1)(c), the licence holder shall submit its business to the control of such person and shall provide such person with such facilities as may be required to carry on that business or to carry out the functions assigned to such person under the said paragraph; and all the powers, functions and duties of the licence holder, including, if such licence holder is a legal person, those exercisable by the legal person in a general meeting, or by the directors, or by any other person, including the legal and judicial representation of such legal person in all matters, shall be exercisable by and vest in such person to the exclusion of any other person.

(3) The competent authority may, where it feels it is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any measure taken in terms of this article.

(4) The competent authority may require the licence holder concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article, or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act."

Amendment of  
article 16A of  
the principal  
Act.

**43.** Immediately after sub-article (4) of article 16A of the principal Act, there shall be added the following new sub-articles:

"(5) Where the competent authority has made a public statement in terms of sub-article (4), it shall simultaneously report that fact to ESMA.

(6) The competent authority shall annually provide

ESMA with aggregated information about all the administrative measures and sanctions imposed in accordance with this article and shall upon request provide the necessary information on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the AIFM Directive."

**44.** In article 16B of the principal Act, for the words "any provisions which transpose the MIFID Directive and the UCITS Directive," there shall be substituted the words "any provisions which transpose the AIFM Directive, the MIFID Directive and the UCITS Directive,".

Amendment of article 16B of the principal Act.

**45.** Article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

(a) in sub-article (2) thereof:

(i) for the words "MIFID Directive and the UCITS Directive", wherever they appear in the said sub-article (2), there shall be substituted the words "AIFM Directive, the MIFID Directive and the UCITS Directive";

(ii) for the words "Investment Services Rules issued thereunder.", there shall be substituted the words "Investment Services Rules issued thereunder:", and immediately thereafter there shall be added the following new proviso:

"Provided that the competent authority shall communicate information to other European regulatory authorities where this is relevant for monitoring and responding to the potential implications of the activities of an individual AIFM or AIFMs collectively, for the stability of systemically relevant investment firms and the orderly functioning of markets on which AIFMs are active. ESMA and the ESRB shall be informed accordingly.";

(b) in sub-article (8) thereof, for the words "sub-article (7) and article 26" there shall be substituted the words "sub-article (7) of this article and article 26";

(c) in sub-article (9) thereof:

(i) for the words "contrary to the provisions of the MIFID Directive or the UCITS Directive", there shall

be substituted the words "contrary to the provisions of the AIFM Directive, the MIFID Directive or the UCITS Directive";

(ii) for the words "to the contact point in the other Member State or EEA State.", there shall be substituted the words "to the contact point in the other Member State or EEA State and to ESMA:", and immediately thereafter there shall be added the following new proviso:

"Provided that where the said suspected acts have been or are suspected to have been committed by an AIFM in breach of the AIFM Directive, the competent authority shall also inform the home Member State and the host Member State of the AIFM, as the case may be, in as specific a manner as possible."; and

(d) in sub-article (11) thereof:

(i) for the words "contrary to the provisions of the MIFID Directive or the UCITS Directive", there shall be substituted the words "contrary to the provisions of the AIFM Directive, the MIFID Directive or the UCITS Directive"; and

(ii) for the words "shall inform the notifying European regulatory authority", there shall be substituted the words "shall inform the notifying European regulatory authority and ESMA".

Amendment of  
article 17A of  
the principal  
Act.

**46.** Article 17A of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "or in an investigation:", there shall be substituted the words "or in an investigation in the territory of the latter within the framework of their powers:";

(b) in sub-article (2) thereof:

(i) for the words "in terms of Article 101(5) of the UCITS Directive", there shall be substituted the words "in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive"; and

(ii) for the words "overall control of such Member State.", there shall be substituted the words

"overall control of such Member State on whose territory the said verification or investigation is being conducted."; and

(iii) in paragraph (b) of sub-article (3) thereof, for the words "in terms of Article 101(5) of the UCITS Directive", there shall be substituted the words "in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive".

**47.** Article 17B of the principal Act shall be amended as follows:

Amendment of article 17B of the principal Act.

(a) for the words "designated as contact points under Article 56 (1) of the MIFID Directive, or with European regulatory authorities", there shall be substituted the words "designated as contact points under Article 44 of the AIFM Directive, or with European regulatory authorities designated as contact points under Article 56(1) of the MIFID Directive, or with European regulatory authorities"; and

(b) for the words "In any case above-mentioned, the competent authority shall notify the requesting European regulatory authority accordingly providing as much detailed information as possible for such refusal.", there shall be substituted the words "In the case of such a refusal, the competent authority shall notify the European regulatory authority and ESMA accordingly, providing as detailed information as possible for such refusal.".

**48.** Article 17D of the principal Act shall be renumbered as article 17F.

Renumbering of article 17D of the principal Act.

