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I assent.

(L.S.)

GEORGE ABELA
President

24th June, 2011

ACT No. X of 2011

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, 2011.

PART I

**AMENDMENTS TO 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 6 of the
principal Act.

3. In paragraph (f) of sub-article (6) of article 6 of the principal Act, for the words "of any such person, shall be notified in the Gazette" there shall be substituted the words "of any such person including the reason for such termination or resignation, as applicable, shall be notified in the Gazette".

4. Article 16 of the principal Act shall be amended as follows: Amendment of article 16 of the principal Act.

(a) in sub-article (3) thereof, for the words "an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "an administrative penalty which may not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.";

(b) in sub-article (4) thereof, for the words "shall be due to the competent authority." there shall be substituted the words "shall be due to the Authority.";

(c) in sub-article (7) thereof, for the words "the competent authority may issue reprimands," there shall be substituted the words "the Authority may issue reprimands,"; and

(d) in the Maltese text of sub-article (8) thereof, for the words "għandha tkun bla ħsara għall-pubblikazzjoni" there shall be substituted the words "għandha tkun soġġetta għall-pubblikazzjoni".

5. Sub-article (2) of article 17 of the principal Act shall be amended as follows: Amendment of article 17 of the principal Act.

(a) in paragraph (a) thereof, for the words "a foreign competent authority or body" there shall be substituted the words "an overseas regulatory authority or body"; and

(b) in the proviso thereto, for the words "concluded with the Competent Authority." there shall be substituted the words "concluded with the Authority.".

6. Article 20A of the principal Act shall be amended as follows: Amendment of article 20A of the principal Act.

(a) in sub-article (1) thereof, for the words "The Minister, acting on the advice of the competent authority," there shall be substituted the words "The Minister, acting on the advice of the Authority,"; and

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(b) in sub-article (2) thereof, for the words "The Minister, acting on the advice of the competent authority," there shall be substituted the words "The Minister, acting on the advice of the Authority,".

Amendment of
article 20C of
the principal
Act.

7. In paragraph (a) of sub-article (2) of article 20C of the principal Act, for the words "and from other competent authorities," there shall be substituted the words "and from other overseas regulatory authorities," and for the words "with overseas competent authorities, as may be necessary;" there shall be substituted the words "with overseas regulatory authorities, as may be necessary;".

Amendment of
article 21 of the
principal Act.

8. For sub-article (18) of article 21 of the principal Act, there shall be substituted the following:

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

PART II

AMENDMENTS TO THE TRUSTS AND TRUSTEES ACT

Amendment of
the Trusts and
Trustees Act.
Cap. 331.

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

Amendment of
article 43 of the
principal Act.

10. Article 43 of the principal Act shall be amended as follows:

(a) in paragraph (j) of subarticle (7) thereof, for the words "their individual nominal value does not exceed one euro" there shall be substituted the words "their aggregate nominal value does not exceed five euro";

(b) in paragraph (a) of subarticle (9) thereof:

(i) for sub-paragraph (i) thereof, there shall be substituted the following:

"(i) securities or interests in or issued by a Maltese legal entity, other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction; or";

(ii) in sub-paragraph (ii) thereof:

1. for the words "immovable property in Malta (hereafter referred to as "relevant property") by trustees who are not authorised shall be permitted only if a person –", there shall be substituted the words:

"immovable property in Malta,

(hereafter referred to as "relevant property") by trustees who are not authorised shall be permitted only if a person –";

2. for the words "by the Authority from time to time.", there shall be substituted the words "by the Authority from time to time;

For the purposes of this paragraph:

(i) "recognised jurisdiction" shall mean:

(a) an EEA State, an EU Member State, or Switzerland;

(b) any country that is a member of the Organisation for Economic Co-operation and Development (OECD);

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

(d) any other jurisdiction with whom the Authority has a Memorandum of Understanding covering securities;

(ii) "regulated market" and "multilateral system" shall have the same meaning assigned to them by the Financial Markets Act."; and

Cap. 345.

(c) in paragraph (a) of subarticle (11) thereof, for the words "their individual nominal value does not exceed one euro", there shall be substituted the words "their aggregate nominal value does not exceed five euro".

11. Article 51 of the principal Act shall be amended as follows:

Amendment of article 51 of the principal Act.

(a) in sub-article (6) thereof, for the words "fine (*multa*)

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not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68)" there shall be substituted the words "fine (*multa*) not exceeding four hundred and sixty-six thousand (466,000) euro"; and

(b) in sub-article (7) thereof, for the words "may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "may not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

Amendment of article 53 of the principal Act.

12. In sub-article (6) of article 53 of the principal Act, for the words "not more than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47)" there shall be substituted the words "not more than forty-seven thousand (47,000) euro".

PART III

AMENDMENTS TO THE FINANCIAL MARKETS ACT

Amendment of the Financial Markets Act. Cap. 345.

13. 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.

14. In sub-article (1) of article 2 of the principal Act for the definition "competent authority" there shall be substituted the following:

" "competent authority" means the Malta Financial Services Authority established by the Cap. 330. Malta Financial Services Authority Act;".

Amendment of article 11A of the principal Act.

15. In sub-article (2) of article 11A of the principal Act, for the words "an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (€93,174.94)." there shall be substituted the words "an administrative penalty which may not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

Amendment of article 19 of the principal Act.

