VERŻJONI ELETTRONIKA

I assent.

(L.S.)

GEORGE ABELA
President

26th November, 2010

ACT No. XIX of 2010

AN ACT to amend various financial services laws

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2010.

PART I

AMENDMENT OF THE MALTA FINANCIAL SERVICES AUTHORITY ACT

Amendment of the Malta Financial Services Authority Act. Cap. 330.

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

Amendment of article 2 of the principal Act.

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

(a) the definition "financial services" shall be substituted as follows:

" "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;"; and

(b) immediately after the definition "prescribed" there shall be inserted the following new definition:

" "Registrar of Companies" means the person appointed pursuant to article 400 of the Companies Act and who shall be a senior official of the Authority;". Cap. 386.

Amendment of article 4 of the principal Act.

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

(a) In subarticle (2) thereof, immediately after the words "monitoring areas or activities in the financial services sector" there shall be added the words "and the registration of commercial partnerships"; and

(b) in subarticle (4) thereof, for the words "In this Act, "Malta's international commitments" shall have the same meaning assigned to the term under article 2 of the Investment Services Act.", there shall be substituted the words "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.".

Addition of new article 4A to the principal Act.

5. Immediately after article 4 of the principal Act there shall be inserted the following new article:

"Licence considered to be a concession.

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 subarticle, licence includes and applies to any licence and authorisation, however designated, issued by the Authority under any legislation for whose administration it is responsible.".

Addition of new article 7A to the principal Act.

6. Immediately after article 7 of the principal Act, there shall be added the following new article 7A:

"Board of Governors when acting as the Listing Authority.

7A. (1) The Board of Governors shall also act as the Listing Authority established under the Financial Markets Act and shall perform the functions set out in Part III of the said Financial Markets Act.

(2) The Board of Governors when acting as the Listing Authority may delegate in writing any of its functions and powers, including the power to take decisions on behalf of the Board, on such matters and subject to such conditions and modalities as may be specified in the delegation, to the chairman or one or more of the members of the Board, as may be specified. Any decision so taken shall be ratified by the other members of the Board at the first opportunity.

(3) The Board of Governors when acting as the Listing Authority may delegate in writing any of its decisions relating to the admissibility to listing to any one or more of the Listing Committees established under the Financial Markets Act. Any such delegation shall be subject to such terms, conditions and restrictions as the Board of Governors may think fit.".

Amendment of article 9 of the principal Act.

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

(a) in subarticle (1) thereof, immediately after the words "the Authority.", there shall be added the words "The Co-ordination Committee shall act as the point of contact and the principal channel of communication and co-ordination between the Board of Governors, the Supervisory Council and the Board of Management and Resources."; and

(b) for subarticle (2) thereof, there shall be substituted the following:

"(2) The Co-ordination Committee shall consist of the Chairman of the Board of Governors, who shall preside thereat, the Director-General, the Chief Operations Officer of the Authority, the Director of the Legal Office and the Registrar of Companies.".

Amendment of article 10 of the principal Act.

8. In subarticle (2) of article 10 of the principal Act, for the words "within the Authority for Banking, Company Compliance, Insurance, Investment Services and for any other area of financial services under the regulatory supervision of the Authority.", there shall be substituted the words "within the Authority for Authorisation, the supervision of Banking, Insurance and Pensions, Securities and Markets, for Regulatory Development and for any other area of financial services under the regulatory supervision of the Authority as may be determined by the Board of Governors. The Supervisory Council may, with the approval of the Board of Governors, from time to time make internal arrangements to authorise one or more of the aforementioned Directors to sign a licence, category of licences or any other form of authorisation as it may deem appropriate.".

Amendment of article 11 of the principal Act.

9. In subarticle (1) of article 11 of the principal Act, for the words "the Authority including business development and ancillary services", there shall be substituted the words "the Authority including human resources, business development and ancillary services".

Amendment of article 13 of the principal Act.

10. Subarticle (1) of article 13 of the principal Act shall be amended as follows:

(a) for the words "a Consumer Complaints Manager and such other officers", there shall be substituted the words "Directors, a Consumer Complaints Manager and such other officers"; and

(b) for the words "the Chief Operations Officer and the Consumer Complaints Manager", there shall be substituted the words "the Chief Operations Officer, Directors and the Consumer Complaints Manager".

