

CHAPTER 330

MALTA FINANCIAL SERVICES AUTHORITY ACT

To establish an Authority for Financial Services from within Malta, to regulate such activities and to provide for matters ancillary or incidental thereto or connected therewith.

*Substituted by:
XIII.1994.2.
Amended by:
XVII. 2002.103.*

20th January, 1989;

30th June, 1989

ACT XXXIV of 1988, as amended by [Act XV of 1989](#); [Legal Notice 167 of 1989](#); [Legal Notice 79 of 1990](#); [Act XXXI of 1990](#); [Legal Notice 183 of 1990](#); Acts [XIII of 1994](#), [XXV of 1995](#), [XVII of 2002](#), [IV of 2003](#), [XIII of 2004](#), [XII of 2006](#), [XX of 2007](#); [Legal Notice 424 of 2007](#); Acts [III of 2009](#), [II](#), [XIX of 2010](#), [X of 2011](#); [Legal Notice 426 of 2012](#); Acts [XX of 2013](#), [XXII of 2014](#), [XXI of 2015](#), [XVI](#), [XXXI of 2017](#), [VI of 2018](#), [VIII of 2019](#), [XXVI of 2019](#), [V of 2020](#), [VIII of 2020](#) and [LXII of 2020](#) and [XII of 2021](#), [Legal Notice 225 of 2021](#), [Acts XLVI](#), [LXXI of 2021](#), [LXXII of 2021](#), [VI of 2024](#) and [XV of 2026](#).

1. The short title of this Act is the Malta Financial Services Authority Act.

*Short title.
Amended by:
XIII. 1994.2;
XVII. 2002.103.*

2. In this Act unless the context otherwise requires:

"Authority" means the Malta Financial Services Authority established by article 3;

"Audit Committee" means the Committee established by article 12A;

"Board of Governors" means the Board of Governors of the Authority established by article 6;

"the [BRRD](#)" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Chief Executive Officer" means the Officer responsible for the overall performance of the Authority and the implementation of its objectives, strategy, and of policies as set by the Board of Governors. The Chief Executive Officer shall be appointed by the Board of Governors. The Chief Executive Officer shall be a non-voting member of the Board of Governors;

"Chief Officer" means the Officer responsible for a Directorate;

"Directorate" means a section of the Authority, established by the Board of Governors in terms of article 5, made up of a number of units and functions;

*Interpretation.
Amended by:
XV. 1989.2;
XXXI. 1990. 2;
XIII. 1994.3;
XX. 1994.4.
Substituted by:
XVII. 2002.105.
Amended by:
IV. 2003.16;
XX. 2007.3;
XIX. 2010.3;
XXI. 2015.3;
XVI. 2017.42;
XXXI. 2017.3;
VI. 2018.2;
VIII.2019.2;
XLVI.2021.3.*

"[Disclosure Regulation](#)" means Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Executive Committee" means the Committee appointed in terms of article 9;

"Enforcement Decisions Committee" means the sub-committee of the Executive Committee established by article 11;

"financial year" means a period of twelve months beginning on the 1st day of January and ending on the 31st day of December of each year;

"financial services" means the business of credit and financial institutions, the business of insurance and the activities of insurance intermediaries, the provision of investment services and collective investment schemes, pensions and retirement funds, regulated markets, central securities depositories and such other areas of activity or services as may be placed under the supervisory and regulatory competence of the Authority by the Minister or by any other law;

"General Counsel" means the Officer leading the Directorate for Legal and International Relations;

"institution" means a credit institution or an investment firm;

"internal audit" means an independent, objective assurance and consulting activity designed to add value and improve the operations of the Authority;

"local regulated market" means a regulated market authorized under the Financial Markets Act;

"[MiFID](#)" means [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

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

"person" includes any entity corporate or unincorporated which may hold a licence or other authorisation issued by the Authority or which falls within the supervisory or regulatory authority of the Authority;

"prescribed" means prescribed under this Act, or any regulations or Rules issued thereunder;

"Taxonomy Regulation" means Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, as amended from time to time, and includes any binding legal instruments, guidelines and other

measures that have been or may be issued thereunder.

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

*Added by
XXVI.2019.78.*

3. (1) There shall be an authority, to be called the Malta Financial Services Authority.

*Establishment of
the Authority.
Amended by:
XIII.1994.5.
Substituted by:
XVII. 2002.106.
Amended by:
XXVI.2019.79;
XV.2026.4.*

(2) The Authority shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring and disposing of property of any kind for the purposes of its functions under this Act or any other law, of suing and of being sued, and of doing all such things and entering into all transactions as are incidental to or conducive to the exercise or performance of its functions aforesaid.

(3) Save as expressly provided for in this Act or in any other Act administered by the Authority, in the exercise of its functions and powers the Authority, including its decision making bodies, shall be autonomous and shall act objectively and independently, and shall not seek or take instructions from, nor be subject to any interference by any other authority, body or person.

(4) The provisions of article 77 of the [Public Finance Management Act](#) shall not apply to the Authority.

Cap. 601.

4. (1) Without prejudice to any other power or function conferred to it by this Act or any other law, it shall be the function of the Authority:

*Functions of the
Authority.
Amended by:
XIII.1994.6.
Substituted by:
XVII. 2002.106.
Amended by:
XX. 2007.4;
XIX. 2010.4;
XX. 2013.20;
XXI. 2015.4;
VIII.2019.3;
XVII.2019.80;
LXII.2020.2;
XLVI.2021.4.*

- (a) to regulate, monitor and supervise financial services in Malta;
- (b) to promote financial market integrity and the legitimate expectations of consumers of financial services, to promote fair competition practices and consumer choice in financial services and to complement the Central Bank of Malta in its role to ensure the stability of the financial system;
- (c) to monitor and keep under review trading and business practices relating to the supply of financial services to private and other persons, and to provide relevant information and guidance to the public;
- (d) to monitor the working and enforcement of laws that directly or indirectly affect consumer of financial services in Malta, and to undertake or commission such study, research or investigation which it may deem necessary in this regard;
- (e) to advise the Government generally on the formulation of policies in the field of financial services, and to make recommendations to Government on action which in the opinion of the Authority would be expedient in relation to matters falling within the regulatory and supervisory functions of the Authority;

- (f) to investigate allegations of practices and activities detrimental to consumers of financial services, and generally to keep under review trading practices relating to the provision of financial services and to identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers of financial services;
- (g) to ensure high standards of conduct and management throughout the financial system;
- (gA) to provide and foster further training, knowledge and education on all matters relating to financial services;
- (h) to perform such other functions or duties as may be assigned to it under this Act or any other law.

(1A) Without prejudice to the functions of the Authority under this or any other law, it shall also be the function of the Authority:

- (a) to promote and safeguard the integrity of local regulated markets;
- (b) to ensure investor confidence in local regulated markets;
- (c) to ensure that all the participants of local regulated markets are responsible for their decisions and actions; and
- (d) to ensure that any measures imposed upon any person in accordance with this Act or any other law, where relevant, are imposed in accordance with the principle of proportionality.

(1B) Without prejudice to the functions of the Authority under this or any other law, it shall also be the function of the Authority to monitor the compliance:

- (a) of financial market participants and financial advisers, as defined in Article 2 of the [Disclosure Regulation](#), with the requirements of the said Regulation; and
- (b) of financial market participants, as defined in Article 2 of the Taxonomy Regulation, with the requirements of Articles 5, 6 and 7 of the said Regulation.

(2) For the better performance of its functions, the Authority shall collaborate with other local and foreign bodies, Government departments, international organisations, with the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), colleges of supervisors, the European Systemic Risk Board (ESRB), the European Central Bank (ECB), the Single Resolution Board (SRB) and other entities which exercise regulatory, supervisory, registration or licensing functions and powers under any law in Malta or abroad or which are otherwise engaged in overseeing or monitoring areas or activities in the financial services sector and the registration of commercial partnerships, and to make arrangements for the mutual exchange of information and for other

forms of assistance in regulatory and supervisory matters.

(3) The Authority shall have the power to impose such fees as may be prescribed, and to levy charges in respect of any request, application or other matter that may be submitted to it under this or any other Act including the fees and charges in respect of any permission, licence, authorisation, exemption or other benefit, as well as fees and charges in respect of its regulatory, supervisory or investigative functions under this or any other law, including the Authority's function to provide training, knowledge and education on all matters relating to financial services.

(4) In exercising its functions and powers assigned to it under this Act or any other Act, the Authority shall be obliged to have regard to Malta's international commitments including its obligations under the Treaty within the meaning of the [European Union Act](#). In this Act, "Malta's international commitments" shall mean Malta's commitments, responsibilities and obligations arising out of membership of the European Union and membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral, multilateral including Memoranda of Understanding, to which Malta is a party.

Cap. 460.

4A. The granting of a licence is a concession and a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder. The burden of proving the licence holder's qualifications to hold a licence shall rest at all times on the licence holder. In this sub-article, licence includes and applies to any licence and authorisation, however designated, issued by the Authority under any legislation for whose administration it is responsible.

Licence considered to be a concession.
Added by:
XIX. 2010.5.

5. (1) The main organs of the Authority are the Board of Governors, the Executive Committee and Directorates as may be established by the Board of Governors from time to time.

