

## CHAPTER 618

### RESIDUAL BALANCES FUND ACT

*AN ACT to provide for the establishment of a Residual Balances Fund and a framework for action that shall be taken in respect of the residual balances of a credit institution which meets the criteria set out in this Act in order to facilitate the dissolution and winding up process of such a credit institution whilst allowing for a controlled release of the residual balances transferred from that credit institution that ensures the prevention of money laundering and the funding of terrorism.*

11th August, 2020

[ACT XLVIII of 2020.](#)

#### ARRANGEMENT OF THE ACT

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#### PART I

##### Preliminary

**1.**     **(1)**     The short title of this Act is Residual Balances Fund Act. Short title, purpose and object.

**(2)**     The principal purpose and object of this Act is to facilitate the dissolution and winding up process of a credit institution which meets the criteria set out in this Act whilst allowing for a controlled release of the residual balances transferred from that credit institution that ensures the prevention of money laundering and the funding of terrorism.

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

"anti-money laundering and counter-funding of terrorism laws" means the [Prevention of Money Laundering Act](#), the [Prevention of Money Laundering and Funding of Terrorism Regulations](#) and procedures and guidance issued in terms of such regulations and which impose obligations on credit institutions;

"application" means the written application that shall be submitted by a transferred depositor to the Fund for the release

of transferred deposit liabilities due to that transferred depositor, in accordance with the provisions of this Act and any regulations issued thereunder;

Cap. 330. "the Authority" means the Malta Financial Services Authority established by the [Malta Financial Services Authority Act](#);

Cap. 371. "business of banking" means the same as the meaning assigned to it under the [Banking Act](#);

Cap. 204. "Central Bank" means the Central Bank of Malta as defined in the [Central Bank of Malta Act](#);

"compliance review" means a review process in relation to the transferred deposit liabilities transferred by a particular transferring institution, with the aim of ascertaining whether the said transferred deposit liabilities can be released or otherwise by the Fund in accordance with the provisions of this Act and any regulations issued thereunder;

"confidential information" means any information falling under article 24(1);

Cap. 371. "credit institution" means an undertaking that carries on the business of banking and which has been granted a licence under the [Banking Act](#). For the avoidance of any doubt, this shall also include a credit institution which has been subject to a restriction or withdrawal of its licence in terms of article 9 of the [Banking Act](#);

Cap. 371.

Cap. 371. "deposit" means the same as the meaning assigned to it in the [Banking Act](#) and shall include electronic money;

"deposit assets" means the liquid assets of a credit institution which are equivalent to the deposit liabilities held by the same credit institution as at the transfer date;

"deposit liabilities" means the amount repayable by the credit institution to its depositors as at the transfer date;

"deposit liability portfolio" means a portfolio created by the Fund in accordance with article 18;

"deposit liability transfer" means the requirement imposed by the Authority, by means of deposit liability transfer instrument and subject to such terms and conditions as may be set out therein, on a solvent credit institution for it to transfer its deposit liabilities and the corresponding deposit assets to the Fund, together with all of the property or rights pertaining to such deposit liabilities and deposit assets, if the Authority determines that the transferring conditions are met;

"deposit liability transfer instrument" means the instrument by means of which the Authority may impose a deposit liability transfer subject to such terms and conditions as may be set out in the deposit liability transfer instrument;

"depositor" means the holder or, in the case of a joint account, each of the holders, of a deposit and, in the case of a deceased depositor, the successor in title of such depositor such as an heir or a legatee of a deposit;

"electronic money" means the same as the meaning assigned to it in the [Financial Institutions Act](#); Cap. 376.

"FIAU" means the Financial Intelligence Analysis Unit established under the [Prevention of Money Laundering Act](#); Cap. 373.

"the Fund" means the Residual Balances Fund established by article 3;

"funding of terrorism" means the same as the meaning assigned to it in the [Prevention of Money Laundering Act](#); Cap. 373.

"liquid assets" means those assets which fall under level 1 and level 2A as laid down in Articles 10 and 11, or as such Articles may be renumbered or substituted, of the Commission Delegated Regulation (EU) 2015/61;

"the Minister" means the Minister responsible for the regulation of financial services;

"money laundering" means the same as the meaning assigned to it in the [Prevention of Money Laundering Act](#); Cap. 373.

"officer" means the same as the meaning assigned to it in the [Banking Act](#); Cap. 371.

"property" means property and assets of every kind, nature and description, whether movable or immovable, whether corporeal or incorporeal, tangible or intangible, legal documents or instruments evidencing title to, or interest in, such property or assets and, without derogation from the generality of the foregoing, shall include:

(a) any currency, whether or not the same, is a legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in euro or any other foreign currency;

(b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed

which carries or has carried on their business in Malta;

(c) cash or items of value including but not limited to works of art or jewellery or precious metals; and

(d) land or any interest therein;

"repayment conditions" means the conditions established as part of the compliance review which shall, *inter alia*, be satisfied for the transferred deposit liabilities to be released in accordance with the provisions of this Act and of any regulations issued thereunder;

Cap. 386.