**49.** Immediately after article 17C of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"Referral to ESMA.

17D. The competent authority may refer to ESMA, situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

(a) to exchange information as provided for in article 17;

(b) to carry out a supervisory activity, an on-site verification or an investigation, as provided for in article 17A; and

(c) to seek authorisation for its officials to accompany those of the European regulatory authority as provided for in article 17A.

Cooperation  
with ESMA.

17E. (1) The competent authority shall cooperate with ESMA for the purposes of the AIFM Directive, the MIFID Directive and the UCITS Directive in accordance with Regulation (EU) No 1095/2010.

(2) In the case of a disagreement between the competent authority and a European regulatory authority on an assessment, action or omission pertaining to either authority, in areas where the AIFM Directive requires cooperation or coordination between authorities from more than one Member State, the competent authority may refer the matter to ESMA.

(3) The competent authority shall, without delay, provide ESMA with all information necessary to carry out its duties under the AIFM Directive, the MIFID Directive and the UCITS Directive in accordance with Article 35 of Regulation (EU) No 1095/2010."

Addition of new  
article to the  
principal Act.

**50.** Immediately after article 17F, as renumbered, of the principal Act, there shall be added the following new article:

"Competent  
authority to  
inform the  
Commission  
and ESMA of  
general  
difficulties.

17G. The competent authority shall inform the Commission of the European Union and ESMA of any general difficulties which:

(a) an investment services licence holder encounters in establishing itself or providing investment services and, or performing investment activities in any overseas country or territory; and

(b) UCITS encounter in marketing their units in any overseas country or territory."

Amendment of  
article 19 of the  
principal Act.

**51.** Sub-article (2) of article 19 of the principal Act shall be amended as follows:

(a) in paragraph (g) thereof, for the words "article 12(5); or", there shall be substituted the words "article 12(5);";

(b) in paragraph (h) thereof, for the words "article 15.", there shall be substituted the words "article 15; or"; and

(c) immediately after paragraph (h) thereof, there shall be inserted the following new paragraph:

"(i) any measure taken in terms of article 15A(1), (2) and (4).".

**52.** Article 26 of the principal Act shall be amended as follows: Amendment of article 26 of the principal Act.

(a) in the first proviso of sub-article (1) thereof, for the words "or market operators:", there shall be substituted the words "or market operators, including the exchange or transmission of confidential information to ESMA or the ESRB:"; and

(b) in sub-article (3) thereof -

(i) for the words "The provisions of this article and of articles 17 and 17D" there shall be substituted the words "The provisions of this article and of articles 17 and 17F"; and

(ii) for the words "performance of their functions:" there shall be substituted the words "performance of their functions. Likewise, the competent authority shall be entitled to the receipt of such information as it may require for the purpose of performing its functions under the MIFID Directive:".

## PART V

### AMENDMENTS TO THE BANKING ACT

**53.** This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Banking Act. Cap. 371.

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

(a) in the definition "consolidating supervisor", for the words "controlled by EU parent financial holding companies;", there shall be substituted the words "controlled by EU parent financial holding companies or EU parent mixed financial holding companies;"

(b) immediately after the definition "director" there shall be added the following new definition:

" "EBA" means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of the 24 November 2010;"

(c) in the definition "EU parent credit institution" -

(i) for the words "or of a financial holding company set up in any Member State:", there shall be substituted the words "or of a financial holding company or mixed financial holding company established in any Member State:"; and

(ii) in the second paragraph thereof, in the definition "parent credit institution in a Member State", for the words "or of a financial holding company set up in the same Member State;", there shall be substituted the words "or of a financial holding company or mixed financial holding company established in the same Member State;"

(d) in the definition "EU parent financial holding company" -

(i) for the words "or of another financial holding company set up in any Member State:", there shall be substituted the words "or of another financial holding company or mixed financial holding company established in any Member State:"; and

(ii) in the second paragraph thereof, in the definition "parent financial holding company in a Member State", for the words "or of a financial holding company set up in the same Member State;", there shall be substituted the words "or of a financial holding company or mixed financial holding company established in the same Member State;"

(e) immediately after the definition "EU parent financial holding company", there shall be added the following new definition:

" "EU parent mixed financial holding company" means a parent mixed financial holding company in a Member State, which is not itself a subsidiary of a credit

institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State:

For the purpose of this definition, "parent mixed financial holding company in a Member State" means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;"

(f) the definition "Member State" shall be substituted by the following:

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

(g) immediately after the definition "Minister" there shall be added the following new definition:

" "mixed financial holding company" means a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its registered office in the European Union or the EEA, and other entities, constitutes a financial conglomerate;"

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

Amendment of article 3 of the principal Act.

(a) paragraph (b) thereof shall be renumbered as paragraph (c); and

(b) immediately after paragraph (a) thereof, there shall be added the following new paragraph:

"(b) The Minister, acting on the advice of the competent authority, may make regulations to transpose, implement and 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 to licence holders and others 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 of 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, such provisions in any such regulations shall prevail."

