

I assent.

(L.S.)

GEORGE VELLA
President

13th November, 2020

ACT No. L of 2020

AN ACT to amend the Company Service Providers Act, Cap. 529 and to provide for matters ancillary or incidental thereto.

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:

1. (1) The short title of this Act is the Company Service Providers (Amendment) Act, 2020 and this Act shall be read and construed as one with the Company Service Providers Act, hereinafter referred to as "the principal Act".

Short title and commencement.
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(2) The provisions of this Act shall come into force on such date as the Minister responsible for Finance and Financial Services may, by notice in the Gazette, establish, and different dates may be so established for different provisions of the Act.

2. Article 1 of the principal Act shall be amended as follows:

Amendment of article 1 of the principal Act.

(a) in sub-article (2) thereof, for the words "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," there shall be substituted the words "Article 47 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or

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terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time,"; and

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

(i) for the words "Article 36 of Directive 2005/60/EC" there shall be substituted the words "Article 47 of Directive (EU) 2015/849, as amended from time to time"; and

(ii) for the word "registration" there shall be substituted the word "authorisation".

Amendment of article 2 of the principal Act.

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

(a) in the definition "approved jurisdiction", immediately after the words "or any other jurisdiction which" there shall be added the words ", in the opinion of the Authority,";

(b) immediately after the definition "approved jurisdiction", as amended, there shall be added the following new definition:

" "authorised person" means a person in relation to whom an authorisation to act as a company service provider has been issued by the Authority in terms of this Act;"

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

" "close links" means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of 20% or more of the voting rights or capital of a body corporate;

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or

(c) to one and the same third person when:

(i) such person is a member of the authorised person's family, including, but not limited to, the authorised person's spouse or partner, the authorised person's child or step-child, the authorised person's parents and other dependants of the authorised person;

(ii) such person is acting in the capacity of a company service provider of any company, the beneficial owners of which include:

(a) the authorised person, the authorised person's dependants, including, but not limited to, the authorised person's spouse, children or step-children; or

(b) a body corporate with which one is associated in terms of (a) and (b) above;

(iii) such person is acting as business partner of the authorised person or of any person who, by virtue of sub-paragraphs (i) or (ii) above is connected with the authorised person;"

(d) in the definition "company service provider", the words "natural or legal" shall be deleted;

(e) immediately after the definition "company service provider" as amended, there shall be added the following new definitions:

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

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

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

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" "person" means a natural or legal person in terms of law, and for the purposes of this Act the word "legal person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not;"

(g) in the definition "prescribed", for the words "under this Act;" there shall be substituted the words "under this Act."; and

(h) the definition "registered person" shall be deleted.

Amendment of
article 3 of the
principal Act.

4. Article 3 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the word "registration" there shall be substituted the word "authorisation";

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

"(1) Any person operating in or from Malta who acts, or holds himself out as acting as a company service provider by way of its business, shall apply for authorisation with the Authority in terms of this Act.";

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

"(1A) Any person in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant, shall not be required to obtain authorisation from the Authority in terms of this Act:

Provided that, this sub-article shall cease to have effect and such persons shall henceforth no longer be considered to be exempt from the provisions of this Act, following the expiration of eight months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, saving the transitory provisions contained in article 19.

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(1B) Any person falling under article 19(1)(b) who, within the twelve month period referred to in the first proviso to the same sub-article, has not obtained authorisation under this Act, shall immediately cease to

provide the services of a company service provider."