Amendment of article 16 of the principal Act.

11. Article 16 of the principal Act shall be amended as follows:

(a) for subarticle (1) thereof, there shall be substituted the following:

"(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, 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 of this Act and any provision as may be contained in any other law."; and

(b) immediately after subarticle (6) thereof, there shall be inserted the following new subarticles:

"(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 competent 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 subject to publication 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.".

Amendment of article 17 of the principal Act.

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

(a) in paragraph (a) of subarticle (2) thereof, immediately after the words "matters related to the regulation and supervision of financial services", there shall be added the words "and the registration of commercial partnerships"; and

(b) immediately after subarticle (2) thereof, there shall be inserted the following new subarticle:

"(3) 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 overseas regulatory authorities shall be treated as confidential and no Court or Tribunal may order the disclosure of such information unless the prior written approval of the overseas regulatory authority is obtained.".

Amendment of article 21 of the principal Act.

13. In the second proviso to subarticle (9) of article 21 of the principal Act, for the words "two hundred and thirty-two euro and ninety-four cents (232.94)" there shall be substituted the words

"two hundred and thirty-two euro and ninety-four cents (232.94) and from any reprimand, warning or other similar disciplinary sanction or measure.".

Amendment of article 28 of the principal Act.

14. In article 28 of the principal Act, for the words "three months after the close of each financial year" there shall be substituted the words "four months after the close of each financial year".

Amendment of article 29 of the principal Act.

15. For article 29 of the principal Act, there shall be substituted the following:

"29. The Authority, the members of the Board of Governors, of the Co-Ordination Committee, of the Supervisory Council, of the Board of Management and Resources and of the Legal Office 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 function under this Act or any other Act administered by the Authority, 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, in bad faith.".

PART II

AMENDMENT OF THE FINANCIAL MARKETS ACT

Amendment of the Financial Markets Act.
Cap. 345.

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

Amendment of article 2 of the principal Act.

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

(a) for the definition "Listing Authority" there shall be substituted the following:

" "Listing Authority" means such person or body appointed under the Malta Financial Services Authority Act to perform the functions set out in Part III of this Act;";

(b) immediately after the definition "multilateral system" there shall be inserted the following new definition:

" "overseas central securities depository" means a person authorised to provide the same or substantially similar services to those stipulated in article 26 in a recognised jurisdiction."; and

(c) immediately after the definition "quoted company" there shall be inserted the following new definition:

" "recognised jurisdiction" means:

(a) a Member State;

(b) an EEA State;

(c) any country that is a member of the Organization for Economic Co-operation and Development (OECD) established in 1961;

(d) a country that is a signatory of the IOSCO Multilateral Memorandum of Understanding; or

(e) any other jurisdiction where the central securities depository or the overseas central securities depository is regulated and with whom the competent authority has a Memorandum of Understanding covering securities;".

Amendment of article 4 of the principal Act.

18. In article 4 (1)(b) of the principal Act, for the words "an authorised investment exchange for the purposes of this Act", there shall be substituted the words "an authorised regulated market for the purposes of this Act".

Amendment of article 11 of the principal Act.

19. In article 11 of the principal Act, for the words "There shall be a Listing Authority having the following functions:", there shall be substituted the words "The Listing Authority shall have the following functions:".

Addition of new article 11A to the principal Act.

20. Immediately after article 11 of the principal Act there shall be inserted the following new article 11A:

"Further functions of the Listing Authority.

11A. (1) The Listing Authority shall also have the function of:

(a) authorising the admissibility to trading of financial instruments on a second tier market which qualifies as a multilateral trading facility within the meaning of the Investment Services Act and which operates in or from Malta;

(b) issuing rules which may include:

(i) conditions and requirements that need to be satisfied by an applicant to be admissible to trading on a multilateral trading facility;

(ii) conditions and requirements which the applicant must continue to satisfy if its financial instruments are to remain traded on a multilateral trading facility;

(iii) the manner and form in which an application for admissibility to trading on a multilateral trading facility must be made to the Listing Authority and any fees payable in connection therewith;

(iv) certain minimum disclosure requirements to be set out in the offering document issued by issuers seeking admissibility to trading on a multilateral trading facility;

(v) any other provisions which may be required for the better implementation and purposes of this article and anything that is incidental to or connected with any of the matters above, as the Listing Authority may consider appropriate.