"solvent credit institution" means a credit institution which is not considered insolvent in accordance with the provisions of the [Companies Act](#);

"transfer date" means the date of the deposit liability transfer instrument;

"transferred deposit assets" means the deposit assets of the transferring institution, equivalent to its transferred deposit liabilities, which are to be or have been transferred to the Fund in accordance with the deposit liability transfer instrument;

"transferred deposit liabilities" means the deposit liabilities of the transferring institution which are to be or have been transferred to the Fund in accordance with the deposit liability transfer instrument;

"transferred depositor" means any depositor in respect of a transferred deposit liability;

"transferring conditions" means those conditions set out in article 11(1);

"transferring institution" means a credit institution on which a deposit liability transfer is imposed in accordance with the provisions of this Act;

Cap. 371.

"working days" means the same as the meaning assigned to it in the [Banking Act](#).

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

## PART II

### The Fund

Establishment.

**3.** (1) There shall be a fund, that shall be called the Residual Balances Fund;

(2) The Fund shall be a body corporate having a separate and distinct legal personality, capable of entering into contracts, of acquiring and disposing of property or rights for the purposes of attaining its objects and carrying out its functions under this Act or any other law, of suing and being sued in its own name, and of doing all such things and entering into such transactions as may be necessary, incidental or conducive to the attainment of its objects and the performance of its functions under this Act.

(3) The Fund shall be directed and managed by a Committee established under article 7.

(4) The Fund shall publish its audited accounts on an annual basis and shall report to the Minister on its activities as the said Minister may require but in any case not less than once a year. The audited accounts and the annual report of the Fund shall be laid on the Table of the House of Representatives by the Minister.

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 Fund to take such measures as provided for by this Act as it may consider appropriate or necessary for the purpose of attaining the purposes and objects of this Act.

Functions and  
powers of the  
Fund.

(2) Following the release of the transferred deposit liabilities and the settlement of other disbursements in accordance with the provisions of this Act and any regulations issued thereunder, the Fund shall use the remaining balances in the public interest *inter alia* for the advancement of education, research, innovation, social purposes, justice and the rule of law, employment initiatives, the environment and public health.

(3) Without prejudice to the functions and powers of the Fund under this or any other Act, and any regulations issued thereunder, the Fund shall have the following powers and functions:

(a) without prejudice to any confidentiality obligation arising from any other law, to require any information, data and, or documentation from any person as it may deem necessary for the exercise of its powers and functions, or in connection therewith:

Provided that the right of the Fund to obtain information, data and documentation from any person shall not be restricted, obstructed or precluded by any confidentiality obligation or other restrictive condition arising from the contractual relationship between such person and any third party;

(b) to determine whether transferred deposit liabilities should be released in accordance with the provisions of this Act

and any regulations issued thereunder and, where it determines that such transferred deposit liabilities should be released, make the necessary arrangements therefor;

(c) to manage and dispose of the property of the Fund in accordance with the provisions of this Act and any regulations issued hereunder;

(d) to effect the closure and orderly winding-up of a deposit liability portfolio;

(e) to liaise, as it may deem necessary, with any local body or authority in relation to any deposit liability transfer, subject to the provisions of this Act and any regulations issued thereunder;

(f) to override rights of shareholders and, or the officers of the transferring institution, including the requirement for approval by shareholders and, or the board of directors (or other similar governing body) of particular transactions in order to permit a disposal of the transferring institution's deposit liabilities and deposit assets; and

(g) to exercise such powers as may be assigned to it under this Act or any regulations issued thereunder.

(4) The Minister may, in consultation with the Authority, make regulations as shall be deemed appropriate:

(a) to assign functions and powers to the Fund; and

(b) to better implement the provisions of this article and this Act.

Cooperation with  
the Fund.

5. The transferring institution and its officers and employees shall assist and collaborate with the Fund in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information, data and documentation as the Fund may request from time to time. Any such disclosure of information, data or documentation by the transferring institution, its officers and employees to the Fund shall not constitute a breach of any restriction on disclosure imposed by a contract or by any legislative, regulatory or administrative provision.

Other powers of  
the Fund.

6. (1) The Fund may appoint a person, having the necessary skills, to assist it in the fulfilment of any of its functions under this Act or any regulations issued thereunder.

(2) The Fund may from time to time delegate in writing any of 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 Fund, to one (1)

or more of the members of the Committee, a unit or function of the Fund, any one (1) or more employees of the Fund, or any other person as may be specified.

(3) The Fund may:

(a) hold accounts with the Central Bank or any other credit institution in Malta;

(b) invest any of its own assets as may be directed by the Committee from time to time having due regard to the objective of this Act and the purpose for which the Fund has been established in terms of this Act or as may otherwise be prescribed under any regulations issued under this Act;

(c) acquire, purchase, lease or dispose of any movable or immovable property required for the carrying out of its functions or for any purposes ancillary or incidental to the performance of its functions under this Act; and

(d) employ any such persons as staff of the Fund according to such procedures and on such terms and conditions as the Committee may determine.

(4) For the purpose of attaining its objects and carrying out of its functions under this Act, the Fund may, with the approval 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 impose.

(5) The Fund shall not undertake any activities which would require it to be licensed or otherwise authorised under any other law.

7. (1) The main organ responsible for the governance of the Fund is the Committee. The Committee shall be responsible to ensure the highest level of governance of the Fund and that assets of the Fund are used solely for the purposes set out in this Act.