The Authority.
Amended by:
XV. 1989. 3;
XIII. 1994. 8.
Substituted by:
XVII. 2002. 106.
Amended by:
IV. 2003. 16;
VIII. 2019. 4.

(2) It shall be the duty of the organs of the Authority to provide the Board of Governors with all such information as may be required for the proper performance of its functions and in particular to enable it to ensure that its policies are being properly carried out.

6. (1) The Board of Governors shall establish the policies to be pursued by the Authority. In determining such policies the Board of Governors shall follow such policy guidelines as may be set out by Government. The Board of Governors shall also be responsible for advising the Government as provided in article 4.

The Board of Governors.
Amended by:
XIII. 1994. 9.
Substituted by:
XVII. 2002. 106.
Amended by:
IV. 2003. 10;
X. 2011. 3;
VI. 2018. 3;
XII. 2021. 8.

(2) The Board of Governors shall consist of the following:

- (a) a Chairman, appointed by the Prime Minister acting on the advice of the Cabinet of Ministers;
- (b) the Chief Executive Officer;
- (c) five members or more, appointed by the Prime Minister from among persons who have distinguished

themselves in business, financial activities, the professions, the public services or academic affairs and who in his opinion are able to represent the points of view of the industry and consumers of financial services.

The Board of Governors shall choose a deputy Chairman from amongst its members.

(3) A person shall not be eligible to be appointed as Chairman or as a member of the Board of Governors or of any other organ of the Authority, or to hold any office with the Authority, if he is the holder of a licence or other authorisation issued by the Authority or otherwise falls under the regulatory or supervisory functions of the Authority, or is a director, an officer or employee of such holder or other such person.

(4) Where the Chairman is absent or is unable to exercise the functions and powers of his office and the Prime Minister has not appointed another person to act as chairman during the period of absence or disability the remaining members of the Board of Governors shall designate one of the other members of the Board to carry out the functions of the chairman during each period.

(5) The Chairman and the members of the Board of Governors shall hold office for such term, being a period of not more than five years, as may be specified in the letter of appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Minister may from time to time, determine.

(6) (a) Without prejudice to the provisions of sub-article (3) a person shall not be eligible to be appointed or to hold office as Chairman or as a member of the Board of Governors if he -

- (i) is a member of the House of Representatives; or
- (ii) is legally incapacitated or interdicted; or
- (iii) has been declared bankrupt or has made a composition or arrangement with his creditors; or
- (iv) has contravened any provision made by or under any law appearing to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice concerned in the provision of financial services or in the management of companies; or
- (v) has engaged in any business practice appearing to the Prime Minister to be deceitful or oppressive or otherwise improper (whether unlawful or otherwise) or which otherwise reflects discredit on his method of conducting business or professional activities; or
- (vi) has engaged in or been associated with any other business practice or otherwise conducted himself in such a manner as to cast doubt on his

- competence or soundness of judgement; or
- (vii) has a financial or other interest as is likely to prejudicially affect the discharge by him of his functions; or
 - (viii) is otherwise not a fit and proper person to hold that office.
- (b) In determining whether a person is a fit and proper person, the Prime Minister shall have regard to that person's probity, to his competence and soundness of judgement for fulfilling the responsibilities of that office, to the diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of any person are, or are likely to be, in any way threatened by his holding that office.
- (c) Any person whom the Prime Minister has appointed or proposes to appoint as a member of the Board of Governors shall, whenever requested by the Prime Minister to do so, furnish to him such information as the Prime Minister considers necessary for the performance of his duties under paragraphs (a) and (b).
- (d) A member of the Board may be relieved of office by the Prime Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or of misbehaviour; and for the purposes of this paragraph repeated and unjustified non-attendance of meetings may be deemed to amount to misbehaviour.
- (e) Any member of the Board of Governors, may resign his office by letter addressed to the Prime Minister.
- (f) The appointment of any person as a member of the Board of Governors and the termination of office or resignation of any such person including the reason for such termination or resignation, as applicable, shall be notified in the Gazette.

7. (1) The Board of Governors shall meet as often as may be necessary or expedient but in any case not less frequently than once every three months. The meetings shall be convened by the Chairman either on his own initiative or on the written request of any three members.

(2) The Board of Governors may act notwithstanding any vacancy amongst its members provided there is a quorum consisting of not less than three members present at the meeting.

(3) The meetings of the Board of Governors shall be chaired by the Chairman or in his absence by the deputy Chairman, or by a member elected for the particular meeting by the other members present at the meeting.

(4) Decisions of the Board of Governors shall be taken by a majority of votes of the members present, and the Chairman or

Meetings of the Board of Governors.

Amended by:

XIII.1994.10.

Substituted by:

XVII. 2002.106.

Amended by:

VI. 2018.4;

XVII.2019.81.

other person chairing the meeting shall have an original vote and in the event of an equality of votes a second or casting vote.

(5) (a) The Board of Governors shall designate a person to act as Secretary to the Board of Governors for such period and as the Board of Governors shall deem appropriate.

(b) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board of Governors and to keep minutes of those meetings.

(6) Any participation in the proceedings of the Board of Governors by a person not entitled so to do, shall not invalidate the proceedings.

(7) Subject to the foregoing provisions of this article, the Board of Governors may regulate its own proceedings.

(8) The Board may invite any person and may require any officer or employee of the Authority to attend a meeting of the Board of Governors and to take part in the discussions.

The functions and powers of the Board of Governors
Substituted by:
XLVI.2021.5.
Amended by:
LXXI.2021.3.

7A. (1) Without prejudice to the functions and powers of the Board of Governors under this Act or any other law, the Board of Governors shall be responsible for the approval of prospectuses and admissibility to listing.

(2) The Board of Governors may, from time to time, delegate in writing any of its functions and powers under sub-article (1), on such matters and subject to such conditions and modalities as may be specified in the delegation, subject to the terms and duration as determined by the Board of Governors, to the Executive Committee, the Chief Executive Officer or one or more of the members of the Executive Committee, any one or more of the sub-committees established by the Executive Committee, or a function or unit of the Authority, as may be specified.

The Resolution Authority and the Resolution Committee.
Added by:
XXI. 2015.5.
Amended by:
VIII.2019.6.

7B. (1) The Board of Governors shall also act as the Resolution Authority, which shall be the authority appointed for the purposes of Article 3 of the [BRRD](#).

(2) The Resolution Authority shall appoint a Resolution Committee which shall have all the powers assigned to the Resolution Authority under the [BRRD](#). The composition, powers and functions of the Resolution Committee shall be governed by the provisions set out in the First Schedule and in terms of any regulations made hereunder. The Resolution Authority and the Resolution Committee shall be operationally independent and shall act independently of each other and of the Executive Committee.

Recovery and Resolution Rules.
Added by:
XXI. 2015.5.

7C. For the better carrying out and implementation of the provisions of the First Schedule and the [BRRD](#), the Authority, through the Resolution Committee, may, from time to time, issue and publish Recovery and Resolution Rules which shall be binding on institutions and others as may be specified therein. Such Rules may lay down additional requirements and conditions in relation to

the recovery and resolution of institutions, the conduct of their business, their responsibilities, and any other matters as the Resolution Committee may consider appropriate.

8. The legal and judicial representation of the Authority shall vest in the Chief Executive Officer, or in such other person as the Board of Governors may determine for any specific case or class of cases:

Legal and judicial representation.
Amended by:
XIII.1994.11.
Substituted by:
XVII. 2002.106.
Amended by:
VI. 2018.5.

Provided that the Board of Governors may from time to time appoint any one or more of its members, or any one or more of the officers or employees of the Authority, to appear in the name and on behalf of the Authority in any judicial proceedings or on any act, contract, instrument or other document whatsoever, or in any class or category thereof.

9. (1) The Executive Committee shall be responsible for the implementation of the strategy and policies of the Authority, for the approval of regulation, for the approval of and for the issuing of licences and other authorisations, and for the monitoring and supervision of persons and other entities licensed or authorised by the Authority in the financial services sector, for the enforcement of the regulatory framework in the financial services sector, for carrying out the day-to-day management and the finances of the Authority including human resources and ancillary services, and for the general coordination of the Authority's administrative affairs.

The Executive Committee
Amended by:
XV.1989.4;
XIII.1994.12,13.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.16;
XIX. 2010.7;
VI. 2018.6.
Substituted by:
VIII.2019.7.
Amended by:
XLVI.2021.6.

(2) The Executive Committee may from time to time delegate in writing its functions and powers, on such matters and subject to such conditions and modalities as may be specified in the delegation, subject to the terms and duration as determined by the Executive Committee, to the Chief Executive Officer or one or more of the members of the Executive Committee, any one or more of the sub-committees established by the Executive Committee or a function or unit of the Authority, as may be specified. Any decisions so made shall be approved by the Board of Governors and subsequently made public on the website of the Authority.

(3) The Executive Committee shall also be responsible for establishing and empowering sub-committees, units and functions. The Executive Committee shall determine the respective remits of the sub-committees, units and functions.

(4) The Executive Committee shall consist of the Chief Executive Officer, who shall preside thereat, the General Counsel, and of each of the Chief Officers responsible respectively for supervision, enforcement, corporate services, operations, strategy, policy and innovation, and for any other aspect falling within the remit of the Authority as may be determined by the Board of Governors.