(2) Where any person contravenes or fails to comply with any provision of this article or any rules issued thereunder, the Listing Authority may by notice in writing and without recourse to a court hearing impose on any such person or persons, as the case may be, an

administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

(3) The operator of a multilateral trading facility shall comply immediately with any instruction from the Listing Authority to suspend or remove an instrument from trading.".

Amendment of article 14 of the principal Act.

21. Article 14 of the principal Act shall be amended as follows:

(a) for the marginal note "Listing Committee", there shall be substituted the words "Listing Committees";

(b) in subarticle (1) thereof, for the words "The Listing Authority may establish a committee, hereinafter referred to as the "Listing Committee" ", there shall be substituted the words "The Listing Authority shall establish a committee, hereinafter referred to as the "Listing Committee",";

(c) for subarticle (2) thereof, there shall be substituted the following:

"(2) The Listing Committee shall be composed of up to five members and shall be appointed for a term not exceeding three years. The Listing Committee shall make recommendations to, and otherwise assist, the Listing Authority in the admissibility to listing of financial instruments and shall perform such other specific functions as the Listing Authority may from time to time delegate in writing. The Listing Committee shall have such powers and observe such procedures as the Listing Authority may establish, and shall periodically report on its activities to the Listing Authority. The Securities and Markets Supervision Unit of the Authority shall also assist and give advice to the Listing Committee on listing matters."; and

(d) for subarticle (3) thereof, there shall be substituted the following:

"(3) The Listing Authority may appoint additional listing committees for the purpose of assisting the Listing Committee in the performance of

such specific functions as the Listing Authority may delegate in writing. Such additional listing committees shall be set up and shall be subject to the conditions and requirements set out in subarticle (2).".

Amendment of article 28 of the principal Act.

22. Article 28 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "in a central securities depository, may be created and, or transferred by an entry on the register maintained in a central securities depository and no instrument in writing shall be required for this purpose", there shall be substituted the words "in a central securities depository or an overseas central securities depository, may be created and, or transferred by an entry on the register maintained in the central securities depository or the overseas central securities depository and no instrument in writing shall be required for this purpose";

(b) in subarticle (2) thereof, for the words "in a central securities depository, may be held or evidenced in a dematerialised or uncertificated form.", there shall be substituted the words "in a central securities depository or an overseas central securities depository, may be held in a dematerialised or uncertificated form.";

(c) in subarticle (3) thereof, immediately after the words "duly registered with a central securities depository", there shall be added the words "or an overseas central securities depository"; and

(d) in subarticle (4) thereof, for the words "duly authorised in terms of this Part", there shall be substituted the words "or an overseas central securities depository".

Amendment of article 29 of the principal Act.

23. In article 29 of the principal Act, the words "authorised under this Part", shall be deleted.

Amendment of article 30 of the principal Act.

24. Article 30 of the principal Act shall be amended as follows:

(a) in subarticle (1)(h) thereof, for the words "for an authorisation which may be subject to such variations,", there shall be substituted the words "for an authorisation or

from any provision of this Act which may be subject to such variations,"; and

(b) in subarticle (2) thereof, for the words "classes of financial instruments and for different circumstances or purposes", there shall be substituted the words "classes of financial instruments, overseas central securities depositories and for different circumstances or purposes".

Amendment of article 31 of the principal Act.

25. In article 31 of the principal Act, for the words "central securities depositories authorised under this Part and on others", there shall be substituted the words "central securities depositories and on others".

Amendment of article 49 of the principal Act.

26. Article 49 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "for the better regulation of regulated markets and central securities depositories" there shall be substituted the words "for the better regulation of central securities depositories, credit rating agencies and regulated markets";

(b) in paragraph (d) thereof, for the words "relating to regulation of regulated markets" there shall be substituted the words "relating to regulation of credit rating agencies, regulated markets"; and

(c) for paragraph (e) thereof, there shall be substituted the following:

"(e) 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 credit rating agencies, regulated markets and, or the admissibility to listing of financial instruments thereon and others as may be specified therein or to any other matter falling within the terms of this Act.".