Governance of the Fund.

(2) The Committee shall establish the policies that shall be pursued by, and provide ultimate oversight of the Fund in performing its functions under this Act and attaining the purpose and objects of this Act. In determining such policies the Committee shall follow such policy guidelines as may be set out by the Minister.

(3) The Committee shall consist of a Chairman and at least two (2) other members, appointed by the Minister from among persons who have distinguished themselves in the business of banking, in law, finance and, or accounting or auditing.

(4) Where any member of the Committee is absent or is unable to exercise the functions and powers of his office that member shall designate another member of the Committee to exercise the powers and

functions of the same office in his stead.

(5) The Committee may from time to time delegate in writing any of 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 Committee, to one (1) or more of the members of the Committee, a unit or function of the Fund, any one (1) or more employees of the Fund, or any other person as may be specified.

(6) The Minister may make regulations, not inconsistent with the provisions of this Act, to regulate further the composition, procedures, powers and functions of the Committee.

Meetings of the  
Committee.

**8.** (1) The Committee shall meet as often as may be necessary or expedient for the performance of its functions. The meetings may be convened by any member of the Committee.

(2) The Committee may act notwithstanding any vacancy amongst its members provided there is a quorum consisting of not less than a majority of members from those entitled to be present at the meeting.

(3) Decisions of the Committee shall be taken by a majority of votes of the members present, and the Chairman or other person chairing the meeting shall have an original vote and in the event of parity of votes, a second or casting vote.

(4) The Committee shall designate a person to act as Secretary to the Committee for such period and on such terms and conditions as the Committee shall deem appropriate.

(5) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Committee and to keep minutes of those meetings and of the decisions or determinations made by the Committee.

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

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

(8) The Committee may invite or require any person to attend a meeting of the Committee and to take part in the discussions.

Disqualifi-cation.

**9.** (1) A person shall not be eligible to be appointed as Chairman or as a member of the Committee, or to hold any office with the Fund, if he is the holder of a licence or other authorisation issued by the Authority or otherwise falls under the regulation or supervision of the Authority, or is a director, an officer or employee of such holder or other such person.

(2) Without prejudice to the provisions of sub-article (1), a person shall not be eligible to be appointed or to hold office as a member of the Committee, if he:

- (a) is a member of the House; or
- (b) is a Minister or Parliamentary Secretary; or
- (c) is a Judge or Magistrate of the Courts of Justice;

or

- (d) is legally incapacitated or interdicted; or
- (e) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(f) 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

(g) has contravened anti-money laundering and counter-funding of terrorism laws; or

(h) is subject to disqualification under article 320 of the [Companies Act](#); or

Cap. 386.

(i) is subject to black-listing as provided in the [Public Procurement Regulations](#); or

S.L. 601.03.

(j) has engaged in any business practice appearing to the 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

(k) 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

(l) has a financial or other interest as is likely to prejudicially affect the discharge of his functions; or

(m) has a conflict of interest, potential or otherwise, that is likely to prejudicially affect the discharge of his functions; or

(n) is otherwise not a fit and proper person to hold that office.

(3) In determining whether a person is a fit and proper person, the 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 anyway threatened by his holding that office.

(4) Any person whom the Minister has appointed or proposes to appoint as a member of the Committee shall, whenever requested by the Minister to do so, furnish to him such information as the Minister considers necessary for the performance of his duties under sub-articles (2) and (3).

(5) If any person appointed or nominated for appointment as Chairman or as a member of the Committee is or becomes aware that he is not or is no longer eligible to hold such office, he shall immediately inform the Minister thereof and the reason therefor.

(6) The Minister shall immediately remove from office a member of the Committee if such member becomes ineligible to hold that office as such on any of the grounds set out in sub-articles (1) and (2).

(7) A member of the Committee may be relieved of office by the 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 sub-article repeated and unjustified non-attendance of meetings may be deemed to amount to misbehaviour.

(8) Any member of the Committee may resign his office by letter addressed to the Minister.

Conflicts of  
interest.

**10.** (1) Any member of the Committee who has a direct or indirect interest in any contract, proposed contract or in any transaction or arrangement, whether or not it constitutes a contract, made or proposed to be made by or with the Fund, shall disclose the nature of such interest at the first meeting of the Committee after the relevant facts have come to the knowledge of such member.

(2) After the disclosure of a conflict provided for in sub-article (1) has been recorded in the minutes of the meeting of the Committee mentioned in the said sub-article, that member shall withdraw from that part or parts of the meeting or meetings at which such contract, proposed contract, transaction or arrangement is discussed or decided on by the Committee and, in any event, that member shall be prohibited from voting on such contract, proposed contract, transaction or arrangement.

**PART III****Conditions for, and Process of, transferring  
deposit liabilities to the Fund**

11. (1) The Authority may, by virtue of one (1) or more deposit liability transfer instruments and subject to such terms and conditions as may be set out therein, require a solvent credit institution to transfer such of its deposit liabilities and the corresponding deposit assets to the Fund, together with all of the property or rights pertaining to such deposits, if the following conditions are met:

Conditions for a  
deposit liability  
transfer.