Amendment of article 4A of the principal Act.

**56.** In sub-article (2) of article 4A of the principal Act, for the words "Committee of European Banking Supervisors" wherever they appear, there shall be substituted the words "EBA".

Amendment of article 6 of the principal Act.

**57.** Sub-article (2) of article 6 of the principal Act shall be substituted by the following new sub-article:

"(2) All applications for a licence shall be made in such form and accompanied by such information, and shall conform with such requirements as may be prescribed from time to time by a Banking Rule. Such requirements shall be notified to the Commission of the European Union and the EBA:

Provided that an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused."

Amendment of article 7 of the principal Act.

**58.** In sub-article (8) of article 7 of the principal Act, for the words "The competent authority shall notify the Commission of the European Union of every licence issued", there shall be substituted the words "The competent authority shall notify the EBA of every licence issued".

Amendment of article 9 of the principal Act.

**59.** In sub-article (7) of article 9 of the principal Act, for the words "The competent authority shall notify the Commission of the European Union of any revocation of a licence", there shall be substituted the words "The competent authority shall notify the Commission of the European Union and the EBA the reasons for the revocation of a licence".

Amendment of article 11A of the principal Act.

**60.** In sub-article (2) of article 11A of the principal Act, for the words "The competent authority shall notify the European Commission", there shall be substituted the words "The competent authority shall notify the Commission of the European Union, the EBA".

Amendment of article 16A of the principal Act.

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

(a) sub-article (2) thereof shall be renumbered as sub-article (2)(a); and

(b) immediately after paragraph (a) of sub-article (2) thereof, as renumbered, there shall be added the following new paragraph:

"(b) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with article 17D, the competent authority shall assess whether any imposition of a specific own funds requirement in excess of the minimum level is required to capture risks to which a credit institution is or might be exposed, taking into account the following:

(i) the quantitative and qualitative aspects of the credit institutions' assessment process referred to in article 17C;

(ii) the credit institutions' arrangements, processes and mechanisms referred to in article 17B;

(iii) the outcome of the review and evaluation carried out in accordance with article 17D."

**62.** In paragraph (c) of sub-article (1) of article 17 of the principal Act, for the words "competent authority shall require the credit institution, to the exclusion of an electronic money institution, to take necessary measures", there shall be substituted the words "competent authority shall require the credit institution to take necessary measures".

Amendment of article 17 of the principal Act.

**63.** 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 new sub-article:

"(2) The competent authority may further, on the basis of Malta's international commitments, disclose information to overseas regulatory authorities and the EBA in accordance with the Capital Requirements Directive, other European Union Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. Such information shall be subject to professional secrecy provided for under this Act and any regulations made thereunder."; and

(b) sub-article (6) thereof shall be amended as follows:

(i) for the words from "The competent authority shall further, upon a request" to the words "mentioned above, under the law:", there shall be substituted the following:

"The competent authority shall further, upon a request in writing, disclose:

(a) to the Central Bank, central banks of the European system of the central banks, other overseas central banks, other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight payments, clearing and settlement systems and the safeguarding of the stability of the financial system;

(b) where appropriate, to other authorities responsible for overseeing payment systems;

(c) to the European Systemic Risk Board, where the information is relevant for the exercise of statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament,

any information in the possession of or accessible to the competent authority, which is required for the discharge of the duties of the Central Bank and the other authorities mentioned above, under the law:"; and

(ii) in the first proviso thereto, for the words "clearing and settlement systems, and safeguarding the stability of the financial system:", there shall be substituted the words "clearing and securities settlement systems, and safeguarding the stability of the financial system, and shall also communicate information to the European Systemic Risk Board under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory

tasks:".

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

Amendment of  
article 25A of  
the principal  
Act.

(a) in sub-article (1) thereof, for the words "it shall communicate on its own initiative all essential information.", there shall be substituted the words "it shall communicate on its own initiative all essential information:", and immediately thereafter there shall be added the following new proviso:

"Provided that where the competent authority is responsible for supervision, on a consolidated basis, of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or by EU parent mixed financial holding companies, it shall provide the overseas regulatory authorities who supervise subsidiaries of these parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in the Member States of those overseas regulatory authorities shall be taken into account.";

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

"(i) identification of the legal structure and the governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with articles 7(1)(d) and 17B of the Act and Article 73(3) of the Capital Requirements Directive;"

(c) sub-articles (6) to (12) thereof shall be renumbered as sub-articles (7) to (13) respectively;

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

"(6) (a) The competent authority shall cooperate with the EBA for the purposes of the Capital Requirements Directive, in accordance with Regulation (EU) No 1093/2010, and shall provide the EBA with all the information necessary to carry out its duties under the Capital Requirements Directive and in accordance with Article 35 of the said Regulation (EU) No 1093/2010.