(5) The Executive Committee shall designate one of the officers of the Authority, engaged in any of its functions mentioned in sub-article (1), to act as Secretary to the Executive Committee for such period and under such terms as the Executive Committee shall deem appropriate.

(6) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Executive Committee and to keep minutes of those meetings.

(7) The provisions of article 7, in so far as applicable, shall apply to the meetings of the Executive Committee as they apply to the meetings of the Board of Governors.

(8) The Executive Committee may from time to time make internal arrangements to authorize one or more of the senior officers, responsible for the approval of and for the issuing of licences and other authorisations, to sign a licence, category of licences or any other form of authorisation as it may deem appropriate.

The Supervisory Council.

Amended by:
XIII.1994.12,14.
Substituted by:
XVII. 2002.106.
Amended by:
XIX. 2010.8.

10. Deleted by [VIII of 2019](#)

The Enforcement Decisions Committee.

Amended by:
XV.1989. 5;
XXXI. 1990. 3;
XIII.1994.12.
Substituted by:
XVII. 2002.106.
Amended by:
XIX. 2010.9.
Substituted by:
VIII.2019.10.
Amended by:
LXII.2020.3.

11. (1) The Enforcement Decisions Committee shall decide or take such action as it considers appropriate, promptly and without delay, in relation to any recommendation for enforcement action brought before it by the Chief Officer responsible for Enforcement or any other official from the Directorate responsible for enforcement:

Provided that the Executive Committee may take any enforcement action itself if:

- (a) it considers that, in the particular case, the action proposed should occur before it is practicable or possible to convene the Enforcement Decisions Committee; or
- (b) it considers that, in the particular case, an urgent decision on the proposed action is necessary to protect the interests of consumers.

(2) The members of the Enforcement Decisions Committee shall be appointed by the Board of Governors.

(3) The Executive Committee may, after seeking the approval of the Board of Governors, establish a detailed remit for the Enforcement Decisions Committee and may also establish that certain enforcement action, which it does not deem to be material, may be taken by the Chief Officer responsible for enforcement.

(4) The Enforcement Decisions Committee shall be composed of a chairman and two (2) other members appointed by the Board of Governors for such term, being a period of not more than three (3) years, as may be specified in the letter of appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Authority may from time to time determine.

(5) The chairman of the Enforcement Decisions Committee shall be an advocate who for a period of, or periods amounting in

the aggregate to, not less than seven (7) years has served as an advocate in Malta or served as a judge or magistrate in Malta, or partly so practiced and partly so served, and who in the opinion of the Board of Governors possesses the necessary expertise and experience in the business or regulation of financial services, or in finance.

(6) The members of the Enforcement Decisions Committee shall be persons who in the opinion of the Board of Governors possess the necessary expertise and experience in the business or regulation of financial services, or in finance.

(7) For the better carrying out of its functions, and before arriving at any decision, the Enforcement Decisions Committee may decide to hear any person in relation to any matter being considered by the said Committee.

(8) Before arriving at a decision, the Enforcement Decisions Committee shall serve written notice of the decision it proposes to take on the persons being the subject of the recommendation for enforcement action being considered by the said Committee, setting out the reasons for its proposed decisions. Such notice shall also specify therein the period in which the person upon whom the notice is served shall be entitled to make representations in writing to the Enforcement Decisions Committee as to why the proposed decision should not be taken, in accordance with the relevant provisions of the Acts administered by the Authority:

Provided that the Enforcement Decisions Committee may, where it decides that the matter is urgent, take the final decision prior to the expiration of the period stated in the notice.

(9) The Executive Committee, with the approval of the Board of Governors, may make rules governing the procedure for conducting any hearings that may take place before the Enforcement Decisions Committee.

(10) The Board of Governors shall designate one of the officers of the Authority, engaged in any of its functions mentioned in article 9(1), to act as Secretary to the Enforcement Decisions Committee for such period and under such terms as the Board of Governors shall deem appropriate.

(11) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Enforcement Decisions Committee and to keep minutes of those meetings.

(12) The Enforcement Decisions Committee shall report to the Board of Governors on the progress made in its area of competence:

Provided that the Enforcement Decisions Committee shall be independent of the Executive Committee and the Board of Governors, and shall act independently of them.

(13) The provisions of article 7, in so far as applicable, shall apply to the meetings of the Enforcement Decisions Committee as they apply to the meetings of the Board of Governors.

(14) The provisions of paragraphs (a), (b), (d) and (e) of article 6(6) shall, as far as applicable, *mutatis mutandis*, apply to the office of the chairman and members of the Enforcement Decisions Committee.

The Enforcement Directorate
Amended by:
XIII.1994.12,16.
Substituted by:
XVII.2002.106;
VIII.2019.10.

12. (1) It shall be the function of the Enforcement Directorate to:

- (a) deal with enforcement:
 - (i) under the provisions of this Act or any other Act administered by the Authority, or of any regulations or rules made thereunder; or
 - (ii) in relation to any of the conditions imposed in a licence or other authorisation; or
 - (iii) in relation to any administrative measure or penalty imposed by the Authority in terms of this Act or any other Act administered by the Authority, or of any regulations or rules made thereunder;
- (b) investigate any referrals made to it by any other organ of the Authority;
- (c) conduct investigations in relation to any enforcement action;
- (d) make recommendations for any enforcement action to the Enforcement Decisions Committee established in article 11;
- (e) implement any decision of the Enforcement Decisions Committee, including the making of appropriate arrangements for such purpose;
- (f) assist, as applicable, in the conduct of proceedings before the Financial Services Tribunal in relation to such enforcement action;
- (g) carry out such other duties as may be assigned to it by the Executive Committee.

(2) The Enforcement Directorate shall, for the purpose of discharging its functions, have all the powers vested in the Authority under this Act or any other Act administered by the Authority.

(3) The Enforcement Directorate shall be composed of the Chief Officer responsible for enforcement, and such number of officers and employees as may be required for the proper exercise of its functions.

Audit Committee.
Added by:
XXXI.2017.4.
Amended by:
VIII.2019.11.

12A. (1) It shall be the function of the Audit Committee to:

- (a) determine whether the governance, controls and risk management processes of the Authority in implementing agreed policies and strategies across the activities of the Authority are adequate, effective and functioning;
- (b) determine the Internal Audit Unit's remit and role;

- (c) evaluate the performance of the Internal Audit Unit set out under article 12B;
- (d) carry out such other functions as may be assigned to it by the Board of Governors.

(2) In carrying out its functions the Audit Committee shall have all powers necessary to enable it to perform its functions properly, and the provisions of sub-articles (4) and (5) of article 12B shall, *mutatis mutandis*, apply to the Audit Committee.

(3) In carrying out its functions under sub-article (1)(b), the Audit Committee shall consult the Chief Executive Officer regarding new tasks and the processes applied throughout the activities of the Authority to ensure full coverage of the activities of the Authority by the Internal Audit Unit. In so far as its functions under sub-article (1)(c) are concerned, the Audit Committee shall take into consideration the internal audit plan and any audit quality assurance assessment reports.

(4) The Audit Committee shall be composed of a Chairman and two other members appointed by the Board of Governors, for such term, being a period of not more than three years, as may be specified in the letter of appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Authority may from time to time, determine.

(5) The Authority shall consult the Audit Committee before appointing one or more suitable officers to perform the functions of Director and Deputy Director within the Internal Audit Unit.

(6) The Audit Committee shall report to the Board of Governors on the progress made in its area of competence and on the progress made by the Internal Audit Unit.

(7) The Audit Committee shall be independent of the Board of Governors, and shall act independently of it.

(8) The Audit Committee shall designate one of the officers of the Authority as its Secretary for such period and under such terms as the Board of Governors shall deem appropriate.

(9) The provisions of article 7 shall, as far as applicable, *mutatis mutandis* apply to the meetings of the Audit Committee, and the provisions of paragraphs (a), (b), (d) and (e) of article 6(6) shall, as far as applicable, *mutatis mutandis* apply to the office of the Chairman and the members of such Committee.

12B. (1) It shall be the function of the Internal Audit Unit to examine, evaluate and report upon the adequacy and effectiveness of the governance, internal control and risk management processes of the Authority. To this effect, in addition to any other objectives that may be assigned to it by the Board of Governors or the Audit Committee within the purposes of this article, the Internal Audit Unit shall determine that:

Internal Audit
Unit.
Added by:
XXXI. 2017.5.

- (a) adequate internal controls are in place and operating effectively and efficiently;
- (b) risks are appropriately identified and managed;
- (c) interaction with the various units of the Authority occurs as needed;
- (d) financial, managerial and operating information is accurate, reliable, integral and timely;
- (e) the actions of officers and employees of the Authority are in compliance with the policies and procedures of the Authority, and applicable laws and regulations;
- (f) resources are acquired economically, used efficiently, and adequately protected;
- (g) plans and objectives of the Authority are achieved or are being implemented as planned;
- (h) quality and continuous improvement are fostered in the control processes of the Authority;
- (i) significant regulatory issues impacting on the Authority are recognised and addressed appropriately.

(2) The Internal Audit Unit shall be composed of the Director of the Unit, and any number of employees as may be required in order to carry out its functions properly.

(3) In carrying out its functions, the Internal Audit Unit shall, as appropriate, apply international best practice guidance and standards and shall adhere to internationally accepted principles of ethics for internal auditors.