(a) the licence granted to the credit institution has been withdrawn in terms of the applicable legislation; and, or

(b) the credit institution is in the process of being dissolved and consequently wound-up under any applicable law; and

(c) for each deposit liability transfer instrument, the credit institution's deposit liabilities, which are the subject of such instrument, are covered by liquid assets of the credit institution.

(2) The transferring conditions set out in sub-article (1) shall be considered to have been satisfied notwithstanding that the credit institution or any aggrieved person may have filed any action or proceedings against the withdrawal of the credit institution's licence or the dissolution and consequential winding-up thereof.

(3) The Authority may, by giving notice in writing to a credit institution, require that the relevant credit institution make available, in such form as the Authority may request, such information, data and documents as the Authority considers to be relevant for the purposes of making a determination under sub-article (1).

(4) The deposit liabilities and the corresponding deposit assets that shall be transferred in accordance with the deposit liability transfer instrument shall include such deposit liabilities and the corresponding deposit assets that:

(a) are subject to a court order and, or any other order made in terms of the law by an entity empowered by law to issue such an order, including monitoring orders, freezing orders, investigation orders and attachment orders; and

(b) are, for whatever reason, subject to checks relating to anti-money laundering and funding of terrorism.

(5) A deposit liability transfer shall, unless otherwise determined by the Authority, take place without obtaining the consent of the shareholders or officers of the transferring institution or any third party, including (for the avoidance of doubt) the creditor or

counterparty of any deposit liability, and without complying with any procedural requirements which would otherwise apply, except when such procedural requirements are established by this Act or any regulations issued under this Act.

(6) The deposit liability transfer instrument shall:

(a) provide for the transfer of the deposit liabilities and corresponding deposit assets and all property and, or rights pertaining to such deposits from the transferring institution to the Fund, that shall be placed in a deposit liability portfolio;

(b) provide for the right to repayment of the transferred deposit liabilities, subject to the provisions of this Act and any regulations issued thereunder;

(c) specify all the deposit liabilities and the corresponding deposit assets that shall be transferred by the credit institution.

(7) The deposit liability transfer instrument may:

(a) provide for any amendments to the form and, or terms of a transferred deposit liability, including amendments to:

(i) modify the terms, or the effect of the terms, of a transferred deposit liability;

(ii) suspend the rights of transferred depositors to receive amounts payable in respect of transferred deposit liabilities; and, or

(iii) suspend the rights of transferred depositors to receive the benefit of their contractual rights to banking services in respect of transferred deposit liabilities including, but not limited to, any right to make payments, to transfer money or to withdraw money;

(b) modify any transferred deposit liabilities from one form or class of liability to another, including, but not limited to:

(i) converting any transferred deposit liability that is a deposit, whether payable on demand or otherwise, into a liability that is repayable only upon a specified maturity date or a perpetual obligation; and, or

(ii) when the Authority makes a determination whereby the provisions of article 13(1)(e) shall not apply, amending the basis on which interest accrues on such transferred deposit liability until such time as the transferred deposit liability is released in accordance with the provisions of this Act and any regulations issued

thereunder, where this is applicable;

(c) provide for incidental, consequential or transitional provisions including:

(i) provisions generally or only for specified purposes, cases or circumstances;

(ii) different provisions for different purposes, cases or circumstances; and, or

(iii) any additional obligations that shall be imposed on the transferring institution in connection with the deposit liability transfer; and, or

(d) make any other provision that the Authority considers necessary or desirable for the purposes of, or in connection with the deposit liability transfer.

(8) Notwithstanding any provision of this Act or any other law, until such time as the deposit liability transfer is completed, and notwithstanding that such deposit liability transfer may have been ordered following the withdrawal of the transferring institution's licence, the Authority may exercise its powers under this Act or any other Act, or any regulations issued thereunder, to ensure that the deposit liability transfer is effectively completed.

(9) Where the Authority is considering a deposit liability transfer in relation to a credit institution which it considers to be:

(a) of relevance to the stability of Malta's financial system, the Authority shall consult with the Joint Financial Stability Board established by virtue of article 17B of the [Central Bank of Malta Act](#);

Cap. 204.

(b) of systemic importance to Malta's economy, the Authority shall, apart from consulting the Joint Financial Stability Board in line with paragraph (a), also inform the European Central Bank established by virtue of Article 13 of the Treaty on European Union,

before ordering such a credit institution to carry out a deposit liability transfer.

**12.** The Authority shall, by notice on its website, make public a deposit liability transfer within five (5) working days from the transfer date. The notice shall set out:

Public notice.

(a) the name of the credit institution in relation to which the deposit liability transfer was imposed; and

(b) a summary of the reasons for the deposit liability

transfer.

Effects of a deposit  
liability transfer.

13. (1) A deposit liability transfer instrument shall, as from the transfer date, and unless the Authority in the deposit liability transfer instrument otherwise determines, have the effect of:

(a) discharging the transferring institution of the obligation of repayment of any transferred deposit liability towards a transferred depositor;

(b) transferring the obligation of repayment of any transferred deposit liability to the Fund, that shall assume all such repayment obligations;

(c) creating the right of the transferred depositor in relation to a transferred deposit liability that shall be repaid by the Fund in accordance with the provisions of this Act and terminating, with immediate effect, any right of repayment of the said transferred depositor against the transferring institution;

(d) terminating all rights of action of a transferred depositor of a transferred deposit liability against the transferring institution, except for rights accruing to such a transferred depositor up to the transfer date which, notwithstanding any provision of this Act, shall not be transferred to and assumed by the Fund; and

(e) terminating the right of transferred depositors to receive interest accruing on transferred deposit liabilities.