(b) The competent authority may refer to the EBA situations where:

(i) an overseas regulatory authority has not communicated essential information; or

(ii) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.";

(e) in sub-article (7) thereof, as renumbered, for the words "The competent authority may, by bilateral agreement, delegate its responsibility", there shall be substituted the words "The competent authority may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility", and for the words "The Commission shall be kept informed of the existence and the content of any such agreements.", there shall be substituted the words "The EBA shall be kept informed of the existence and the content of any such agreements."; and

(f) in paragraph (a) of sub-article (11) thereof, as renumbered, for the words "and compatibility with European Community Law,", there shall be substituted the words "and compatibility with European Union Law,".

Amendment of  
article 25B of  
the principal  
Act.

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

(a) in sub-article (1) thereof, for the words "and credit institutions controlled by EU parent financial holding companies, it shall carry out the following functions:", there shall be substituted the words "and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies, it shall carry out the following tasks:";

(b) sub-articles (2) to (7) thereof shall be renumbered as sub-articles (3) to (8) respectively;

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

"(2) Where, with respect to the exchange of information within the provisions of this article, an overseas regulatory authority does not co-operate with the competent authority to the extent required in carrying out

the functions listed in sub-article (1), the competent authority may refer the matter to the EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.";

(d) for sub-article (5) thereof, as renumbered, there shall be substituted the following:

"(5) The competent authority in its role as consolidating supervisor shall, subject to article 25, alert as soon as it is practicable the EBA, the European Systemic Risk Board, the central banks of the European system of central banks, and those government departments responsible for legislation on supervision of credit institutions referred to in sub-article (8) and shall communicate all information that is essential for the pursuance of their tasks, where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010, or a situation of adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches are established.";

(e) in sub-article (6) thereof, as renumbered, for the words "it shall alert as soon as it is practicable the overseas regulatory authorities referred to in Articles 125 and 126 of the Capital Requirements Directive.", there shall be substituted the words "it shall alert as soon as it is practicable the overseas regulatory authorities referred to in Articles 125 and 126 of the Capital Requirements Directive and the EBA."; and

(f) immediately after sub-article (8) thereof, as renumbered, there shall be added the following new sub-article:

"(9) Where the competent authority is responsible for supervision on a consolidated basis, it shall provide the overseas regulatory authorities concerned and EBA with all the information regarding the banking group in accordance with articles 7(1)(d) and 17B of the Act and Article 73(3) of the Capital Requirements Directive, in particular regarding the legal structure and the governance and organisational structure of the group.".

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Amendment of  
article 25C of  
the principal  
Act.

**66.** In sub-article (1) of article 25C of the principal Act, for the words "mixed-activity holding company or its subsidiary situated in another Member State", there shall be substituted the words "mixed-activity holding company, a mixed financial holding company, or its subsidiary situated in another Member State".

## PART VI

### AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

Amendments to  
the Financial  
Institutions Act.  
Cap. 376.

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

Amendment of  
article 3 of the  
principal Act.

**68.** In paragraph (b) of sub-article (7) of article 3 of the principal Act, for the words "money laundering or terrorist financing", there shall be substituted the words "money laundering or the funding of terrorism".

Amendment of  
article 8A of the  
principal Act.

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

(a) in paragraph (b) of sub-article (1) thereof, for the words "money laundering and terrorist financing", there shall be substituted the words "money laundering and the funding of terrorism"; and

(b) in the proviso to sub-article (5) thereof, for the words "money laundering or terrorist financing", wherever they appear, there shall be substituted the words "money laundering or the funding of terrorism".

Amendment of  
article 21 of the  
principal Act.

**70.** In paragraph (g) of article 21 of the principal Act, for the words "article 25A", there shall be substituted the words "article 6(8)".

## PART VII

### AMENDMENTS TO THE COMPANIES ACT

Amendment of  
the Companies  
Act.  
Cap. 386.

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

Amendment of  
article 2 of the  
principal Act.

**72.** Paragraph (b) of sub-article (3) of article 2 of the principal Act shall be amended as follows:

(a) in sub-paragraph (iv) thereof, for the words "or the total consideration of the offer in the Community shall not

exceed", there shall be substituted the words "or the total consideration of the offer in the European Union and the EEA shall not exceed";

(b) in sub-paragraph (v) thereof, for the words "the total consideration of the securities for the offer in a Member State or EEA State", there shall be substituted the words "the total consideration of the securities for the offer in the European Union and the EEA"; and

(c) in sub-paragraph (vi) thereof, for the words "total consideration of the offer in a Member State or EEA State", there shall be substituted the words "total consideration of the offer in the European Union and the EEA,".

**73.** Immediately after article 3 of the principal Act, there shall be inserted the following new article:

Addition of new article 3A to the principal Act.

"Transposition and implementation of EU instruments.

