L.N. 57 of 2008

BANKING ACT
(CAP. 371)

European Passport Rights for Credit Institutions (Amendment) Regulations, 2008

IN exercise of the powers conferred by article 3 (2) (b) of the Banking Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Citation.

1. The title of these regulations is the European Passport Rights for Credit Institutions (Amendment) Regulations, 2008 and they shall be read and construed as one with the European Rights for Credit Institutions Regulations, 2004, hereinafter referred to as "the principal regulations".

L.N. 88 of 2004.

Amends regulation 2 of the principal regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "banking directives", and wherever they occur in the principal regulations, for the words "banking directives", there shall be substituted the words "Banking Rules";

(b) in the definition "competent authority", for the words "means the Malta Financial Services Authority appointed", there shall be substituted the words "means the Authority appointed";

(c) the definition "Directive" shall be substituted by the following new definition:

"the Directive" means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder;";

(d) in the definition "European credit institution" and wherever they occur in the principal regulations, for the words

"foreign authority", there shall be substituted the words "European regulatory authority";

(e) immediately after the definition "European credit institution", there shall be inserted the following new definition:

"European regulatory authority" means the body or bodies designated by a Member State or EEA State:

(a) to act as a supervisory authority in relation to the European credit institution concerned in that Member State or EEA State within the meaning of the Directive, or

(b) to carry out the duties provided for in the Directive in relation to a Maltese credit institution exercising or proposing to exercise a European right;"; and

(f) the definitions "foreign authority" and "supervisory authority" shall be deleted.

Amends regulation 3 of the principal regulations.

3. In paragraph (a) of sub-regulation (2) of regulation 3 of the principal regulations and wherever they occur in the principal regulations, for the words "supervisory authority", there shall be substituted the words "European regulatory authority".

Amends regulation 5 of the principal regulations.

4. In sub-regulation (2) of regulation 5 of the principal regulations, for the words "within the meaning of Article 27 of the Directive,", there shall be substituted the words "within the meaning of Article 41 of the Directive,".

Amends regulation 7 of the principal regulations.

5. In sub-regulation (1) of regulation 7 of the principal regulations, for the words "within the meaning of Article 28 as referred to in sub-article (1) of Article 29 of the Directive.", there shall be substituted the words "within the meaning of Article 42 as referred to in sub-article (1) of Article 43 of the Directive.".

Renumbers Part IV of the principal regulations.

6. Part IV of the principal regulations shall be amended as follows:

(a) Part IV entitled "Part IV – Companies other than credit institutions" shall be re-numbered as "Part V – Companies other than credit institutions"; and

(b) regulation 12 thereof shall be re-numbered as regulation 13.

Inserts new Part in the principal regulations.

7. Immediately after regulation 11 of the principal regulations, there shall be inserted the following new Part:

"Part IV – Collaboration between Regulatory Authorities

Collaboration between Regulatory Authorities.

12. (1) Where credit institutions that have their head office in Malta operate in another Member State or EEA State, or where credit institutions have their head office in another Member State or EEA State and operate in Malta, the competent authority shall collaborate closely with the European regulatory authority concerned.

(2) The competent authority shall, in particular, collaborate with other European regulatory authority where branches are concerned and it shall supply such European regulatory authority with all information concerning:

(a) the management and ownership of such credit institutions that is likely to facilitate their supervision;

(b) the examination of the conditions for their authorisation; and

(c) all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.".

Amends regulation 13 as re-numbered of the principal regulations.

8. Regulation 13, as re-numbered, of the principal regulations shall be amended as follows:

(a) in paragraph (g) of sub-regulation (1) thereof, for the words "in accordance with Articles 52 to 56 of the Directive, in particular for the calculation of the solvency ratio, for the control of large exposures and for the purposes of the limitation of holdings provided for in Article 51 of the Directive.", there shall be substituted the words "in accordance with Articles 125 to 143 of the Directive, in particular for the calculation of the capital requirements, for the control of large exposures and for

the purposes of the limitation of holdings provided for in Articles 120 to 122 of the Directive."; and

(b) in sub-regulation (3) thereof, for the words "in accordance with sub-article (3) of Article 5 and Articles 16, 17, 26, 28, 29, 30 and 32 of the Directive:", there shall be substituted the words "in accordance with sub-article (1) of Article 10, and Articles 19 to 22, 40, 42 to 52 and 54 of the Directive:".

Renumbers Part V of the principal regulations.

9. Part V of the principal regulations shall be amended as follows:

(a) Part V entitled "Applicability provisions" shall be re-numbered as "Part VI – Applicability provisions"; and

(b) regulation 13 thereof shall be re-numbered as regulation 14.

Renumbers Part VI of the principal regulations.

10. Part VI of the principal regulations shall be amended as follows:

(a) Part VI entitled "Interpretation" shall be re-numbered as "Part VII"– Interpretation"; and

(b) regulations 14 and 15 thereof shall be re-numbered as regulations 15 and 16 respectively.

Amends regulation 15 as re-numberedof the principal regulations.

11. In regulation 15 of the principal regulations, as re-numbered, for the words "laid down in regulation 12,", there shall be substituted the words "laid down in regulation 13,".

Substitutes the Schedule to the principal regulations.

12. The Schedule to the principal regulations shall be substituted as follows:

"SCHEDULE

Annex I to the Directive

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds

2. Lending

3. Financial Leasing

4. Money transmission services

5. Issuing and administering means of payment (e.g. credit card, travellers cheques and bankers' drafts)

6. Guarantees and commitments

7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, certificates of deposit, etc.);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities

8. Participation in securities issues and the provision of services related to such issues

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings

10. Money broking

11. Portfolio management and advice

12. Safekeeping and administration of securities

13. Credit reference services

14. Safe custody services

The services and activities provided for in Section A and Section B of Schedule I to the European Passport Rights for Investment Firms Regulations, 2007 when referring to the instruments provided for in the Section C of the said Schedule are subject to mutual recognition.”.

L.N. 325 of 2007.

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