(2) Any claims accruing to any third party before the transfer date:

(a) against the transferring institution shall remain valid and effective against the transferring institution, notwithstanding the transfer of any relevant deposit liability to which the claim may relate, and such claims shall be exercisable by the third party against the transferring institution;

(b) with respect to a deposit which is the subject of a deposit liability transfer instrument shall remain valid and effective over such deposit, notwithstanding the transfer of the deposit liability to the Fund, and such claims shall be exercisable by the third party against the Fund:

Provided that there can be no claim against the Fund in excess of the deposit assets transferred to the Fund in connection with the deposit liabilities in relation to which a claim is being made. For any such excess, the claim shall be exercisable against the transferring institution.

**14. (1)** A deposit liability transfer shall take effect:

Further effects of a deposit liability transfer.

(a) by virtue of the deposit liability transfer instrument and in accordance with such terms and conditions as may be set out therein;

(b) despite any restriction, prohibition, limitation, obligation or requirement arising by virtue of contract, law, or in any other way; and

(c) unless otherwise specified in the relevant deposit liability transfer instrument, free from any trust, liability or other encumbrance.

(2) Notwithstanding anything contained in any other law and without prejudice to the generality of sub-article (1), deposit liabilities and deposit assets of a transferring institution, as specified in a deposit liability transfer instrument and which are subject to a court order and, or any other order made in terms of the law by an entity empowered by law to issue such an order, including monitoring orders, freezing orders, investigation orders and attachment orders, shall nonetheless be transferred to the Fund by virtue of the deposit liability transfer instrument:

Provided that:

(a) the disclosure of the existence of an order by the transferring institution for the purposes of the transfer, shall not constitute a breach of the order or the provisions of any law requiring non-disclosure of the order;

(b) the transfer of such deposit liabilities and deposit assets to the Fund shall not constitute a breach of the order to which such deposit liabilities and deposit assets are subject;

(c) the transfer shall not extinguish, or in any way alter, the order to which such deposit liabilities and deposit assets are subject except to the extent that the order shall be deemed to have been addressed to the Fund instead of the credit institution;

(d) any such deposit liabilities and deposit assets transferred to the Fund shall be held by the Fund as subject to the terms of such orders to which they are subject; and

(e) the Fund shall give effect to such orders to which the transferred deposit liabilities and transferred deposit assets are subject.

Cooperation with the Authority and the Fund in relation to the deposit liability transfer.

**15.** The transferring institution shall take any necessary steps to ensure that the deposit liability transfer is effectively completed, including cooperating with the Authority and the Fund throughout the deposit liability transfer process.

Notification procedure.

**16.** Following the issuance of a deposit liability transfer instrument to the transferring institution:

(a) the Authority shall send a copy of the deposit liability transfer instrument to the Fund and the FIAU;

(b) where the deposit liability transfer instrument provides for the transfer of deposit liabilities which are the subject of a court order, the Authority shall notify the Registrar of Courts of the issuance of that deposit liability transfer instrument and the effects of the deposit liability transfer stipulated in this Act in relation to the court orders to which the transferred deposit liabilities are subject; and

(c) the relevant transferring institution subject to the deposit liability transfer instrument shall immediately take the necessary steps to notify the transferred depositors under such deposit liability transfer instrument:

(i) that they constitute transferred depositors thereunder;

(ii) of the terms and conditions, if any, to which the transferred deposit liabilities are subject in accordance with the deposit liability transfer instrument; and

(iii) that all claims which transferred depositors may have against the transferring institution with respect to any deposit liability which is the subject of a deposit liability transfer instrument, shall thereafter constitute claims against the Fund, subject to the provisions of this Act.

#### **PART IV**

##### **Deposit liability portfolios established by the Fund**

Establishment of deposit liability portfolios.

**17.** When the Fund is in receipt of a deposit liability transfer instrument pursuant to the provisions of this Act, the Fund shall do all that it considers necessary to give effect to the deposit liability transfer instrument and to take control of such assets, rights, and liabilities of a transferring institution as may be specified in the deposit liability transfer instrument.

Segregation of deposit liability portfolios.

**18.** (1) The Fund shall create a separate and distinct deposit liability portfolio for any deposit liability transfer instrument relating to the same transferring institution and shall hold and account in such

portfolio all the transferred deposit liabilities and the equivalent transferred deposit assets.

(2) A deposit liability portfolio shall, for all intents and purposes of law, constitute a patrimony separate from the property, rights and liabilities of any other deposit liability portfolio and from the property, rights and liabilities of the Fund itself, and shall be kept segregated from the property, rights and liabilities of any other person.

(3) Without prejudice to article 20, the deposit liabilities incurred by the Fund in respect of a particular deposit liability portfolio, which are not attributable to any other deposit liability portfolio, shall only be paid out of the assets, property and rights forming part of and attributed to that deposit liability portfolio so that the assets, property and rights attributed to or accounted for in another deposit liability portfolio or in the Fund itself, shall not be available for or subject to any claim or proceedings of the creditors of that particular portfolio.