(4) For the better performance of its functions, the Internal Audit Unit may audit all parts of the Authority, and shall have full, complete unrestricted access to any records, files, physical properties, electronic data, and personnel of the Authority relevant to the performance of an audit.

(5) Officers or employees of the Authority shall fully cooperate with the Internal Audit Unit in the exercise of its functions.

(6) The Internal Audit Unit shall report to the Audit Committee on the progress made in its area of competence.

Officers and employees of the Authority.
Amended by:
XIII.1994.17.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.16;
XIX. 2010.10;
XVI. 2017.43;
VIII.2019.12.
Substituted by:
XV.2026.20.

13. (1) The Authority may appoint Deputy Chief Executive Officers, Chief Officers, Heads, Deputy Heads and such other officers and employees as it may consider necessary for the efficient discharge of its functions, powers and duties under this Act or any other law. The selection and appointment of the Deputy Chief Executive Officers shall be made by the Chief Executive Officer in consultation with the Board of Governors. The other officers and employees of the Authority shall be selected and appointed by the Chief Executive Officer according to the procedures and on such terms and conditions as the Board of Governors may establish:

Provided that the officers and employees of the Authority shall be appointed on the basis of published criteria that are objective and transparent and shall, at all times, be persons of integrity and good conduct.

(2) The Authority shall put in place policies, rules, prohibitions and arrangements to prevent conflicts of interest of members of staff in accordance with 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. Such policies, rules, prohibitions and arrangements shall as a minimum apply to conflicts that may arise through:

(a) trading in certain financial instruments; and

(b) being employed by, or accepting any kind of contract for the provision of professional services during an established period of time with such entities as shall be identified in policies, rules, prohibitions and arrangements put in place by the Authority.

(3) The policies, rules, prohibitions and arrangements put in place by the Authority:

(a) shall be proportionate to the role and responsibilities of the members of staff and shall apply in such circumstances, provide for such terms and conditions, and apply for such period of time as may be reasonably necessary to prevent conflict of interest by employees and former employees;

(b) shall require members of staff to provide the Authority with a declaration of interest on any of their financial holdings that may raise conflict of interest concerns and to dispose thereof or otherwise, as may be prescribed;

(c) may provide for exceptions, exemptions, derogations and compensation as may be allowed under the Directive mentioned in sub-article (2);

(d) shall not constitute a breach of workers' rights as established in Maltese law or a breach of any fundamental right recognised in the Constitution of Malta or the Charter of Fundamental Rights of the European Union; and

(e) shall not unduly restrict the ability of the Authority to exercise its supervisory functions.

(4) For the purposes of the [Criminal Code](#) and of any provision of Cap. 9.

a criminal nature in any other law, the members of the Authority, and every officer or employee thereof, shall be deemed to be public officers.

Dissemination of
information.
Amended by:
XIII.1994.18.
Substituted by:
XVII. 2002.106.

14. (1) The Authority shall arrange for the dissemination in such form and manner as it considers appropriate of such information and advice as it may consider expedient to give the public about matters relating to the exercise of its functions under this Act or any other enactment.

(2) In arranging for the publication of any such information or advice, the Authority shall have regard to the duty of professional secrecy and, as far as practicable shall refrain from publishing any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interest of that individual.

Compensation
schemes.
Amended by:
XIII.1994.19.
Substituted by:
XVII. 2002.106.

15. Without prejudice to any provisions of other laws, the Minister may, acting on the advice of the Authority, make regulations to establish, co-ordinate, amalgamate and otherwise regulate compensation schemes or sub-schemes or other similar arrangements in the financial services sector:

- (a) for the provision of compensation where licence holders, or categories thereof, are unable to satisfy their obligations towards depositors, investors, policy-holders or other claimants in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed or otherwise authorized, and
- (b) for the provisions of compensation arising out of or in connection with any other liability as may be prescribed, and to regulate the management and the financing of any such schemes or arrangements for compensation and the contributions and levies to be paid thereto, and such regulations may make different provision for different classes of licence holders and claimants.

Powers of the
Authority.
Substituted by:
XIII.1994.20;
XVII. 2002.106.
Amended by:
IV. 2003.11;
XII. 2006.57;
XX. 2007.5;
L.N. 424 of 2007;
III. 2009.9;
XIX. 2010.11;
X. 2011.4;
XX. 2013.21;
XXII. 2014.14;
XXVI.2019.82;
V.2020.3;
XLVI.2021.7.

16.(1)(a) Without prejudice to any other function and power under this or any other law, the Authority shall, in the exercise of its functions and powers under this Act, have the right to reasonable access and entry to any business premises and, or offices of a licence holder, access to any relevant documentation and, or records of a licence holder, or of any other person who appears to be in possession of relevant documentation and, or records, including access to any telephonic or other records and access to any other information relating or pertaining to the activities licensed or authorised by the Authority or otherwise falling under its supervisory or regulatory functions. The Authority shall also have the right to issue orders for the freezing of funds and, or other assets including bank accounts in the name of the

licence holder or any other third party or parties as may be indicated and for such time and under such conditions as the Authority may set out in writing. The order may also prohibit a licence holder from transferring, disposing or losing possession of any such funds or assets. These orders may also be issued at the request of a foreign enforcement or supervisory authority.

- (b) The directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.
- (c) The Authority may exercise the powers under this article notwithstanding articles 17A and 17B and any provision as may be contained in any other law.

(2) The Authority may, for the better carrying out of the provisions of this Act or any other Act administered by it, from time to time:

- (a) issue and publish Rules regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions. Such Rules may:
 - (i) lay down additional requirements and conditions in relation to activities of such persons, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the Authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the Authority may consider appropriate;
 - (ii) provide for the returns, statements and notices to be made or given for any purposes in regard to which the Authority exercises supervisory or regulatory functions under this Act or any other Act, and the form and contents thereof; and
 - (iii) prescribe the information that such persons are to submit to the Authority:

Provided that such Rules shall be binding on all licence holders and others as may be specified therein;
- (b) issue a directive in writing requiring a person to do or to refrain from doing any act, including such prohibitions, restrictions and conditions as may be specified in the directive; and any person to whom or to which the notice is given shall obey, comply with and otherwise give

effect to any such directive within the time and in the manner stated in the directive;

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

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

- (b) Where a skilled person is appointed in terms of this sub-article, the following provisions shall apply:
 - (i) any person appointed as a skilled person shall be a person who, in the opinion of the Executive Committee, possesses the expertise necessary to provide the assistance required by the Authority in terms of his appointment;
 - (ii) the person in relation to whom the skilled person is appointed shall co-operate with the skilled person and provide any information and documentation, as may be required, by such skilled person in the fulfilment of his appointment;
 - (iii) where such skilled person is appointed in relation to a particular person, the Authority may require such person to pay all fees and expenses charged by the skilled person;
 - (iv) the Authority may require the skilled person, *inter alia*, to provide it with a report relating to the assistance provided to the Authority in terms of his appointment; and
 - (v) a report drawn up by the skilled person in terms of sub-paragraph (iv) and endorsed by the Authority in writing, shall for all purposes have the same effect as a document drawn up by the Authority:

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

(3) Without prejudice to any other powers that may be exercised by the Authority in terms of this Act or of any other law, where any

person contravenes or fails to comply with any provision of this Act or any other Act administered by the Authority, with any regulations or Rules issued thereunder, with any of the provisions of the [Disclosure Regulation](#), with any of the provisions of Articles 5, 6 or 7 of the Taxonomy Regulation, with any of the conditions imposed in a licence issued by the Authority or with any directives issued by the Authority, 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 one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be.

(4) Where a notice as referred to in sub-article (3) or as referred to in any other Act administered by the Authority or in any regulations or Rules issued thereunder, has not been appealed, or where such notice has been appealed, within fifteen days of the determination by the Tribunal of such appeal, the administrative penalty as contained in the notice or as reduced or increased by the decision of the Tribunal shall be due to the Authority. Upon the service of a copy of the notice or the decision, as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the [Code of Organization and Civil Procedure](#).

Cap. 12.

(5) The right of the Authority to obtain information from a person who holds or has held a licence or other authorization, or from any of the officials or employees of such person, shall not be restricted, obstructed or precluded in any manner. Any gagging or similar confidentiality obligation or other restrictive condition arising from the legal or contractual relationship between such person and his officials or employees shall be, in so far as it is contrary to these provisions and impedes or restricts the right of the Authority to receive information required in the pursuance of its regulatory functions and duties arising under this or any other Act, null and void.

(6) In furtherance of sub-article (5), the following provisions shall apply:

- (a) any person who holds or has formerly held a license or other authorization from the Authority, and the officials and employees thereof shall, upon a written request by the Authority, promptly provide the Authority with any information that it may require as provided in sub-article (5), and may not raise any contractual gagging restriction or similar prohibition or other confidentiality obligation arising or alleged to arise under contract law or otherwise refuse to comply with such a request of the Authority;
- (b) no action for breach of contract and no disciplinary measure may be taken, directly or indirectly, by a person against any of its officials or employees for providing the Authority with any information required by the Authority as provided in sub-article (5); and any contractual or disciplinary measure contrary to this provision shall be null and void;

(c) for the purposes of this article:

- (i) "information" shall include explanations and other forms of assistance; and
- (ii) "employees" and "officials" shall include former employees and officials.