Amendment of article 50 of the principal Act.

27. In article 50 of the principal Act, immediately after the words "in terms of article 45", there shall be added the words

"or on a regulated multilateral system or an equivalent regulated market or multilateral system in a non-Member State or non-EEA State".

PART III

AMENDMENT OF THE COMPANIES ACT

Amendment of the Companies Act. Cap. 386.

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

Amendment of article 66A of the principal Act.

29. In article 66A of the principal Act, for the words "This article shall apply to a partnership *en commandite* or limited partnership the capital of which is divided into shares" there shall be substituted the words "This article shall apply to a partnership *en commandite* or limited partnership the capital of which may be divided into shares".

Addition of new article 84D to the principal Act.

30. Immediately after article 84C of the principal Act, there shall be added the following new article:

"Minister may make regulations relating to formation etc. of incorporated cell companies and cells.

84D. The Minister, in consultation with the Minister responsible for finance and acting on the advice of the competent authority under the Insurance Business Act or the competent authority under the Investment Services Act, may make regulations which provide for the formation, constitution, authorisation and regulation of incorporated cell companies and incorporated cells as limited liability companies with separate legal personality under this Act, and which make it possible for such companies to carry on any financial services business as may be prescribed, and for all matters ancillary thereto or that may arise in connection therewith. Regulations issued in terms of this article may also provide for the applicability or inapplicability of, or the total or partial exemption from, any of the provisions of this Act or of any other law in force to incorporated cell companies and incorporated cells subject to any modifications, variations or conditions as may be specified.".

Amendment of article 118 of the principal Act.

31. Article 118 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "may be made by private writing", there shall be substituted the words "shall be made in writing"; and

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

"(3) This article shall not apply to shares or debentures of a public company held or evidenced in a dematerialised or uncertificated form within the meaning of the Financial Markets Act.".

Amendment of article 120 of the principal Act.

32. In subarticle (3) of article 120 of the principal Act, for the words "as the case may be.", there shall be substituted the words "as the case may be:

Provided that in the case of public companies whose shares are admitted to listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State, the delivery to the Registrar shall take place within 90 days after the date on which a transfer of any such shares is registered with the company, and within 90 days from the date on which any such shares transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof.".

Insertion of new article 126A to the principal Act.

33. Immediately after article 126 of the principal Act, there shall be added the following new article 126A:

"Proper keeping of register in certain instances.

126A. (1) Notwithstanding the provisions of articles 123 and 124 of this Act, where shares or debentures of a public company are held or evidenced in a dematerialised or uncertificated form within the meaning of the Financial Markets Act, the company shall remain responsible for the proper keeping of the register and shall keep a copy of all entries relating to registered shareholders and registered holders of debentures held by the central securities depository or by an overseas central securities depository.

(2) For the purposes of this article "central securities depository" and "overseas central securities depository" shall have the same meaning assigned to them in article 2 of the Financial Markets Act.".

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Amendment of article 209 of the principal Act.

34. Immediately after paragraph (b) of subarticle (2) of article 209 of the principal Act, there shall be added the following new paragraph:

"(c) allow any of its securities to be admitted to listing or trading.".

Amendment of article 335 of the principal Act.

35. Subarticle (3) of article 335 of the principal Act shall be deleted.

Amendment of article 345 of the principal Act.

36. In paragraph (b) of subarticle (6) of article 345 of the principal Act, for the words "referred to in article 349, at the registered office of the acquiring company:" there shall be substituted the words "referred to in article 349, in accordance with the provisions of that article:".

Substitution of article 346 of the principal Act.

37. For article 346 of the principal Act, there shall be substituted the following:

"346. (1) The directors of each of the amalgamating companies shall:

(a) draw up a detailed written report explaining the draft terms of the merger and setting out the legal and economic grounds for them, in particular the share exchange ratio, and shall describe any special valuation difficulties which have arisen; and

(b) inform the general meeting of their company and the directors of the other amalgamating company or companies so that they may inform their respective general meetings, of any material change in the assets and liabilities between the date of preparation of the draft terms of merger and the date of the general meetings which are to decide on the draft terms of merger.