(4) The Fund shall hold or cause to be held such separate records, accounts, statements and other documents as may be necessary to evidence the liabilities, property and rights of each deposit liability portfolio as distinct and separate from the liabilities, property and rights of other deposit liability portfolios managed or otherwise controlled by the Fund.

## PART V

### Process for the release of transferred deposit liabilities

19. (1) Upon deposit liabilities and deposit assets being transferred to the Fund, the Fund shall notify in writing the transferred depositors to whom the transferred deposit liabilities and the relative transferred deposit assets are attributable of the completion of the said transfer in accordance with the deposit liability transfer instrument. Such notification shall be made for the purpose of releasing the transferred deposit liabilities and transferred deposit assets to the transferred depositors, subject to the provisions of this Act and any regulations issued thereunder.

Procedure for the release of transferred deposit liabilities.

(2) Following the notification made in terms of sub-article (1) and within a period of three (3) years from the transfer date, the Fund shall, unless an application has already been submitted to it in terms of sub-article (3), notify in writing the transferred depositors on two (2) further occasions of the transfer to the Fund of the transferred deposit liabilities and the relative transferred deposit assets attributable to them for the purpose mentioned in sub-article (1).

(3) All transferred depositors shall, within three (3) years from the transfer date, submit an application to the Fund for the release of the transferred deposit liabilities due to that transferred depositor:

Provided that where there are lawful impediments to the

submission of an application by a transferred depositor, including any lawful prohibition, restriction, or limitation that may be imposed by law or order of any competent court, or where the submission of an application is not possible due to circumstances which are clearly beyond the control of the transferred depositor, the said transferred depositor shall, immediately and not later than three (3) years from the transfer date, notify the Fund in writing of such impediments, and the three (3) year period mentioned in this article shall be suspended until any such impediments are lifted or such circumstances change.

(4) Upon receipt of an application submitted in terms of sub-article (3), the Fund shall carry out a compliance review for the purpose of determining whether the transferred deposit liabilities being claimed can be released or otherwise by the Fund in accordance with the provisions of this Act and any regulations issued thereunder.

(5) The Fund may require the transferred depositor to provide it with any information and, or documentation within such time-frames as it may deem necessary for the purposes of the compliance review and, if the transferred depositor fails to provide such information and, or documentation within the stipulated time-frames without reasonable justification, the Fund may determine that the transferred depositor failed the compliance review and that the relative transferred deposit liabilities cannot be released.

(6) Upon completion of the compliance review, the Fund shall notify the transferred depositor, in writing, whether the compliance review was satisfactorily completed and whether the relative transferred deposit liabilities shall be released in accordance with the provisions of this Act and any regulations issued thereunder:

Provided that where there are lawful impediments for the release of such transferred deposit liabilities, including any lawful prohibition, restriction, or limitation that may be imposed by law or order of any competent court, the said transferred deposit liabilities shall not be released until and unless any such impediments are lifted.

Distribution and  
utilisation of  
remaining funds.

**20.** (1) Without prejudice to article 19, where the transferred depositor fails the compliance review, or where transferred deposit liabilities remain unclaimed following the lapse of the time period specified in article 19(3), the liability of the Fund to repay those transferred deposit liabilities shall *ipso jure* cease. Thereafter, the Fund shall no longer be liable to any claim or action by any person for the repayment of such transferred deposit liabilities or in connection therewith. The corresponding transferred deposit assets shall, upon the lapse of such period, become vested in the Fund that shall thereupon acquire full legal title to the said transferred deposit assets free of any claim by any creditor or third party and without the corresponding transferred deposit liabilities.

(2) When the transferred deposit assets become vested in the

Fund in accordance with sub-article (1), they shall, subject to sub-article (3), become available for utilisation by the Fund in accordance with the provisions of this Act and any regulations issued thereunder.

(3) Prior to the utilisation of the transferred deposit assets by the Fund in accordance with the provisions of this Act and any regulations issued thereunder, the following repayments shall be made according to the ranking hereunder:

(a) the repayment of any costs incurred by the Fund itself in connection with the deposit liability transfer and, or the release of the transferred deposit liabilities in accordance with the provisions of this Act and any regulations issued thereunder;

(b) the repayment of any costs incurred by the Authority in relation to any regulatory action against the transferring institution and, or otherwise due to the Authority by the said transferring institution, including but not limited to costs incurred in relation to the investigation, analysis and remediation of regulatory breaches as well as the deposit liability transfer;

(c) the repayment of any costs incurred by any other national authorities in the exercise of their functions in connection with the transferring institution and the deposit liability transfer;

(d) the repayment of any costs incurred by the Fund in connection with any other deposit liability portfolio and, or the ensuing release of the transferred deposit liabilities pertaining to that other deposit liability portfolio in accordance with the provisions of this Act and any regulations issued thereunder, in so far as these costs were not repaid from the deposit liability portfolio created in connection with the said deposit liability transfer;