(7) Notwithstanding any provision as may be contained in any other law for whose administration the Authority is responsible and where circumstances so warrant, the Authority may issue reprimands, warnings or take other similar disciplinary sanctions or measures of whatever type as may be deemed warranted by the circumstances and the nature and seriousness of the breach and wrongdoing.

(8) Any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the Authority under any law for whose administration it is responsible, shall be published in such medium and in such manner and for such duration as may be deemed warranted by the circumstances and the nature and seriousness of the breach or wrongdoing. The Board of Governors may from time to time establish policies and guidelines regarding the publication of administrative sanctions and disciplinary measures.

Criminal sanctions and criminal investigations concerning breaches of provisions transposing MiFID.
Added by:
XXXI. 2017.7.

16A. (1) The Authority shall, on an annual basis, contact the office of the Attorney General and the Commissioner of Police and seek information about any criminal sanctions imposed for any breaches of any provisions of any Act or regulations transposing [MiFID](#). The office of the Attorney General and the Commissioner of Police shall co-operate with the Authority and shall, where relevant, send the Authority a copy of the final judgement in relation to any criminal sanctions imposed. The Authority shall submit such copy of the final judgement to the European Securities and Markets Authority (ESMA).

(2) The Authority shall, on an annual basis, contact the office of the Attorney General and the Commissioner of Police and ask for anonymised and aggregated data regarding all criminal investigations undertaken and all criminal sanctions imposed for any breaches of any provisions of any Act or regulations transposing [MiFID](#). The Authority shall forward such information to the European Securities and Markets Authority (ESMA).

Exchange of information.
Amended by:
XIII.1994.21.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.12;
XX. 2007.6;
XIX. 2010.12;
X. 2011.5;
XX. 2013.22;
V.2020.4;
LXII.2020.4.

17. (1) Other than for the proper discharge of their duties or functions under this or any other Act, or as may be otherwise provided in any other law, the members of the Board of Governors or of any other organ of the Authority, and the officers and employees of the Authority shall treat any information acquired in the discharge of their duties as confidential, and shall not, directly or indirectly, disclose such information to any other person, except with the consent of the person who had divulged the information. For the purposes of this sub-article, "employees" and "officials" shall include former employees and officials.

(2) Notwithstanding the foregoing provisions of this article, the

Authority may, pursuant to a written request, disclose information to:

- (a) an overseas regulatory authority or body carrying out similar or equivalent functions in order to assist the same in matters related to the regulation and supervision of financial services and the registration of commercial partnerships;
- (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;
- (c) any other body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial, registration or licensing function in terms of law:

Provided that the Authority shall disclose the requested information where required or requested to do so within the terms of Malta's international commitments, or where so required within the terms of understanding assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration, including a request arising under a Memorandum of Understanding concluded with the Authority.

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

(4) Information divulged to the Authority under conditions of confidentiality in pursuance to a request within the terms of a bilateral or multilateral agreement, memorandum of understanding or other similar document or arrangement for the exchange of information or for any other form of collaboration with any authority, body or other entity as provided for in this article shall be treated as confidential and no Court or Tribunal may order the disclosure of such information unless the prior written approval of any such authority, body or other entity is obtained.

Attachment
Orders.

17A. When upon information received from the Authority, the Attorney General has reasonable cause to suspect that a person is guilty of a breach of this Act or of any other Act, the Attorney General may request the Criminal Court to issue an Attachment Order and the provisions of article 35 of the [Proceeds of Crime Act](#) shall apply.

Cap. 621.
Added by:
XX. 2007.7.
Amended by:
L.N. 424 of 2007;
VIII.2020.84.
Substituted by:
VI.2024.9.

Freezing of funds.

17B. When a person is charged with a criminal offence in breach of this Act or with an offence which is a relevant offence in terms of the [Proceeds of Crime Act](#), the prosecution may apply to the Court of Magistrates for a freezing order and the provisions of article 36 of the said Act shall apply.

Cap. 621.
Added by:
XX. 2007.7.
Amended by:
L.N. 424 of 2007;
L.N. 426 of 2012.
Substituted by:
VI.2024.10.

Communications
with the Central
Bank of Malta and
other bodies.
Amended by:
XIII.1994.21.
Substituted by:
XVII. 2002.106.
Amended by:
XIII. 2004.69;
XX. 2013.23.
Cap. 204.

18. (1) The Central Bank of Malta and the Authority shall on request exchange information in their possession which is necessary for the discharge by the Central Bank of its duties under the Central Bank of Malta Act, and by the Authority under this Act or any other law.

(2) The Authority may, subject to such conditions it may deem fit to impose and to such procedures as may be applicable according to law, disclose information to overseas central banks, the European System of Central Banks, the European Central Bank and other authorities responsible for monetary policy and, where appropriate to other overseas public authorities responsible for overseeing payment systems, where such information relates and is connected to their respective functions in terms of law.

Consideration of
complaints.
Amended by:
XIII.1994.21.
Substituted by:
XVII. 2002.106.

19. (1) The Authority may investigate any matter which:

- (a) relates to the functions exercisable by the Authority under this Act or any law, and
- (b) is the subject of a representation (other than one appearing to the Authority to be frivolous) made to the Authority by or on behalf of a person appearing to the Authority to have an interest in that matter.

(2) Where the Authority has investigated any matter under this article, it shall prepare a report on that matter and (subject to any obligation with respect to professional secrecy) shall send a copy of any such report to such of the following persons as it thinks appropriate, that is to say:

- (a) any person to whom the report refers or who appears to the Authority to have an interest in the matter to which the report relates;
- (b) any person whose functions under any enactment appear to the Authority to be exercisable in relation to that matter;

- (c) any person who appears to the Authority to be a person who ought to take account of the report in determining how to act in relation to that matter.

20. Deleted by Act [XVI. 2017.44.](#)

Appointment of
Consumer
Complaints
Manager.
Substituted by:
XVII. 2002.106.
Amended by:
XX. 2007.8;
XVI. 2017.44.

20A. (1) The Minister, acting on the advice of the 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; 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, said provisions in any such regulations shall prevail.

Power to make
regulations.
Added by:
XX. 2007.10.
Amended by:
II. 2010.3;
X. 2011.6;
V.2020.5;
XLVI.2021.8.

(2) The Minister, acting on the advice of the Authority, may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, prescribe anything that is to be or which may be prescribed and provide for any matter consequential, incidental to or connected with any of the above matters.

(2A) The Minister, acting on the advice of the Authority, may make regulations to impose such fees and charges in respect of any request, application or other matter that may be submitted to the Authority under this or any other Act, including the fees and charges in respect of any permission, licence, authorisation, exemption or other benefit, as well as any fees and charges in respect of the Authority's regulatory, supervisory or investigative functions under this or any other law, including the Authority's function to provide training, knowledge and education on all matters relating to financial services.

Added by:
XLVI.2021.8.

(3) Where regulations have been made in terms of this article, the Authority may issue Rules for the better carrying out of, and to better implement, the provisions of the regulations.

(4) Regulations made under this article may impose:

- (a) administrative penalties which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;
- (b) punishments or other penalties in respect of any offence, not exceeding a fine (*multa*) of one hundred

and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment; and

- (c) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), where deemed necessary or appropriate for any contravention of or failure of compliance with any EU Directive or EU Regulation or of any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation.

Distance selling
arrangements.
Added by:
IV. 2003.13.
Amended by:
XX. 2007.9.

20B. The Minister may, acting on the advice of the Authority, make regulations to regulate distance selling arrangements in relation to financial services and the conclusion of agreements where the consumer and other purchasers and the provider of the service are at a distance from each other, and for this purpose to set out the form and procedure for concluding such distance selling agreements, to provide for the inclusion or exclusion of particular terms and conditions, to establish a cooling-off period for consumers, to lay down thresholds and exemptions, and to establish minimum consumer rights, and to introduce measures to make offers for such agreements more transparent and informative, and to regulate any other aspect of distance selling.

Financial
conglomerates.
Added by:
XIII. 2004.70.
Amended by:
XX. 2007.9;
X. 2011.7.

20C. (1) The Minister may, acting on the advice of the Authority, make regulations for the transposition of [Directive 2002/87/EC](#) of the European Parliament and of the Council of 16 December 2002 and to provide for the supplementary supervision of credit institutions, financial institutions, insurance undertakings and investment firms in a financial conglomerate, and to otherwise regulate the supervision of financial conglomerates and financial groups with crosssectoral financial activities.

(2) Regulations made by the Minister in virtue of sub-article (1) shall, in particular and without prejudice to the authority vested in the Minister by the said sub-article -

- (a) provide for the appointment of a co-ordinator responsible for coordination and examination of supplementary supervision, for the assessment of the financial situation of a group, including solvency requirements, risk concentration and intra-group transactions, and the means for obtaining from the entities within a financial group and from other overseas regulatory authorities, the information necessary for the performance of this supplementary supervision and may provide for consultation and the sharing and exchange of information with overseas regulatory authorities, as may be necessary;
- (b) provide for the establishment and imposition of administrative penalties or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Financial Services Tribunal.