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

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

(f) in sub-article (4) thereof, for the word "registration" there shall be substituted the word "authorisation";

(g) in paragraph (a) of sub-article (5) thereof:

(i) for the words "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," there shall be substituted the words "Any person having a licence, registration or any other authorisation to provide company services, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to authorisation under this Act,";

(ii) for the words "forty-five" there shall be substituted the words "ninety"; and

(iii) immediately after the words "that it does not object thereto." there shall be added the words "Such persons shall also be classified, at the discretion of the Authority, into one of the three classes laid out in the Schedule to this Act, which shall *mutatis mutandis* apply to such persons. When any such person is classified by the Authority as a Class A CSP or a Class B CSP in terms of the Schedule, the Authority shall also determine whether such person is over-threshold or under-threshold, and for such purpose the Authority may issue rules in terms of article 5(2B)."; and

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

"(6) The Authority may, at its discretion and at any time, request any of the persons referred to in sub-articles (1a) and (5) to furnish any information or documentation related to such person's operations and activities as a company service provider, as it may deem necessary, and such person shall collaborate with the Authority and shall promptly collate and transmit without any undue delay such information and documentation as the Authority may request."

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Amendment of
article 4 of the
principal Act.

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

(a) in the marginal note thereto, for the word "registration" there shall be substituted the word "authorisation";

(b) in the heading thereof, for the words "application for registration" there shall be substituted the words "application for authorisation";

(c) in paragraph (c) thereof, for the word "registration" there shall be substituted the word "authorisation"; and

(d) in paragraph (d) thereof, for the word "registration" there shall be substituted the word "authorisation".

Amendment of
article 5 of the
principal Act.

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

(a) in the marginal note thereto, for the words "grant a registration." there shall be substituted the words "grant authorisation.";

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

(i) for the words "may register or refuse an application for registration made under this Act. Such registration" there shall be substituted the words "may grant or refuse to grant authorisation applied for under this Act. Such authorisation";

(ii) for the words "grant a registration" there shall be substituted the words "grant authorisation";

(iii) paragraph (b) thereof shall be substituted by the following:

"(b) the applicant is operating in or from Malta;"

(iv) in paragraph (c) thereof:

(i) for the words "company or other type of legal entity" there shall be substituted the words "legal person";

(ii) in sub-paragraph (iii) thereof, for the words "the directors of the company" there shall be substituted the words "the directors, administrators or partners, as the case may be, of the legal person";

(iii) sub-paragraph (iv) thereof shall be substituted by the following:

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

(iv) in sub-paragraph (v) thereof, for the word "company" there shall be substituted the words "legal person"; and

(v) in sub-paragraph (vi) thereof, for the word "company", there shall be substituted the words "legal person";

(c) in sub-article (2) thereof, for the word "a registration" there shall be substituted the word "authorisation";

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

"(2A) As part of the authorisation process, the applicant shall be classified at the discretion of the Authority into one (1) of the three (3) classes which determine the requirements of authorised persons in terms of the provisions of the Schedule. As part of the said process, when an applicant is classified by the Authority as a Class A CSP or a Class B CSP in terms of the Schedule, the Authority shall also determine whether such applicant is over-threshold or under-threshold.

(2B) The Authority may issue rules laying down the requirements, conditions and criteria by which a person shall be considered to be an over-threshold or an under-threshold Class A CSP or Class B CSP.";

(e) in sub-article (3) thereof:

(i) for the words "In granting registration" there shall be substituted the words "In granting authorisation"; and

(ii) for the words "having granted registration" there shall be substituted the words "having granted authorisation";

(f) sub-article (4) thereof shall be amended as follows:

(i) for the word "registration" there shall be substituted the word "authorisation";

(ii) for the words "any rules made thereunder." there shall be substituted the words "any regulations or rules made thereunder:

Provided that, the Authority may at any time request the applicant to provide it with any additional information it may deem necessary to enable it to better consider the application, and from such time as the Authority makes such a request until such time that any such information is provided, the running of the six month time period mentioned in this sub-article shall be suspended:

Provided further that, where an applicant fails to provide any additional information which may be requested by the Authority within three months from the request being so made, the Authority shall deem such an application to have been withdrawn by the applicant.";

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

(i) for the words "registration has been granted in terms" there shall be substituted the words "authorisation has been granted in terms"; and

(ii) the words "and shall indicate the names of the persons to whom such registration has been granted, as well as their contact details," shall be deleted; and

(h) in sub-article (7) thereof:

(i) for the words "a registered person" there shall be substituted the words "an authorised person"; and

(ii) for the words "constituting the company, or any change of its directors or members" there shall be substituted the words "constituting the legal person, or any change of its directors, administrators or members, as the case may be".