(e) the repayment of any costs incurred by the Authority in relation to any regulatory action against a transferring institution and, or otherwise due to the Authority by a transferring institution, which was subject to a deposit liability transfer pertaining to any other deposit liability portfolio, including but not limited to costs incurred in relation to the investigation, analysis and remediation of regulatory breaches as well as the deposit liability transfer in relation to the said transferring institution, in so far as these costs were not repaid from the deposit liability portfolio created in connection with the said deposit liability transfer; and

(f) the repayment of any costs incurred by any other national authorities in the exercise of their functions in connection with a transferring institution which was subject to a

deposit liability transfer pertaining to any other deposit liability portfolio, in so far as these costs were not repaid from the deposit liability portfolio created in connection with the said deposit liability transfer:

Provided that no repayment shall be made in terms of paragraphs (b) and (c) unless a claim has been made, in writing, for any costs incurred by the authorities as mentioned in the said paragraphs within five (5) years from the transfer date.

## PART VI

### Miscellaneous Provisions

Exemption of liability.

**21.** The Fund, including the members of the Committee when acting in any function assigned to the Committee under any provision of this Act, and the employees of the Fund, as well as any person to whom a delegation was made in terms of article 6(2) and, or article 7(5), 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.

Funding.

**22.** (1) The Minister may make advances to the Fund of such sums as he may consider to be required by the Fund for carrying out any of its functions under this Act and any regulations issued thereunder, 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.

(2) The Minister may, in consultation with the Authority, make regulations providing for the funding of the Fund, including to impose a financial levy on any deposit liability portfolio, transferred deposit liabilities and, or the transferring institution and prescribe therein the basis on which such levy shall be calculated so as to meet the costs incurred by the Authority and the Fund in connection with a deposit liability transfer and, or the release of the transferred deposit liabilities.

Forfeiture of proceeds of crime.

**23.** (1) Without prejudice to the above-mentioned and notwithstanding anything contained in any other law, where it is established that a transferred depositor has committed one (1) or more offences relating to money laundering or funding of terrorism, the court shall, in addition to any punishment for such offences under anti-money laundering and counter-funding of terrorism laws, order the forfeiture in favour of the Fund of the proceeds, or property the value of which corresponds to the value of such proceeds, deemed to be derived from the said offences and which are liable to confiscation or forfeiture by the court:

Provided that the proceeds that shall be forfeited in favour of the Fund in terms of this sub-article shall be limited to the value of the transferred deposit liabilities of the transferred depositor mentioned in this sub-article that were transferred to the Fund by virtue of a deposit liability transfer instrument:

Provided further that for the purposes of this sub-article, "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

(2) The proceeds forfeited in favour of the Fund in accordance with the provisions of sub-article (1) in connection with a transferred depositor shall be held and accounted for in the deposit liability portfolio relating to the transferring institution against which that transferred depositor mentioned in sub-article (1) would have normally had a claim prior to the deposit liability transfer.

(3) Proceeds forfeited in favour of the Fund in accordance with the provisions of sub-article (1) shall immediately become available for utilization by the Fund in accordance with the provisions of this Act and any regulations issued thereunder, subject to the provisions of article 20(3).

**24.** (1) Unless otherwise provided or permitted in this Act or any other law, the Fund, including the former and present members of the Committee and employees of the Fund, any delegatee, and any person appointed or engaged to assist the Fund in the fulfilment of any of its functions under this Act or any regulations issued thereunder, or to provide services thereto, as well as any person, Ministry, Government department, registry, authority, body, organisation and, or entity who or which is in any way involved with the Fund and, or was directly or indirectly involved in a deposit liability transfer, including the transferring institution and all former and present officers and employees thereof, shall treat any non-public information acquired in the discharge of their duties and functions in connection with this Act and, or a deposit liability transfer as confidential, and shall not, directly or indirectly, disclose such information to any other person.

Confidentiality.

(2) Notwithstanding the provisions of sub-article (1), the Fund shall disclose confidential information where such disclosure:

(a) is required for the proper discharge of its duties or functions under this Act or any other Act, and any regulations issued thereunder;

(b) is lawfully required or permitted by any court or under a provision of any law;

(c) is made with a view to the institution of any proceedings by the Fund before any court or tribunal, or

otherwise for the purposes of any proceedings by or against the Fund before any court or tribunal; and, or

(d) is expressly consented to, in writing, by the person, body or entity from whom the confidential information is obtained.

Cooperation and exchange of information.

**25.** Without prejudice to any confidentiality obligation arising from any other law, the Authority and the FIAU shall, for the attainment of the purposes and objects of this Act, cooperate closely and exchange information with each other, including confidential information, as well as assist one another to the extent possible, on any matter relating to a deposit liability transfer or any provision of this Act or any regulations issued thereunder, or any matter ancillary thereto.

Notification and reporting requirements.

**26.** (1) The Fund shall notify and report to the FIAU where it suspects that transferred deposit liabilities are the proceeds of criminal activity or are related to the funding of terrorism, or that a transferred depositor may have been, is or may be connected with money laundering or the funding of terrorism.

(2) Following a notification in accordance with sub-regulation (1), the FIAU may demand information from the Fund. Where such a demand is made, the Fund shall comply as soon as is reasonably practicable but not later than five (5) working days from when the demand is first made:

Provided that the Fund may make representations justifying why the requested information cannot be submitted within the said time and the FIAU may, at its discretion and after having considered such representations, extend such time as is reasonably necessary to obtain the information, whereupon the Fund shall submit the information requested within the time as extended.