(2) The report referred to in paragraph (a) of subarticle (1) hereof and the information referred to in paragraph (b) of subarticle (1) hereof shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the amalgamating companies have so agreed.".

Amendment of article 347 of the principal Act.

38. In article 347 of the principal Act, for the words "shall not apply." there shall be substituted the words "shall not apply

where an independent expert's report on the draft terms of merger is drawn up.".

39. Article 349 of the principal Act shall be amended as follows: Amendment of article 349 of the principal Act.

(a) in subarticle (1) thereof -

(i) in paragraph (c), for the words "an accounting statement" there shall be substituted the words "where required, an accounting statement";

(ii) for paragraph (d), there shall be substituted the following:

"(d) where required, the reports of the directors of the amalgamating companies relating to the amalgamation;";

(iii) in paragraph (e), for the word "amalgamation.", there shall be substituted the words "amalgamation; and";

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

"(f) for the purposes of paragraph (c) of this subarticle, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with listing rules issued in terms of the Financial Markets Act and governing such reports, and makes it available to shareholders in accordance with this subarticle. Furthermore, an accounting statement shall not be required if all the shareholders and all holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.";

(b) in subarticle (3) thereof, for the words "mentioned in subarticle (1)." there shall be substituted the words "mentioned in subarticle (1), and where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided in such manner."; and

(c) immediately after subarticle (3) thereof, there shall be inserted the following new subarticles:

"(4) A company shall be exempt from the requirement to make the documents referred to in sub-article (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of merger and ending not earlier than the conclusion of that meeting, it makes them available on its website.

(5) Subarticle (3) shall not apply if the company's website gives shareholders the possibility, throughout the period referred to in subarticle (4), of downloading and printing the documents referred to in subarticle (1).".

Amendment of article 354 of the principal Act.

40. Immediately after subarticle (2) of article 354 of the principal Act, there shall be inserted the following new subarticle:

"(3) Where the assets of a company being acquired include immovable property or rights relating thereto, the directors of the acquiring company shall cause within one month from the coming into force of the amalgamation, a declaratory public deed to be published, containing a detailed description of the immovable property or rights relating thereto delivered to the acquiring company, and a true copy of the said deed shall be lodged with the Registrar within fourteen days from the enrolment thereof at the Public Registry.".

Amendment of article 357 of the principal Act.

41. In subarticle (3) of article 357 of the principal Act, for the words "shall not apply." there shall be substituted the words "shall not apply where an independent expert's report on the draft terms of merger is drawn up.".

Amendment of article 358 of the principal Act.

42. Article 358 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "which is the holder of all their shares" there shall be substituted the words "which is the holder of all their shares and other securities conferring the right to vote at general meetings"; and

(b) for paragraph (b) of subarticle (3) thereof, there shall be substituted the following:

"(b) within the period mentioned in paragraph (a), all shareholders of the acquiring company shall be entitled to inspect at the registered office of the company the documents specified in article 349(1)(a), (b) and where required, (c) which those same shareholders would be entitled to inspect in case of an amalgamation made in any of the manners specified in article 343; and the provisions of subarticles (2), (3), (4) and (5) of article 349 shall apply:".

Amendment of article 359 of the principal Act.

43. For the first paragraph of subarticle (1) of article 359 of the principal Act, there shall be substituted the following:

"(1) Where a merger by acquisition is carried out by a company which holds 90% or more, but not all, of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, the general meeting of the acquiring company need not approve the acquisition provided the following conditions are fulfilled:".

Amendment of article 362 of the principal Act.