20D. (1) The Minister, acting on the advice of the Resolution Authority, may make regulations for the following purposes:

- (a) to transpose, implement, and, or give effect to the requirements of the [BRRD](#);
- (b) to better implement the provisions of the First Schedule;
- (c) to provide for powers and functions of the Resolution Committee;
- (d) to establish and impose administrative penalties and other administrative measures on institutions or others as may be specified therein;
- (e) to prescribe that a breach of any regulations made under this Act may amount to a criminal offence as may be specified, and for this purpose such regulations may impose punishments in respect of any breach, not exceeding a fine (*multa*) of two million euro (€2,000,000) or imprisonment for a term not exceeding three years, or both such fine and imprisonment.

(2) Where regulations have been made in terms of this article, the Authority, through the Resolution Committee, may issue Recovery and Resolution Rules within the meaning of article 7C for the better carrying out of, and to better implement, the provisions of the regulations.

20E. The Minister may, acting on the advice of the Authority, make regulations for the following purposes:

- (a) to implement and, or give effect to:
 - (i) the requirements of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014, and to otherwise regulate the supervision of supervised entities within the meaning of Regulation (EU) 2016/1011; and
 - (ii) the requirements of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of re-use and amending Regulation (EU) No. 648/2012, and to otherwise regulate the supervision of financial counterparties and non-financial counterparties within the meaning of Regulation (EU) 2015/2365;
- (b) where regulations have been made in terms of this article, the Authority may issue Rules for the better carrying out of, and to better implement, the provisions of the regulations;

Power to make regulations in relation to the Resolution Authority and the Resolution Committee.
Added by:
XXI. 2015.7.

Transparency of securities financing transactions and of re-use, and benchmarks.
Added by:
XXXI. 2017.9.

- (c) to establish and impose administrative penalties and other administrative measures as may be specified therein for the purposes of implementing Regulation (EU) 2016/1011 and Regulation (EU) No 2015/2365 and to provide for appeals therefrom to the Financial Services Tribunal.

Language of regulations.
Added by:
 XIII. 2004.70.
Amended by:
 XX. 2007.9.
Re-numbered by:
 XXI. 2015.6;
 XXXI. 2017.8.

20F. Regulations which are required to be issued by the Minister upon the advice of the Authority or after consultation therewith under any Act in respect of which the Authority has been appointed as the competent authority, may be made in the English language only.

Financial Services Tribunal.
Amended by:
 XIII.1994.21.
Substituted by:
 XVII. 2002.106.
Amended by:
 IV. 2003.14;
 XX. 2007.11;
 L.N. 424 of 2007;
 XIX. 2010.13;
 X. 2011.8;
 LXII.2020.5;
 L.N. 225 of 2021;
 XLVI.2021.9.

21. (1) There shall be a tribunal to be called "The Financial Services Tribunal", in this Act also referred to as "the Tribunal", which shall exercise and perform the functions and powers assigned to it by law.

(2) The Tribunal shall consist of a chairman and two other members appointed by the Minister.

(2A) The Minister shall appoint a number of substitute members, which number shall lie within the discretion of the Minister but shall not be less than two (2), according to necessity, from time to time, and which substitute members shall satisfy the criteria according to sub-articles(3) or (4), and sub-articles (5), (6) and (7) shall apply. In case of a vacancy in the composition of the Tribunal or for the reasons contemplated in article 10A, or due to indisposition of any member of the Tribunal, including the Chairman, the Minister shall appoint a substitute member according to the rota, and who satisfies the requisites of the vacancy according to sub-articles (3) or (4), as the case may be.

(3) The chairman shall be an advocate who for a period of, or periods amounting in the aggregate to, not less than twelve years has served as an advocate in Malta or served as a magistrate in Malta, or partly so practised and partly so served.

(4) Subject to any other provision in any other law related to the composition of the Tribunal or to the qualifications of its members, the two other members mentioned of the Tribunal shall be persons who in the opinion of the Minister possess the necessary expertise and experience in the business or regulation of financial services, or finance.

(5) The chairman and the other members of the Tribunal shall hold office for a period of three years, shall be eligible for re-appointment and may not be removed during their term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(6) The chairman and other members of the Tribunal shall receive such remuneration as may be determined in their instrument of appointment.

(7) The remuneration referred to in sub-article (6) shall not be

altered during the tenure of office of a member by whom it is receivable, except for such changes as may from time to time be required to preserve at all times during the tenure of the appointment the proportion of the remuneration to the salary of a judge of the superior courts, as existed on the date of the appointment.

(8) An appeal within the terms of sub-article (9) to the Tribunal shall be made in writing explaining clearly the grounds for the appeal by not later than thirty days from the date the decision or act in question has been notified to the aggrieved person, and the competent authority shall have thirty (30) days from the date when it was served by the Tribunal with the appeal in question to file its reply.

(8A) The Tribunal shall proceed to deal with any matter before it with utmost urgency and shall give its decision without delay.

*Added by:
XLVI.2021.9.*

(9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant -

- (a) the competent authority has, in its decision wrongly applied any of the provisions of this Act, or any regulations issued thereunder;
- (b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

Provided further that no appeal shall lie from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) and from any reprimand, warning or other similar disciplinary sanction or measure.

(9A) The Tribunal shall also determine whether, for the reasons adduced by the appellant:

- (a) the Resolution Committee has, in its decision, wrongly applied any of the provisions of this Act or any regulations issued thereunder; or
- (b) the decision of the Resolution Committee constitutes an abuse of discretion or is manifestly unfair:

Provided that, with respect to an appeal from a decision of the Resolution Committee to take a crisis management measure, the Tribunal shall use the complex economic assessments of the facts carried out by the Resolution Committee as a basis for its own assessment of that decision:

Provided further, that the complex nature of such economic assessments shall not prevent the Tribunal from examining whether the evidence relied on by the Resolution Committee is factually accurate, reliable and consistent, and whether that evidence contains all relevant information which should be taken into account in order to assess a complex situation, and whether it is capable of substantiating the conclusions drawn therefrom.

(10) The Tribunal shall hold its sittings in public unless having

regard to the nature of the matter before it, the Tribunal deems it fit and proper to conduct the proceedings or any part thereof behind closed doors; in any such case the decision of the Tribunal shall always be delivered in public.

(10A) The Chairman or other members of the Tribunal may be challenged or may abstain from sitting in a case in those circumstances that would disqualify a judge in a civil lawsuit, and in such case the Chairman or member shall be substituted by another member appointed by the Minister in terms of sub-article (2A):

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Provided that for the purposes of the [Insurance Business Act](#), such member is to be replaced by another member who shall have the knowledge and experience required in terms of article 57(1) of the [Insurance Business Act](#).

(11) The Tribunal shall have the power to summon witnesses and to administer the oath thereto, and to appoint any expert or experts as it may deem necessary for the determination of the case before it.

(12) (a) All evidence must be relevant to the matter in issue between the parties.

(b) In all cases the Tribunal shall require the best evidence that the party may be able to produce.

(c) The Tribunal shall disallow any evidence which it considers to be irrelevant or superfluous, or which it does not consider to be the best which the party can produce.

(13) Upon the hearing of an appeal, made to it under any law, the Tribunal shall have the power -

(a) to confirm, annul or vary the decision of the competent authority or the Resolution Committee under the relevant law and to give directions within its powers under this Act or any other law to the said competent authority or the Resolution Committee to implement the decision of the Tribunal;

(b) to require the production of any document or other information;

(c) to order the payment of costs and expenses by any party to the appeal.

(14) An appeal on a question of law only from a decision of the Tribunal shall lie to the Court of Appeal. An appeal shall be made by not later than twenty days from the date of the decision of the Tribunal. In the determination of such an appeal, the Court of Appeal shall have all the powers of the Tribunal to make orders.

(15) The Minister may make regulations governing the procedure and fees for bringing and conducting appeals before the Tribunal, provided that in the absence of such regulations and subject to the rules of natural justice, the Tribunal shall regulate its own procedure.

(16) The Minister responsible for Justice may by regulations made under this sub-article establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals to the Court of Appeal under this article:

Provided that until such fees are so established by the Minister, the fees contained in Schedule A to the [Code of Organization and Civil Procedure](#) shall apply.

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(17) An appeal made under this article shall not suspend the operation of any decision or directive from which the appeal is made:

Provided that a decision to cancel a licence shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned;

Provided further that, with respect to a decision of the Resolution Committee to take a crisis management measure:

- (a) the lodging of an appeal from such decision shall not entail any automatic suspension of the effects of the challenged decision; and
- (b) the decision of the Resolution Committee shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(18) In this article, "competent authority" refers to the Authority under this Act and under any other law for the purposes of which it is appointed as the competent authority.

22. The revenue of the Authority shall consist of:

- (a) income derived in respect of licences, authorisations and registrations and other fees or charges payable under this Act or any other law in respect of which the Authority exercises registration, supervisory, regulatory or similar functions;
- (b) rents, interest and profits accruing from property, deposits and other assets of the Authority;
- (c) any sums required by the Authority for carrying out any of its functions under this Act shall be paid to the Authority out of the Consolidated Fund and shall be a charge on such Fund by virtue of this Act and without further appropriation;
- (d) any other money receivable or received by the Authority.

Financial provisions.
XV.1989.6;
XXXI.1990.4;
XIII.1994.21,22.
Substituted by:
XVII. 2002.106.
Amended by:
VI. 2018.7.

Estimates and expenditure.
Amended by:
XV.1989.7;
XXXI. 1990.5;
XIII.1994.23.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.16;
VI. 2018.8.