Offences.

**27.** (1) Any person who:

(a) fails to comply with any provision of this Act or any regulations issued thereunder;

(b) fails to comply with any instrument, including a deposit liability transfer instrument, or directive, order or instruction issued by the Authority or the Fund pursuant to their respective powers under this Act, or any regulations issued thereunder;

(c) knowingly alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce under this Act or any regulations issued thereunder; and, or

(d) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly

conceals any material facts, or recklessly makes, whether dishonestly or otherwise, a statement, promise or forecast which is misleading, false or deceptive,

shall be guilty of an offence.

(2) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under sub-article (1), shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

(3) Any person found guilty of an offence shall, on conviction, be liable to a fine (multa) not exceeding five hundred thousand euro (€500,000) or to a term of imprisonment not exceeding five (5) years or to both such fine (multa) and imprisonment.

**28.** (1) Without prejudice to the powers of the Authority under this or any other Act, and any regulations issued thereunder, where the Authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act or any regulations issued thereunder, the Authority may, by notice in writing and without recourse to a court hearing, take any of the following administrative measures:

Administrative penalties and measures.

(a) impose an administrative penalty in the form of a fixed penalty, a daily penalty, or both, not exceeding one hundred and fifty thousand euro (€150,000), for each breach;

(b) issue a public statement which indicates the person responsible for the breach and the nature of such breach;

(c) issue an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

(d) 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

(e) impose such other administrative penalties and, or measures as may be specified in any regulations issued under this Act.

(2) The Authority may publish, on its official website and in any other media as it considers appropriate, any administrative penalty or measure imposed under the provisions of this Act and of any regulations made 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 or measure was imposed, without undue delay after that person is informed of that administrative penalty or measure.

(3) The Minister may, in consultation with the Authority, make regulations as shall be deemed appropriate:

(a) to provide further for the establishment and imposition of administrative penalties and measures; and

(b) to better implement the provisions of this article.

Powers of the Authority.

**29.** (1) Without prejudice to the powers of the Authority under this or any other Act or any regulations issued thereunder, the Authority may, where it deems necessary, appoint a person to carry out, in part or in whole, the obligations of the transferring institution under this Act or any regulations issued thereunder.

(2) Any person appointed in terms of sub-article (1) shall have all the rights and powers of the transferring institution necessary for the purposes of his appointment.

(3) The Authority shall fix the remuneration that shall be paid by the relevant transferring institution to any person appointed under sub-article (1).

Right of appeal.

Cap. 330.

**30.** (1) In this article, the "Financial Services Tribunal" means the Tribunal established in terms of article 21 of the [Malta Financial Services Authority Act](#), and the term "Tribunal" shall be construed accordingly, and the provisions of the said article 21 shall, except in so far as any of them is incompatible with the provisions of this article, apply to appeals made to the Financial Services Tribunal under this Act.

(2) A transferring institution or any other person to whom a decision of the Authority is addressed, which is aggrieved by a decision of the Authority:

(a) to order a deposit liability transfer;

(b) to impose any administrative penalty or measure:

Cap. 330.

Provided that in terms of the provisions of this Act or any regulations issued thereunder, may appeal against such decision to the Financial Services Tribunal within such period and under such conditions as are established under the [Malta Financial Services Authority Act](#).

(3) An appeal against a decision of the Authority shall not suspend the operation of that decision.

(4) With respect to an appeal made in terms of sub-article (2)(a), upon the hearing of such an appeal the Financial Services Tribunal shall only have the power to:

(a) confirm the Authority's decision; or

(b) determine that:

(i) the Authority has, in its decision, wrongly applied any of the provisions of this Act; and, or

(ii) the decision of the Authority constitutes an abuse of discretion or is manifestly unfair.

**31.** (1) Without prejudice to the power of the Minister to make regulations under any other provision of this Act, the Minister may, in consultation with the Authority, 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 shall be or which may be prescribed and provide for any matter consequential, incidental to or connected with any of the provisions or matters set out in this Act or any regulations issued thereunder.

Power to make regulations.

(2) Without prejudice to the generality of sub-article (1) and the power of the Minister to make regulations under any other provision of this Act, the Minister may, in consultation with the Authority, make regulations:

(a) to assign powers and functions to the Authority and, or the FIAU for the purposes of this Act;

(b) for the general purpose of the exercise of powers and the performance of functions assigned under this Act;

(c) to regulate the power of the Fund to invest for its benefit any of its own assets;

(d) for the purpose of determining which deposit liabilities of a credit institution shall be transferred to the Fund pursuant to a deposit liability transfer instrument; and, or

(e) to provide for any matter incidental to or connected with any of the provisions above.

(3) Without prejudice to the generality of sub-article (1) and the power of the Minister to make regulations under any other provision of this Act, the Minister may, in consultation with the Authority and the FIAU, make regulations to determine the nature, specifications and extent of any compliance review, the basis for a determination of failure of the compliance review, as well as the repayment conditions and any other conditions forming part thereof.

(4) Regulations made in accordance with the provisions of this Act may be made in the English language only.

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