3A. This Act, in part, seeks to transpose, implement and give effect to the provisions and requirements of the following European Union Directives and Regulations, as may be amended from time to time, including any implementing measures that have been or may be issued thereunder:

(a) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies;

(b) Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies;

(c) Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;

(d) Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State;

(e) Directive 2003/58/EC of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies;

(f) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies;

(g) 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;

(h) Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital;

(i) Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies;

(j) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent;

(k) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies;

(l) Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions;

(m) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies;

(n) Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;

(o) Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG);

(p) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE);

which shall be interpreted and applied accordingly."

**74.** Article 66A of the principal Act shall be amended as follows:

Amendment of article 66A of the principal Act.

(a) in sub-article (1) thereof -

(i) for the words "may be divided into shares which in the deed of partnership expressly limits its objects to the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of spreading investment risk and giving", there shall be substituted the words "may or may not be divided into shares, which in the deed of partnership expressly limits its object either to the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of giving"; and

(ii) for the words "or for any other purpose as the Minister may from time to time prescribe by regulations.", there shall be substituted the words "or otherwise to any other purpose as may be prescribed in the Tenth Schedule or as the Minister may from time to time prescribe by regulations.";

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

"(2) A partnership *en commandite* or limited partnership within the meaning of subarticle (1) shall be regulated by the provisions contained in the Tenth Schedule and by any regulations made by the Minister in terms of this article; the provisions of this Part of this Act, other than this article, shall not apply to any such partnership except and to the extent that they are expressly made applicable by means of the said Schedule or by means of any such regulations."; and

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

"(3) The Minister may make regulations for the better carrying out of the provisions of this article and of any of the provisions of the Tenth Schedule, and may, without prejudice to the generality of the foregoing, by such regulations make provisions as to any of the following matters -

(a) the forms and returns to be used in respect of such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1), for the purposes of this Act or such other purposes as may be prescribed therein;

(b) the registration of such partnerships *en*

*commandite* or limited partnerships under this Act within the meaning of sub-article (1) and any matters incidental thereto;

(c) the records and accounts to be kept by such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1) and any matter incidental thereto;

(d) the prescription of fees payable under this Act in respect of such partnerships *en commandite* or limited partnerships within the meaning of subarticle (1);

(e) the exemption of partnerships *en commandite* or limited partnerships within the meaning of subarticle (1) or any category thereof from any of the provisions of the Tenth Schedule or of this Act which may otherwise be applicable thereto, as the case may be, subject to such modifications, variations and conditions as may be specified;

(f) any other matters to be prescribed under this Act or the Tenth Schedule in respect of such partnerships *en commandite* or limited partnerships within the meaning of subarticle (1), or any other matters to better regulate the provisions of the Tenth Schedule in respect of such partnerships *en commandite* or limited partnerships within the meaning of subarticle (1) or any category thereof."

**75.** In article 68 of the principal Act, for the words "subscribed by at least two persons, and a certificate of registration is issued in respect thereof.", there shall be substituted the words "subscribed by at least two persons, or in the case of a single member company constituted in terms of article 212, by the single member, and a certificate of registration is issued in respect thereof."

Amendment of article 68 of the principal Act.

**76.** Article 70 of the principal Act shall be amended as follows:

Amendment of article 70 of the principal Act.

(a) in sub-article (1) thereof, for the words "abbreviation "p.l.c."", there shall be substituted the words "abbreviation "p.l.c.":", and immediately thereafter there shall be added the following new proviso:

"Provided that where the public company is a

‘societas europaea’ in accordance with Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company, in lieu of the words "public limited company" or their abbreviation "p.l.c.", the name of the public company shall be preceded or followed by the abbreviation "SE".;

(b) in paragraph (b) of sub-article (3) thereof, for the words "The words "investment company with fixed share capital" may be replaced with the words "investment company" or with "INVCO" ", there shall be substituted the words "the words "investment company with fixed share capital" may be replaced with the abbreviation "INVCO" ";

(c) in the second proviso of sub-article (4) thereof, for the words "the Registrar shall have regard to the business or proposed business of the company, to the protection of the names of individuals", there shall be substituted the words "the Registrar shall have regard, *inter alia*, to the business or proposed business of the company, to the protection of the names of persons"; and

(d) in sub-article (6) thereof:

(i) in paragraph (c) thereof, for the words "under a name or title which ends with the words "investment company with fixed share capital", "investment company" or "INVCO" or a contraction or imitation thereof", there shall be substituted the words "under a name or title which contains the words "investment company with fixed share capital" or "INVCO" or a contraction or imitation thereof"; and

(ii) in paragraph (d) thereof, for the words "under a name or title which ends with the words" there shall be substituted the words "under a name or title which contains the words".

Amendment of  
article 82 of the  
principal Act.

77. In the proviso of sub-article (2) of article 82 of the principal Act, for the words "may, in addition to the manner of authentication laid down in sub-article (1), be authenticated by an individual specifically authorised for such purpose by the memorandum", there shall be substituted the words "may be authenticated by a director, the company secretary, an authorised officer of the company or by an individual specifically authorised for such purpose by the memorandum".