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

(a) in the marginal note thereto, for the word

"registration" there shall be substituted the words "an authorisation";

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

(i) for the words "a registration" there shall be substituted the words "an authorisation";

(ii) in paragraph (a) thereof, for the word "registered" there shall be substituted the word "authorised";

(iii) in paragraph (b) thereof:

- for the words "the registered person" there shall be substituted the words "the authorised person";

- for the words "Act or any rules" there shall be substituted the words "Act or any regulations or rules";

- for the words "such registered person or the registration is subject by virtue of this Act and any rules" there shall be substituted the words "such authorised person or the authorisation is subject by virtue of this Act and any regulations and rules"; and

- immediately after the words "issued thereunder" there shall be added the words ", including any breach in relation to the authorised person's governance and control framework";

(iv) in paragraph (c) thereof, for the words "the registered person or someone acting on behalf of such registered person" there shall be substituted the words "the authorised person or someone acting on behalf of such authorised person";

(v) in paragraph (d) thereof, for the word "registered" there shall be substituted the word "authorised";

(vi) in paragraph (e) thereof, for the word "registration" there shall be substituted the word "authorisation";

(vii) paragraph (f) thereof shall be substituted by the

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following:

"(f) the authorised person has so requested;"

(viii) immediately after paragraph (f) thereof as substituted, there shall be added the following new sub-paragraph:

(fA) the authorised person is found liable, by the Financial Intelligence Analysis Unit, for a serious, repeated or systematic breach of the Prevention of Money Laundering Act and, or of any regulations issued thereunder; or

(ix) in paragraph (g) thereof:

- for the words "granting registration" there shall be substituted the words "granting authorisation"; and

- for the words "such registration." there shall be substituted the words "such authorisation.";

(c) in sub-article (2) thereof, for the word "registration" there shall be substituted the word "authorisation"; and

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

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

Provided that this sub-article shall not apply to the cancellation of an authorisation in terms of paragraph (f) of sub-article (1):

Provided further that any person whose authorisation has been cancelled in terms of paragraph (f) of sub-article (1) shall ensure that the services he had been providing to companies or other legal entities in terms of its authorisation are transferred to another person which is duly authorised or otherwise not required to be authorised in terms of this Act, or are otherwise terminated in

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terms of applicable law, prior to the Authority acceding to the request for cancelling the authorisation."

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

Amendment of article 7 of the principal Act.

(a) in the marginal note thereto, for the word "registration" there shall be substituted the word "authorisation";

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

(i) in paragraph (a) thereof, for the word "registration" there shall be substituted the word "authorisation";

(ii) in paragraph (b) thereof, for the words "the registration" and "a registration" there shall be substituted the words "the authorisation" and "an authorisation" respectively; and

(iii) for the words "registered person" there shall be substituted the words "authorised person"; and

(c) in sub-article (3) thereof, for the words "registered person" there shall be substituted the words "authorised person".

9. Immediately after article 7 of the principal Act as amended, there shall be added the following new article:

Addition of article 7A to the principal Act.

"Duties of auditors.

7A. (1) An auditor of an authorised person shall have the duty to report immediately to the Authority any fact or decision of which such auditor becomes aware in his capacity as auditor of such authorised person which:

(a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such authorised person; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to authorised persons under this Act; or

(c) gravely impairs the authorised person's ability to continue as a going concern; or

(d) relates to any other matter which may be prescribed:

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Provided that the matters mentioned in this paragraph may include matters related to any person other than the authorised person, including any person having close links with such authorised person.

(2) No duty, including the duty of professional secrecy, to which an auditor of the authorised person may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that authorised person and which may be relevant to the Authority under the provisions of this Act or any regulations or rules issued hereunder or is required to be communicated by virtue of this article."