23. (1) The Executive Committee shall cause to be prepared in respect of each financial year and shall not later than six weeks after the end of the previous financial year prepare for adoption by the Board of Governors, within six weeks of presentation with or without amendments, estimates of the income and expenditure of the Authority for that financial year.

(2) In the preparation of such estimates the Authority shall take account of any funds and other moneys that may be due to be paid to it out of the Consolidated Fund during the relevant financial year by virtue of this Act, and shall endeavour to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its income and expenditure account, including, but, without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board of Governors may direct.

(4) Notwithstanding the provisions of sub-article (1), if in respect of any financial year, it is found that the amount approved by the Board of Governors is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Executive Committee may adopt supplementary estimates for approval by the Board of Governors and for the consideration by the House after examination by the committee as aforesaid in sub-article (5).

(5) Such estimates shall be examined by a committee of the House appointed for this purpose, which shall report thereon for consideration to the House.

(6) The sum or sums referred to in the previous sub-articles shall be determined by resolution of the House after considering the estimates prepared by the Authority and the report thereon by the committee to the House.

Other powers of the Authority.
Amended by:
XV. 1989.8;
XXXI. 1990.6;
XIII.1994.21,24.
Substituted by:
XVII. 2002.106.

24. (1) The Authority may:

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board of Governors;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

(2) For the purpose of carrying out of its functions under this Act, the Authority may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such conditions as the Minister, may in writing approve.

25. The Minister may make advances to the Authority of such sums as he may consider to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may deem appropriate. Any such advances may be made by the Minister out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advances.

Advances by the Government.
Substituted by:
XIII.1994.20.
Amended by:
XVII. 2002.106;
IV. 2003.16.

26. (1) The Authority shall establish a Reserve Fund to which the surplus for the year established in the Audited Income Statement shall be appropriated:

Determination and allocation of profits.
Amended by:
XIII.1994.21;
XVII. 2002.106;
IV. 2003.15, 16
XVI. 2017.45.

Provided that the said fund shall not at any time exceed the equivalent of the Operational Expenses registered in the preceding financial year as disclosed in the Audited Financial Statements.

(2) The surplus funds of the Authority for each financial year shall be determined after the Authority meets all current expenditure for that year and after making such provisions, including provisions for contingencies, as it deems fit, and the appropriation referred to in sub-article (1).

(3) After the allocations referred to in sub-articles (1) and (2) have been made, the remainder of the surplus funds shall be paid to the Government.

27. (1) The Authority shall cause to be kept proper books of accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year.

Accounts and audit.
Amended by:
XV.1989.10;
XIII.1994.21, 27.
Substituted by:
XVII. 2002.106.

(2) The accounts of the Authority shall be audited by auditors appointed by the Board of Governors from among persons who are qualified to be appointed as auditors of a company.

28. The Authority shall, as soon as may be but not later than six months after the close of each financial year, transmit to the House, through the Minister, a copy of its annual accounts certified by the auditors together with a report on its activities during the previous year.

Authority's reporting duties to the House.
Amended by:
XV.1989.11;
XXXI.1990.8;
XIII.1994.21.
Substituted by:
XVII. 2002.106.
Amended by:
XIX. 2010.14;
V.2020.6.

Exemption from liability.

Amended by:

XV.1989.12;

XXXI.1990.9;

XIII.1994.21.

Substituted by:

XVII. 2002.106.

Amended by:

IV. 2003.16.

Substituted by:

XIX. 2010.15.

Amended by:

XXI. 2015.8.

Substituted by:

V.2020.29.

29. (1) The Authority, including the members of the Board of Governors when acting in any function assigned to the Board under any provision of this Act, any body or other organ, including any committee or sub-committee, established under this Act, and any member or officer of that body or organ, and the officers and employees of the Authority, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any such function or otherwise in the exercise of their official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, through wilful misconduct.

(2) For the purposes of this provision, the phrase "this Act" shall include any other Act administered by the Authority and any regulations or Rules made thereunder.

30. The Authority shall be exempt from any liability for the payment of income tax, duty on transfers and documents, and customs and excise duty, under any law for the time being in force.

31. (1) Any decision taken by the Co-ordination Committee, the Supervisory Council and the Board of Management and Resources, prior to the date of entry into force of this article, shall continue to apply:

Provided that, for purposes of this article, the term "decision" shall, in the case of the Supervisory Council, include licences issued, approvals and authorisations granted, and regulatory action taken.

(2) Any reference in any law to the Director General or Chief Operations Officer of the Authority shall be read and construed as a reference to the Chief Executive Officer of the Authority as so defined in article 2.

(3) Any reference in any law to the Co-ordination Committee, the Supervisory Council, or the Board of Management and Resources shall be read and construed as a reference to the Executive Committee and shall include a reference to any sub-committees, directorates, functions or units established under this Act, as the case may require.

Exemption from taxes.

Amended by:

XV.1989.13;

XIII.1994.28.

Substituted by:

XVII. 2002.106.

Transitory provisions and construction of references.

Added by:

VIII.2019.15.

FIRST SCHEDULE
RECOVERY AND RESOLUTION
Article 7B.

Added by:
XXI. 2015.9.
Amended by:
LXII.2020.6.
LXXI.2021.4;
LXXII.2021.3.

Interpretation.

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

"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;

"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, 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;

"European resolution authority" means an authority which is situated in a country or territory outside Malta that is in a Member State or an EEA State, and which exercises any function corresponding to the functions of the Resolution Committee under this Act and the Recovery and Resolution Regulations;

"investment firm" means an investment firm as defined in point (2) of Article 4(1) of the [CRR](#), that is subject to the initial capital requirement laid down in Article 28(2) of the [CRD](#);

"resolution" means the structuring of a credit institution or investment firm through the application of a resolution measure or measures in order to achieve one or more of the objectives referred to in paragraph 3(2);

"resolution measures" means one or more of the following:

- (a) sale of business;
- (b) bridge institutions;
- (c) asset separation; and
- (d) bail in;

"resolution powers" means the powers conferred on the Resolution Committee in terms of the Recovery and Resolution Regulations;

"third-country resolution authority" means an authority in a country or territory that is not a Member State or EEA State which is responsible for carrying out functions comparable or equivalent to those of the Resolution Committee pursuant to this Act.

(2) Words and expressions used in this Schedule, but which are not defined herein, shall be interpreted within the meaning of the [BRRD](#).

The Resolution Committee.

2. (1) The Resolution Committee shall ensure full and complete adherence to the requirements and obligations prescribed by regulations made under this Act, either directly or in collaboration with European and third-country resolution authorities, and may, for such purposes, exercise any of its powers under this Act and any regulations made thereunder.

(2) The Resolution Committee shall be composed of three persons, who shall be a person appointed by the Central Bank of Malta, a person appointed by the Authority, and a person appointed by the Ministry responsible for Finance, who have distinguished themselves in banking and financial related matters or have the relevant experience in financial supervision, regulation, resolution and insolvency of institutions.

(3) The appointment of such persons shall be for such term, being a period of not more than three years, as may be specified in the letter of appointment, and shall be eligible for reappointment for a maximum period of two terms or otherwise for a maximum period of six years, whichever is the higher. Such persons shall receive such remuneration as the Authority may from time to time determine.

(4) The provisions of article 6(3) to (6) of the Act shall, as far as applicable, *mutatis mutandis* apply to the eligibility, term of office, termination and resignation of the Resolution Committee.

The objectives of the Resolution Committee.

3. (1) In discharging its general functions, the Resolution Committee shall, as far as is reasonably possible, act in a way which:

- (a) is compatible with the resolution objectives; and
- (b) minimises the cost of resolution and avoids the destruction of value of the institution.

(2) The resolution objectives of the Resolution Committee are:

- (a) safeguarding the continuity of critical functions;
- (b) minimising risks to financial stability;
- (c) protecting public funds by reducing reliance on extraordinary public financial support;
- (d) protecting depositors and investors;
- (e) protecting clients' funds and clients' assets.

(3) (a) The Resolution Committee shall have the power to require the full assistance and collaboration of any institution, as may be necessary to enable it to fulfil its functions under this Schedule.

- (b) Any institution as may be required by the Resolution Committee to provide its assistance and collaboration

in terms of sub-paragraph (3)(a) shall comply with such request fully, without delay and in such detail as may be required.

Functions and powers of the Resolution Committee.

4. (1) Without prejudice to any other function or power conferred to it by this Act or any other law or regulations, it shall be the function of the Resolution Committee to:

- (a) review and decide upon the recommendations made to it by the Resolution Unit established in terms of this Schedule, in relation to resolution decisions;
- (b) liaise and consult, on matters relating to budgets and resources, with the Authority;
- (c) exchange information, where necessary, with the Authority;
- (d) carry out such other functions which are assigned to it by this Act or any regulations made thereunder;
- (e) apply resolution measures when an institution is failing or is likely to fail;
- (f) cooperate closely with and consult the Authority in the preparation, planning and application of resolution decisions, and in all other instances where any such cooperation or consultation is required by the [CRD](#), by the [BRRD](#) or by the [CRR](#);
- (g) cooperate closely with and consult authorities, both local or overseas, in order to coordinate resolution measures to protect financial stability in all affected Member States and EEA States and, when a cross-border group is failing or likely to fail, to achieve the most effective outcome for the group as a whole, and in all other instances where any such cooperation or consultation is required by the [CRD](#), by the [BRRD](#) or by the [CRR](#);
- (h) cooperate with European resolution authorities and third country resolution authorities on matters relating to resolution;
- (i) set up a resolution financing arrangement through mandatory contributions from institutions;
- (j) communicate to the Resolution Authority its resolution decisions which necessitate implementation;
- (k) implement the resolution decisions mentioned under point (j);
- (l) assist the Resolution Authority on any matter falling under this Part, on which the Resolution Authority seeks assistance.