78. Article 85 of the principal Act shall be amended as follows: Amendment of article 85 of the principal Act.

(a) sub-article (1) thereof, for the words "for an ordinary resolution by article 135(2).", there shall be substituted the words "for an ordinary resolution by article 135(2):", and immediately thereafter there shall be added the following new proviso:

"Provided that the memorandum or articles, or an extraordinary resolution of a company may permit either:

(a) the board of directors to issue shares up to a maximum amount as may be specified in the same memorandum or articles, or extraordinary resolution, which permission shall be for a maximum period of five years, renewable by ordinary resolution for further maximum periods of five years each; or

(b) the general meeting to authorise by ordinary resolution the board of directors to issue shares up to a maximum amount as may specified in the same memorandum or articles, or in the extraordinary resolution, which permission shall be for a maximum period of five years, renewable by ordinary resolution for further maximum periods of five years each.";

(b) sub-article (2) thereof shall be deleted, and sub-articles (3), (4), (5) and (6) shall be renumbered as sub-articles (2), (3), (4) and (5) respectively;

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

"(2) Where there are several classes of shares, any resolution referred to in sub-article (1) shall be subject to a separate vote for each class of shareholders whose rights are affected by such resolution, and the provisions relating to the majority required for the resolution shall apply for each class.";

(d) in sub-article (3) thereof, as renumbered, for the words "referred to in sub-articles (1), (2) and (3)", there shall be substituted the words "referred to in sub-articles (1) and (2)";

(e) in sub-article (4) thereof, as renumbered, for the words "The provisions of sub-articles (1) to (4)", there shall be substituted the words "The provisions of sub-article (1) to (3)"; and

(f) sub-article (5) thereof, as renumbered, shall be substituted by the following:

"(5) Where an increase in the issued share capital is not fully taken up, that issue shall be deemed not to have taken effect:

Provided that if the conditions of the issue so provide, the issued share capital shall be increased by the amount of subscriptions received."

Amendment of article 89 of the principal Act.

**79.** In the second proviso to article 89 of the principal Act, for the words "Provided further that paragraph (e) shall also apply to a limited liability company established outside the Community whose securities are admitted to trading", there shall be substituted the words "Provided further that paragraph (e) shall also apply to a company established outside the European Union and the EEA and whose securities are admitted to trading".

Amendment of article 106 of the principal Act.

**80.** In paragraph (d) of sub-article (1) of article 106 of the principal Act, for the words "shall not exceed ten per cent of the issued share capital;", there shall be substituted the words "shall not exceed fifty per cent of the issued share capital;".

Amendment of article 107 of the principal Act.

**81.** In the proviso to sub-article (3) of article 107 of the principal Act, for the words "may be effected by the company in the meantime.", there shall be substituted the words "may be effected by the company in the meantime:", and immediately thereafter there shall be added the following new proviso:

"Provided further that this sub-article shall not apply where the company has acquired the shares otherwise than for valuable consideration."

Amendment of article 182 of the principal Act.

**82.** The first proviso to paragraph (b) of sub-article (3) of article 182 of the principal Act shall be substituted by the following:

"Provided that for the purpose of determining whether a company carries on business or has business interests outside Malta as aforesaid, interests or holdings held in a company referred to in this sub-article, and income derived therefrom, shall, for the purposes of this sub-article, be deemed to constitute business interests outside Malta:".

Amendment of article 183 of the principal Act.

**83.** In sub-article (1) of article 183 of the principal Act, for the words "prescribed by article 182.", there shall be substituted the words "prescribed by article 182. Where a copy of the annual accounts, auditors' report and directors' report is delivered to the

Registrar by electronic means, without prejudice to the requirements of articles 176(3), 178(3) and 179(6), such electronic copy shall be authenticated in accordance with article 82."

**84.** In sub-article (2) of article 184 of the principal Act, for the words "by electronic means, in addition to the manner of signing laid down in this sub-article, such annual return may be signed by an individual specifically authorised", there shall be substituted the words "by electronic means it may be signed by one director or the company secretary or by an individual specifically authorised".

Amendment of article 184 of the principal Act.

**85.** Article 187 of the principal Act shall be amended as follows:

Amendment of article 187 of the principal Act.

(a) in sub-article (2) thereof, for the words "official closing middle rate issued by the Central Bank of Malta for that date.", there shall be substituted the words "official euro reference middle exchange rate published by the European Central Bank, or the indicative middle exchange rate published by the Central Bank of Malta, as the case may be, for that date."; and

(b) in sub-article (4) thereof, for the words "official closing middle rate issued by the Central Bank of Malta.", there shall be substituted the words "official euro reference middle exchange rate published by the European Central Bank, or the indicative middle exchange rate published by the Central Bank of Malta, as the case may be.".