Amendment of article 8 of the principal Act.

10. In sub-article (2) of article 8 of the principal Act, for the words "company service providers." there shall be substituted the words "company service providers and others as may be specified therein."

Amendment of article 9 of the principal Act.

11. Article 9 of the principal Act shall be amended as follows:

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

"(1) Where any person contravenes or fails to comply with any of the provisions of this Act or of any regulations or rules issued thereunder, with any of the conditions imposed in an authorisation issued by the Authority, with any directive issued by the Authority, or fails to cooperate with the Authority in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on any such person an administrative penalty which may not exceed fifty thousand euro (€50,000) for each infringement or failure to comply, as the case may be.";

(b) the proviso to sub-article (2) shall be deleted;

(c) in sub-article (4) thereof, for the words "the provision of this Act or the rules, and the penalty" there shall be substituted the words "the provisions of this Act or of any regulations or rules issued thereunder, and the administrative penalty".

Amendment of article 10 of the principal Act.

12. Sub-article (1) of article 10 of the principal Act shall be amended as follows:

(a) for the words "require registration" there shall be substituted the words "require authorisation"; and

(b) in paragraph (a) thereof, for the words "any such activities as aforesaid;" there shall be substituted the words "any such activities as aforesaid, including the power to require existing telephone and existing data traffic records with respect to any such activities;".

13. Sub-article (2) of article 11 of the principal Act shall be amended as follows: Amendment of article 11 of the principal Act.

(a) in paragraph (b) thereof, for the words "having functions of a company service provider" there shall be substituted the words "having functions in relation to a company service provider"; and

(b) in paragraph (c) thereof, for the word "registered" there shall be substituted the word "authorised".

14. Sub-article (1) of article 14 of the principal Act shall be amended as follows: Amendment of article 14 of the principal Act.

(a) in paragraph (c) thereof, for the words "registration or supervisory fees and such other charges" there shall be substituted the words "authorisation or supervisory fees and such other fees and charges";

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

"(eA) provide for alternative methods and mechanisms of supervision of company service providers, in so far as this is permissible at law;

(eB) provide for enhanced collaboration, cooperation and information sharing, between the Authority and other authorities, agencies and any other body which the Minister may deem appropriate, with respect to the regulation and supervision of company service providers;

(eC) amend the provisions of the Schedule to this Act;".

15. Article 15 of the principal Act shall be amended as follows: Amendment of article 15 of the principal Act.

(a) in sub-article (1) thereof, for the words "registration,

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condition, obligation" there shall be substituted the words "authorisation condition, any obligation";

(b) in sub-article (5) thereof, for the word "registered" there shall be substituted the word "authorised";

(c) sub-article (8) thereof shall be deleted.

Amendment of article 16 of the principal Act.

16. Sub-article (2) of article 16 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof:

(i) for the words "a registered" there shall be substituted the words "an authorised"; and

(ii) for the words "its registration" there shall be substituted the words "its authorisation"; and

(b) in paragraph (c) thereof for the words "registration or cancellation of registration" there shall be substituted the words "authorisation or cancellation of authorisation".

Amendment of article 17 of the principal Act.

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

(a) in the heading thereof, for the word "registration" there shall be substituted the word "authorisation"; and

(b) in paragraph (b) thereof, for the words "the Trusts and Trustees Act, and any regulations made thereunder" there shall be substituted the words "the Trusts and Trustees Act, the Securitisation Act, the Retirement Pensions Act, the Virtual Financial Assets Act, and any regulations made thereunder";

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Cap. 484.
Cap. 514.
Cap. 590.

Addition of Article 19 to the principal Act.

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

"Further transitory provisions and savings clause. Act No. L of 2020.

Act No. L of 2020.

19. (1) Persons who, on the first date of the coming into force of the amendments to the provisions of this Act introduced by virtue of Company Service Providers (Amendment) Act, 2020, are offering any of the services of a company service provider within the meaning of this Act, and who, until such date, were not required to be registered in terms of this Act, may only continue to offer the services of a company service provider following eight months from such date of coming into force of Company Service Providers (Amendment) Act, 2020 if:

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2020.