(2) In carrying out its general functions, the Resolution Committee shall:

- (a) ensure that no conflict of interest may arise with the supervisory functions of the Authority;

- (b) seek the approval in writing of the Minister, after informing the Resolution Authority and the Central Bank of Malta, prior to taking any decisions that may have a direct fiscal impact or which have systemic implications;
 - (c) notify the Minister, after having informed the Resolution Authority, of any decisions taken by it pursuant to this Act.
- (3) The Resolution Committee shall have all the powers that are necessary to enable it to perform its functions under this paragraph and to ensure the effective implementation of the provisions of the [BRRD](#).
- (4) The Resolution Committee shall also have the power to:
 - (a) collect the contributions from institutions towards the resolution financing arrangements;
 - (b) determine the administrative penalties payable by institutions for failure to comply with the decisions addressed to them;
 - (c) impose administrative penalties on any person whose conduct, in the opinion of the Resolution Committee, amounts to a breach of any of the provisions of this Act or any regulations or Rules issued thereunder transposing the [BRRD](#);
 - (d) impose an administrative penalty on any person who has failed to comply with a directive issued by the Resolution Committee under this Act or any regulations or Rules issued thereunder transposing the [BRRD](#); and
 - (e) publish, collect and recover any administrative penalties imposed by it in terms of this paragraph.
- (5) (a) In exercising its power under sub-paragraphs (4)(c) and (d), the Resolution Committee may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty of:
 - (i) up to twice the amount of the benefit derived from the breach, where that benefit can be determined;
 - (ii) in the case of a natural person, up to five million euro (€5,000,000); or
 - (iii) in the case of a legal person, up to 10% of the total annual net turnover of the undertaking in the preceding business year including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of the [CRR](#). In the case of a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the

consolidated accounts of the ultimate parent undertaking in the preceding business year.

- (b) Where the Resolution Committee decides to impose an administrative penalty, it shall notify the person on whom the penalty is being imposed by means of a notice in writing.
- (c) Where the person upon whom the notice referred to in point (b) is served:
 - (i) fails to pay to the Resolution Committee the amount of the administrative penalty within a period of thirty days from the service of the notice, and fails to appeal from the decision of the Resolution Committee to the Court of Civil Jurisdiction; or
 - (ii) appeals to the Court of Civil Jurisdiction and fails within a period of fifteen days from the decision of the said Court to pay the administrative penalty as confirmed or as varied by that Court;

then, in every case, the amount of the administrative penalty, as originally imposed or as reduced or increased, as the case may be, shall be due to the Resolution Committee as a civil debt, and the provisions of point (d) shall apply.

- (d) A notice as is referred to in point (b), or the decision of the Court of Civil Jurisdiction, as the case may be, shall upon the service by judicial act of a copy thereof on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

(6) The imposition by the Resolution Committee of an administrative penalty in terms of this article shall be without prejudice to any other consequences of the act or omission of the offender under civil or criminal law:

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

(7) The Resolution Committee shall designate an official forming part of the Resolution Unit to act as a secretary for such period of time and under such terms as the Resolution Committee shall deem appropriate.

(8) The Resolution Committee may invite any person and may require any officer of the Resolution Unit or of the Authority to attend a meeting of the Resolution Committee and to take part in the discussion.

Publication of administrative penalties.

5. (1) The Authority shall publish, on its official website and in any other media as it considers appropriate, any administrative penalty or penalties for any breaches of the provisions of the [BRRD](#) imposed by the Resolution Committee under the provisions of this Act and of any regulations made or Rules issued thereunder. Such publications shall include information on the type and nature of the breach and the identity of the person on whom the administrative penalty is imposed, without undue delay after that person is informed of those penalties:

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

(2) The Authority shall publish the administrative penalties for any breaches of the provisions of the [BRRD](#), imposed by the Resolution Committee under the provisions of this Act and of any regulations made or Rules issued thereunder, on an anonymous basis, in any of the following circumstances:

- (a) where the administrative penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) where publication would jeopardise the stability of financial markets or an on-going criminal investigation;
- (c) where publication would cause, insofar as can be determined, disproportionate damage to the institutions, to the entities referred to in point (b), (c) or (d) of Article 1(1) of the [BRRD](#) or to the natural persons involved;

Provided that publication on an anonymous basis in any such circumstances shall be an exceptional measure which needs to be justified by a detailed report compiled by the Resolution Committee:

Provided further that where the circumstances referred to in this sub-article are likely to cease within a reasonable period of time, publication under this article may be postponed for such a period of time.

(3) Information published in terms of this article shall remain on the official website of the Authority for a period of not less than five years. Personal data shall be retained on the official website of the Authority and in any other media it considers appropriate only for the period necessary, in accordance with the provisions of Maltese legislation on data protection.

Power to recover debt.

6. The Resolution Committee may bring proceedings before the Court of Civil Jurisdiction to recover as a debt an amount of administrative penalty due to it under this Part.

Power to issue directives.

7. (1) Without prejudice to any of the powers conferred in this Act, the Resolution Committee may, whenever it deems necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances in order to carry out the functions and duties prescribed by this Act, and any regulations made or Rules issued thereunder transposing the [BRRD](#).

(2) 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.

(3) Any person to whom a notice is given in accordance with sub-paragraph (1) shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(4) Where the Resolution Committee is satisfied that the circumstances so warrant, it may at any time make public any directive which it has issued in terms of this paragraph.

The Resolution Unit

8. (1) There shall be a Resolution Unit which shall carry out the functions assigned to it under this Act, and as may be assigned to it by the Resolution Committee.

(2) The Resolution Unit shall periodically report to the Resolution Committee on the activities and developments within its area of competence.

(3) The Resolution Unit shall be composed of the Director of the Office, and any number of employees as may be required in order to carry out its functions properly.

(4) It shall be the function of the Resolution Unit to:

- (a) assess whether an institution is failing or is likely to fail, after consulting the Authority;
- (b) draw up resolution plans, after consulting the Authority, on how to deal with financial stress or failure of institutions, including at group level;
- (c) carry out resolvability assessment of institutions;
- (d) cooperate, liaise and exchange information, as necessary, with the Units respectively responsible for supervision of credit institutions and investment firms within the Authority.

Remedies for a wrongful decision or action.

9. Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under

resolution by virtue of the use of resolution tools or exercise of resolution powers by the Resolution Committee, the annulment of a decision of the Resolution Committee shall not affect any subsequent administrative acts or transactions concluded by the Resolution Committee which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the Resolution Committee shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

Issuing of precautionary warrant.

10. Notwithstanding any other law, no precautionary warrant or other order under any other law shall be issued by any Court or Tribunal restraining the Resolution Committee from taking any action, including a crisis prevention measure or a crisis management measure, under this Act, or under any regulations issued thereunder or any other law.

Functions and powers of the Authority.

11. (1) In addition to the powers assigned to the Authority under this Act, the Banking Act, and the Investment Services Act, the Authority shall have the power to:

- (a) determine the administrative penalties payable by institutions for failure to comply with any decisions issued by the Authority and addressed to them;
- (b) impose administrative penalties on any person whose conduct, in the opinion of the Authority, amounts to a breach of any of those provisions of this Act or any regulations or Rules issued thereunder transposing the [BRRD](#) in which an institution has an obligation towards the Authority;
- (c) impose an administrative penalty on any person who has failed to comply with a directive issued by the Authority under this Act or any regulations or Rules issued thereunder transposing the [BRRD](#);
- (d) publish, collect and recover any administrative penalties imposed by it in terms of this paragraph:

Provided that in exercising the powers listed in subparagraphs (a) to (d), the provisions of paragraphs 4(5), 4(6) and 5 of this Schedule shall apply *mutatis mutandis*, and provided further that any reference to "the Resolution Committee" shall be deemed to be a reference to "the Authority", and any reference to "the Court of Civil Jurisdiction" or "the Court" shall be deemed to be references to "the Tribunal";

- (e) issue, by notice in writing, such directives on any person as it may deem appropriate in the circumstances in order to carry out the functions and duties prescribed by this Act and any regulations or Rules issued thereunder transposing the [BRRD](#), and in exercising such power, the provisions of paragraph 7 of this Schedule shall apply *mutatis mutandis*, and any

reference to "the Resolution Committee" shall be deemed to be a reference to "the Authority"; and

- (f) bring proceedings before the Court of Civil Jurisdiction to recover as a debt an amount of administrative penalty due to it under this Schedule.

(2) The Authority shall have all the powers that are necessary to enable it to perform its functions under this paragraph to ensure the effective implementation of the provisions of the [BRRD](#) imposing rights and obligations on competent authorities, and, accordingly the powers of the Authority in terms of this paragraph shall be interpreted and applied in accordance with the provisions of the [BRRD](#).