**86.** In the proviso to article 210 of the principal Act, for the words "or otherwise purports to deprive the auditors of the right granted to them by virtue of the provisions of article 155", there shall be substituted the words "or otherwise purports to deprive the auditors of the right to attend and be heard at any general meeting of the company on any part of the business of the meeting which concerns them as auditors".

Amendment of article 210 of the principal Act.

**87.** In sub-article (1) of article 212 of the principal Act, for the words "its main trading activity", there shall be substituted the words "its main activity".

Amendment of article 212 of the principal Act.

**88.** Article 225 of the principal Act shall be amended as follows:

Amendment of article 225 of the principal Act.

(a) in sub-article (1) thereof, for the words "The Minister shall appoint an individual to be the official receiver" there shall be substituted the words "The Minister, acting on the advice of the Malta Financial Services Authority, shall appoint a

senior official of the said Authority to be the official receiver";

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

"(2) The official receiver may authorise in writing any individual to perform any of the functions assigned to the official receiver under this Act or any other law."; and

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

"(3) Notwithstanding anything to the contrary contained in this Act or any other law, the official receiver and any other individual authorised in terms of sub-article (2), shall be exempt from any personal liability whatsoever, including any liability in damages for anything done or omitted to be done in the discharge or purported discharge of any of his functions under this Act or under any other law, or otherwise in the exercise of his official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith."

Amendment of  
article 229 of  
the principal  
Act.

**89.** Article 229 of the principal Act shall be amended as follows:

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

"(1) The official receiver, by virtue of his office and upon notification by the Court, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Title, and shall, upon notification by the Court, be the liquidator during any vacancy."; and

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

"(2) The official receiver shall, within fourteen days of notification by the court, deliver an authenticated copy of such notification to the Registrar for registration."

Amendment of  
article 236 of  
the principal  
Act.

**90.** Sub-article (2) of article 236 of the principal Act shall be substituted by the following:

"(2) The official receiver and any person appointed as

liquidator by the Court shall be remunerated out of the assets of the company or otherwise, and on such basis as the Court may direct."

**91.** In sub-article (2) of article 241 of the principal Act, for the words "If any such liquidator retains for more than ten days a sum exceeding four hundred and sixty-five euro and eighty-seven cents (465.87)", there shall be substituted the words "If any such liquidator retains for more than ten days, other than in a bank account mentioned in sub-article (1), a sum exceeding five hundred euro (500)".

Amendment of article 241 of the principal Act.

**92.** Article 258 of the principal Act shall be amended as follows:

Amendment of article 258 of the principal Act.

(a) in paragraph (j) of sub-article (2) thereof, for the words "the remuneration of the liquidator.", there shall be substituted the words "the remuneration of the official receiver and of the liquidator."; and

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

"(3) For the purposes of sub-article (2), "official receiver" shall include any individual authorised in terms of article 225(2)."

**93.** Sub-article (4) of article 374 of the principal Act shall be deleted.

Amendment of article 374 of the principal Act.

**94.** In sub-article (1) of article 400 of the principal Act, for the words "acting on the advice of the competent authority under the Malta Financial Services Authority Act,", there shall be substituted the words "acting on the advice of the Malta Financial Services Authority,".

Amendment of article 400 of the principal Act.

**95.** Article 425 of the principal Act shall be amended as follows:

Amendment of article 425 of the principal Act.

(a) sub-article (6) thereof shall be deleted; and

(b) sub-articles (7), (8) and (9) thereof shall be renumbered sub-articles (6), (7) and (8) respectively.

**PART VIII****AMENDMENTS TO THE INSURANCE BUSINESS ACT**

Amendments to  
the Insurance  
Business Act.  
Cap. 403.

**96.** This Part amends and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as "the principal Act".

Amendment of  
article 4 of the  
principal Act.

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

(a) sub-articles (3) and (4) thereof shall be renumbered as sub-articles (4) and (5) respectively; and

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

"(3) The competent authority may make insurance rules as may be required for the purpose of implementing the guidelines and recommendations issued by the European Insurance and Occupational Pensions Authority, under Article 16 of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of the 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC, on interim measures for the preparation of the implementation of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast).".

Amendment of  
article 64 of the  
principal Act.

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

(a) in sub-article (5) thereof, for the words "including the conditions under which the activities of such vehicles shall be carried on.", there shall be substituted the words "including the conditions under which the activities of such vehicles shall be carried on. Any such regulations may provide for exemptions from any provisions of this Act or of any other law, subject to such modifications, variations and conditions as may be specified therein, and in particular may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, the provisions of the regulations shall prevail, and the provisions of this Act or of any other law shall, to the extent of the inconsistency, not apply."; and

(b) in sub-article (7) thereof, for the words "or any other similar measure relevant for the purposes of this Act.", there shall be substituted the words "or any other similar measure relevant for the purposes of this Act. Any such regulations made to transpose any requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure may provide for exemptions from any provisions of this Act or of any other law, subject to such modifications, variations and conditions as may be specified therein, and in particular may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, the provisions of the regulations shall prevail, and the provisions of this Act or of any other law shall, to the extent of the inconsistency, not apply.".