44. Article 362 of the principal Act shall be amended as follows:

(a) in paragraph (b) of subarticle (6) thereof, for the words "specified in article 365(1) at the registered office of that company; and" there shall be substituted the words "specified in article 365(1) in accordance with the provisions of that article; and"; and

(b) immediately after subarticle (6) thereof, there shall be inserted the following new subarticle:

"(7) Without prejudice to subarticle (6), approval of the division by the general meeting of the company being divided shall not be required if the recipient companies together hold all the shares and other securities conferring the right to vote at general meetings of the company being divided, and the following conditions are fulfilled:

(a) the publication of the statement referred to in article 401(1)(e), provided for pursuant to the registration required by virtue of article 361(5) shall be effected, for all companies involved in the division, at least one month and not more than three months before the date fixed for the general meeting of the company to be divided which is to decide on the draft terms of division;

(b) at least one month before the date specified in paragraph (a) all shareholders of all companies involved in the division shall be entitled to inspect the documents specified in article 365(1) in accordance with the provisions of that article; and

(c) where a general meeting of the company being divided, required for the approval of the division, is not convened, the information provided for by article 363(4) covers any material change in the assets and liabilities after the date of preparation of the draft terms of division.".

Amendment of article 363 of the principal Act.

45. In subarticle (2) of article 363 of the principal Act, for the words "The report shall" there shall be substituted the words "Where applicable, the report shall".

Amendment of article 364 of the principal Act.

46. For subarticle (3) of article 364 of the principal Act, there shall be substituted the following:

"(3) The report on considerations other than in cash referred to in article 73(4) and the report on the draft terms of division drawn up in accordance with subarticle (1) shall be drawn up by the expert or experts approved under subarticle (1):

Provided that the report on considerations other than in cash shall not be required if a written report in accordance with subarticle (1) has been drawn up.".

Amendment of article 365 of the principal Act.

47. Article 365 of the principal Act shall be amended as follows:

(a) immediately after paragraph (e) of subarticle (1) thereof, there shall be inserted the following new proviso:

"Provided that for the purposes of paragraph (c) of this subarticle, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with listing rules issued in terms of the Financial Markets Act and governing such reports, and makes it available to shareholders in accordance with this subarticle.";

(b) in subarticle (3) thereof, for the words "referred to in subarticle (1)." there shall be substituted the words "referred to in subarticle (1) and where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided in such manner."; and

(c) immediately after subarticle (3) thereof, there shall be inserted the following new subarticles:

"(4) A company shall be exempt from the requirement to make the documents referred to in sub-article (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of division and ending not earlier than the conclusion of that meeting, it makes them available on its website.

(5) Subarticle (3) shall not apply if the website gives shareholders the possibility, throughout the period referred to in subarticle (4), of downloading and printing the documents referred to in subarticle (1).".

Amendment of article 400 of the principal Act.

48. In subarticle (1) of article 400 of the principal Act, for the words "The Minister shall appoint a person to be Registrar of Companies and other Commercial Partnerships", there shall be substituted the words "The Minister, acting on the advice of the competent authority under the Malta Financial Services Authority Act, shall appoint a senior official of the said Authority to be Registrar of Companies and other Commercial Partnerships".

Cap. 330.

PART IV

AMENDMENT OF THE INSURANCE BUSINESS ACT

Amendment of the Insurance Business Act.
Cap. 403.

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

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Amendment of article 69 of the principal Act.

50. Subarticle (10) of article 69 of the principal Act shall be deleted.

PART V

AMENDMENT OF THE INVESTMENT SERVICES ACT

Amendment of the Investment Services Act.
Cap. 371.

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

Amendment of article 6 of the principal Act.

52. In sub-paragraph (ii) of paragraph (a) of subarticle (1) of article 6 of the principal Act, for the words "grant an investment services licence:" there shall be substituted the words "grant an investment services licence for the provision of any investment service other than acting as trustee or custodian in relation to a collective investment scheme:".

Amendment of article 12 of the principal Act.

53. Subarticle (1) of article 12 of the principal Act shall be amended as follows:

(a) paragraphs (n) and (o) thereof shall be re-numbered (o) and (p) respectively; and

(b) immediately after paragraph (m) thereof, there shall be inserted the following new paragraph (n):

"(n) 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 or to any other matter falling within the terms of this Act;".

PART VI

AMENDMENT OF THE DUTY ON DOCUMENTS AND TRANSFERS ACT

Amendment of the Duty on Documents and Transfers Act.
Cap. 364.

54. This Part amends and shall be read and construed as one with the Duty on Documents and Transfers Act, hereinafter in this Part referred to as "the principal Act".