(a) they have applied for authorisation in terms of article 4, within two months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020 and have been authorised by the Authority as an under-threshold company services provider within eight months of such date of coming into force; or

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2020.

(b) they have applied for authorisation in terms of article 4 within two months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, and have been provisionally authorised by the Authority as an over-threshold or Class C company services provider within eight months of such date of coming into force, subject to the submission of any additional information as may be required by the Authority and the payment of any additional fee as may be prescribed in the relevant rules or regulations issued under the Act:

Provided that, notwithstanding the provisions of article 5(4), the Authority shall notify any such person provisionally authorised in terms of paragraph (b), of its decision whether to grant or refuse authorisation, within twelve months of having granted such provisional authorisation:

Provided further that persons referred to in paragraph (b) shall *mutatis mutandis* comply with and adhere to the provisions of this Act during the said twelve month period or until such date as their application is approved or refused by the Authority, whichever is the earlier, and during such period any reference in the Act to a "company service provider" or an "authorised person" shall be deemed to include reference to a person who has been provisionally authorised under this sub-article:

(2) Any failure to meet any of the requirements mentioned in sub-article (1)(b), or to furnish any additional information requested by the Authority within the time stipulated by the Authority, or any withdrawal or abandonment of the application at any time during the said twelve month period, or the Authority's decision to refuse or grant an authorisation in terms of article 5, or if the applicant 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 automatically render any such provisional authorisation null and without effect:

Provided that the granting of a provisional authorisation is a temporary concession and privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder.

(3) The criteria by which a person shall be considered to be an over-threshold or under-threshold company services provider shall be provided for in rules issued under this Act.

(4) Subject to a complete application being submitted to the Authority in terms of sub-article (1), and before such person is authorised in terms of sub-article (1)(a) or before such person is provisionally authorised in terms of sub-article (1)(b), as the case may be, the Authority shall proceed to classify such person into one of the Classes for company service providers set out in the Schedule to this Act and into one of the thresholds mentioned in sub-article (3), and shall notify such person in writing of the outcomes of such classification and of such allocation of thresholds.

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(5) Any person who, on the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, is already registered as a company service provider under this Act shall be considered to be an authorised person for the purposes of this Act. This notwithstanding, such person shall be subject to the Authority's classification process set out in sub-article (4), with no requirement, however, on such person to submit any application to the Authority.

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(6) Any applicant who may have already submitted an application for registration with the Authority prior to the first date of the coming into force of Company Service Providers (Amendment) Act, 2020 and whose application had, by such date, not yet been determined by the Authority in terms of article 5, shall notify the Authority, in writing, whether such applicant intends continuing with the application or whether such applicant wishes to withdraw such application.

Act No. L of 2020. Provided that, where an applicant does not so notify the Authority, within three months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, the Authority shall deem such an application to have been withdrawn.

Act No. L of 2020. (7) Any person who, on the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, had already notified the Authority in terms of Article 3(5) prior to such coming into force of the said Act shall be subject to the Authority's classification process set out in sub-article (4), with no requirement, however, on such person to submit any application to the Authority.

(8) The Authority may, at its sole discretion, direct the manner and intervals within which applications from different persons are to be received by the Authority within the period referred to in sub-article (1) above."

19. Immediately after article 19 of the principal Act, there shall be added the following new Schedule:

Addition of Schedule to the principal Act.

" SCHEDULE

Class A CSP	A company service provider authorised to provide, by way of its business, the following services to third parties: (i) formation of companies or other legal entities; and, or (ii) 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.
Class B CSP	A company service provider authorised to provide, by way of its business, the service to third parties of 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.
Class C CSP	A company service provider authorised to provide, by way of its business, all of the services of a company service provider specified under article 2(1) in the definition "company service provider."

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Passed by the House of Representatives at Sitting No. 395 of the 6th
November 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