## PART IX

### AMENDMENTS TO THE PREVENTION OF FINANCIAL MARKETS ABUSE ACT

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

Amendments to  
the Prevention  
of Financial  
Markets Abuse  
Act.  
Cap. 476.

**100.** In sub-article (1) of article 2 of the principal Act, immediately after the definition "EEA State", there shall be added the following new definition:

Amendment of  
article 2 of the  
principal Act.

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;".

**101.** Article 20 of the principal Act shall be amended as follows:

Amendment of  
article 20 of the  
principal Act.

(a) in sub-article (3) thereof, immediately after the words "for the purpose of carrying out its duties in the investigation and detection in terms of the Market Abuse Directive,", there shall be added the words "including a request by the foreign authority for them to accompany officers, employees or other agents of the competent authority during the course of an investigation,"; and

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

"(7) Without prejudice to Article 258 of the Treaty on the Functioning of the European Union, where a request for information, co-ordination of efforts or other form of collaboration, including a request to accompany officials of the foreign authority during the course of an investigation in terms of the Market Abuse Directive, made by the competent authority to a foreign authority in terms of this article is not acted upon within a reasonable time or is rejected, the competent authority may refer such rejection or absence of action to ESMA within a reasonable timeframe."

Addition of new article to the principal Act.

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

"Collaboration with ESMA.

20A. The competent authority shall collaborate with ESMA for the purposes of the Market Abuse Directive in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council of the 24 November 2010, and in particular it shall forward to ESMA, without delay, all information necessary for ESMA to carry out its duties in accordance with Article 35 of the said Regulation."

Amendment of article 22 of the principal Act.

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

(a) in sub-article (3) thereof, for the words "Upon the conclusion of any appeal proceedings in terms of article 23, or the lapse of time required to lodge such an appeal, the competent authority may," there shall be substituted the words "The competent authority may,";

(b) sub-article (5) thereof shall be renumbered as sub-article (6);

(c) immediately after sub-article (4) thereof, there shall be added the following new sub-article:

"(5) Where the competent authority has disclosed an administrative measure or sanction to the public in terms of sub-article (3), it shall contemporaneously report that fact to ESMA."; and

(d) immediately after sub-article (6) thereof, as renumbered, there shall be added the following new sub-article:

"(7) The competent authority shall provide ESMA annually with aggregated information regarding all administrative measures and sanctions imposed in terms of this Act and any applicable regulations made thereunder."

## PART X

### AMENDMENTS TO THE SECURITISATION ACT

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

Amendments to the Securitisation Act.  
Cap. 484.

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

Amendment of article 5 of the principal Act.

(a) for the words "assumed by the securitisation vehicle, the securitisation vehicle shall not", there shall be substituted the words "assumed by the securitisation vehicle, but without prejudice to article 5A, the securitisation vehicle shall not";

(b) for the words "the Financial Institutions Act, and the Insurance Business Act.", there shall be substituted the words "the Financial Institutions Act and, save for what is provided in article 5A, the Insurance Business Act."; and

(c) the proviso thereto shall be substituted by the following new proviso:

"Provided that nothing contained in this article shall affect any of the provisions of the Income Tax Act and the Income Tax Management Act.";

Cap. 123.

Cap. 372.

**106.** Immediately after article 5 of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Non-applicability.  
Cap. 403

5A. Unless otherwise provided in the Insurance Business Act or in any regulations issued thereunder, the provisions of this Act shall not apply to a reinsurance special purpose vehicle established and regulated by any regulations made under the Insurance Business Act in terms of article 64 of the said Act:

Cap. 123.  
Cap. 372.

Provided that nothing contained in this article shall affect any of the provisions of the Income Tax Act and the Income Tax Management Act in relation to such securitisation vehicles."

## PART XI

### AMENDMENTS TO THE RETIREMENT PENSIONS ACT

Amendments to  
the Retirement  
Pensions Act.  
Cap. 514.

**107. (1)** This Part amends and shall be read and construed as one with the Retirement Pensions Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force on such date as the Minister for Finance may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

Amendment of  
article 3 of the  
principal Act.

**108.** Subarticle (2) of article 3 of the principal Act shall be amended as follows:

(a) in subparagraph (ii) thereof, for the words "employed by the employer.", there shall be substituted the words "employed by the employer."; and

(b) immediately after subparagraph (ii) thereof, as amended, there shall be added the following new proviso:

"Provided that a scheme or arrangement described in paragraph (a) may, by written notice to the competent authority, apply to be considered as a scheme for the purposes of this Act."

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Passed by the House of Representatives at Sitting No. 103 of the 16th December, 2013.

ANĠLU FARRUGIA

*Speaker*

RAYMOND SCICLUNA

*Clerk to the House of Representatives*