55. Immediately after article 41A of the principal Act, there shall be inserted the following new article 41B:

Addition of new article 41B in the principal Act.

"Conversion of a commercial partnership.

41B. The succession to all assets, rights, liabilities and obligations of the commercial partnership that has been converted, by the commercial partnership resulting from the conversion referred to in article 335(1) of the Companies Act, shall not give rise to any liability to the payment of any duty under this Act.".

56. In article 64 of the principal Act, for subarticle (1) thereof, there shall be substituted the following:

Amendment of article 64 of the principal Act.

"(1) No person or authority shall, where a transfer is subject to duty under this Act, or where a transfer of value is exempt from duty by virtue of the proviso to article 42B of the Act, other than paragraph (iv) of the said proviso, register any transfer, reduction, or allotment of company shares whether in the name of a transferee or any other person claiming through or under him or otherwise, before ascertaining that such transfer, reduction or allotment has been notified to the Commissioner in accordance with this Act.".

PART VII

AMENDMENT OF THE INCOME TAX ACT

57. This Part amends and shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred to as "the principal Act".

Amendment of the Income Tax Act. Cap. 123.

58. For article 45A of the principal Act, there shall be substituted the following:

Substitution of article 45A of the principal Act.

"Conversion of a commercial partnership.

45A. Notwithstanding anything said in this Act, where in accordance with the provisions of the Companies Act, a company is converted into a commercial partnership *en nom collectif* or a commercial partnership *en commandite* the capital of which is not divided into shares, the following shall apply:

(a) it shall be deemed for all the purposes of the Income Tax Acts that any balance of distributable profits allocated to any of the tax accounts, existing on the day the company ceases

to be a company, to have been distributed by way of dividend on the said day and the provisions of articles 61 to 67 shall apply accordingly to such profits;

(b) subject to paragraph (c) of this article, it shall be deemed for all the purposes of the Income Tax Acts that no transfer or acquisition of assets has taken place and for the purpose of determining the chargeable income or gains on a transfer of the said assets by the partnership, the cost and date of acquisition taken into account shall be the cost and date as applicable to the company that has been converted;

(c) where the assets of the company ("the chargeable company") include shares in a company or immovable property situated in Malta which have been acquired from another company ("the transferor") under a transfer which qualified for tax relief under the provisions of articles 5(9) or 5A(4)(f), it shall be deemed for the purposes of articles 5(9A) and 5A(12A) that the chargeable company ceases to be a member of the original group and the provisions of the said articles shall apply accordingly;

(d) where the transferor company referred to in the preceding paragraph is converted into a partnership, for the purpose of determining whether the chargeable company referred to in articles 5(9A) and 5A(12A) ceases to be a member of the original group, it shall be deemed that the conversion had not taken place and such determination shall be made by reference to the same individuals referred to in paragraph (iii) of article 5(9) taken into account in determining whether the chargeable company and the transferor company satisfied the provisions of paragraphs (i) and (iii) of article 5(9) on the date of the acquisition referred to in paragraph (c) above;

(e) where the company has available for set-off capital losses referred to under article 5(10) of the Act, such losses shall be carried forward and

set off only against capital gains derived by the partnership in the manner prescribed in the said article as would have applied had the conversion not taken place;

(f) where the company has available for set-off losses referred to under article 14(1)(g) of the Act, such losses shall be carried forward and set off only against the total income derived by the partnership in the manner prescribed in the said article as would have applied had the conversion not taken place.".

PART VIII

TRANSITIONAL ARRANGEMENTS

Transitional arrangements.

59. (1) The Listing Committee referred to in subarticle (2) of article 14 of the Financial Markets Act as amended by means of this Act, shall be a continuation of the Listing Committee established in terms of the Financial Markets Act, as in force prior to the coming into force of Part II of this Act.

(2) Any rules issued in terms of article 11A of the Financial Markets Act shall apply to issuers of financial instruments already listed on the second tier market, as established in terms of the Listing Rules, as from the date which shall be determined by the Listing Authority.".

Passed by the House of Representatives at Sitting No. 287 of 22nd November, 2010.

MICHAEL FRENDO
Speaker

PAULINE ABELA
Clerk to the House of Representatives