16. In sub-article (1) of article 19 of the principal Act, for the words "not exceeding ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "not exceeding one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

- 17.** Sub-article (5) of article 28 of the principal Act shall be deleted. Amendment of article 28 of the principal Act.
- 18.** In sub-article (3) of article 38 of the principal Act, for the words "fine (*multa*) of eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87)" there shall be substituted the words "fine (*multa*) of twelve thousand (12,000) euro". Amendment of article 38 of the principal Act.
- 19.** In sub-article (1) of article 39A of the principal Act, for the words "may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "may not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.". Amendment of article 39A of the principal Act.
- 20.** In sub-article (1) of article 41 of the principal Act, for the words "fine (*multa*) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68)" there shall be substituted the words "four hundred and sixty-six thousand (466,000) euro". Amendment of article 41 of the principal Act.
- 21.** In sub-article (2) of article 42 of the principal Act, for the words "in excess of one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69)." there shall be substituted the words "in excess of one thousand and one hundred and sixty-five (1,165) euro.". Amendment of article 42 of the principal Act.

PART IV

AMENDMENTS TO THE INVESTMENT SERVICES ACT

- 22.** 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 the Investment Services Act. Cap. 370.
- 23.** Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.
- (a) in sub-article (1) thereof:
 - (i) for the definition "competent authority" there shall be substituted the following:

Cap. 330. " "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act, which body shall also carry out the duties as competent authority for all purposes of the MIFID Directive and the UCITS Directive;"

(ii) the definition "Directive" shall be deleted;

(iii) in the definition "European investment firm", for the words "of the Directive", there shall be substituted the words "of the MIFID Directive";

(iv) in the definition "European regulatory authority", for the words "Article 48 of the Directive to carry out each of the duties provided for under the different provisions of the Directive", there shall be substituted the words "Article 48 of the MIFID Directive and Article 97 of the UCITS Directive to carry out each of the duties provided for under the different provisions of both said Directives";

(v) immediately after the definition "Member State" there shall be inserted the following new definition:

" "MIFID Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(vi) in the proviso to the definition "qualifying shareholding", for the words "Annex 1 to the Directive", there shall be substituted the words "Annex 1 to the MIFID Directive";

(vii) immediately after the definition "subsidiary" there shall be inserted the following new definition:

" "UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"; and

(b) in sub-article (3) thereof, for the word "Directive" there shall be substituted the words "MIFID Directive and the UCITS Directive".

24. For article 2A of the principal Act, there shall be substituted the following:

Substitution of article 2A of the principal Act.

"2A. The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of this Act."

25. Paragraph (b) of sub-article (6) of article 10A of the principal Act shall be amended as follows:

Amendment of article 10A of the principal Act.

(a) in sub-paragraph (i) thereof, for the words "the Directive" there shall be substituted the words "the MIFID Directive"; and

(b) for sub-paragraph (ii) thereof, there shall be substituted the following:

"(ii) the UCITS Directive;".

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

Amendment of article 12 of the principal Act.

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

(i) in paragraph (k) thereof, for the words "requirements of the Directive" there shall be substituted the words "requirements of the MIFID Directive and the UCITS Directive";

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(ii) in paragraph (m) thereof, for the words "Directive thereon", there shall be substituted the words "MIFID Directive and UCITS Directive thereon";

(iii) in paragraph (n) thereof, for the words "within the terms of this Act" there shall be substituted the words "within the terms of this Act and for this purpose to provide that any provision in any other law shall not apply to matters falling under the regulations, and, in particular, may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of the Companies Act, such provisions shall prevail, and the provisions of the Companies Act shall, to the extent of the inconsistency, not apply";

(iv) paragraphs (o) and (p) thereof shall be renumbered (p) and (q) respectively;

(v) immediately after paragraph (n) thereof, there shall be added the following new paragraph:

"(o) provide that any one or more of the bodies mentioned in Article 107(3) of the UCITS Directive may, in the interests of consumers, and in accordance with the applicable laws of Malta, take action before the courts or administrative bodies of Malta, to ensure that the provisions of this Act and the Investment Services Rules and regulations issued hereunder transposing the UCITS Directive are implemented"; and

(b) in sub-article (5) thereof, for the words "fine (*multa*) of ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)" there shall be substituted the words "fine (*multa*) of one hundred and fifty thousand (150,000) euro".

Amendment of
article 15 of the
principal Act.

27. Sub-article (2) of article 15 of the principal Act shall be amended as follows:

(a) in paragraph (f) thereof, for the words "in the implementation of the Directive", there shall be substituted the words "in the implementation of the MIFID Directive and the UCITS Directive"; and

(b) in paragraph (g) thereof, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive".

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

Amendment of
article 16A of
the principal
Act.

(a) in sub-article (1) thereof, for the words "may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "may not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.";

(b) in sub-article (2) thereof:

(i) for the words "Investment Services Rules may provide for the imposition of administrative penalties" there shall be substituted the words "Administrative penalties"; and

(ii) for the words "whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the Rules." there shall be substituted the words "may be imposed in the form of a fixed penalty, a daily penalty, or both.";

(c) in sub-article (4) thereof:

(i) for the words "Upon conclusion of any appeal proceedings in terms of article 19, or the lapse of time required to lodge an appeal, the competent authority may", there shall be substituted the words "The competent authority may"; and

(ii) for the words "such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.", there shall be substituted the words "such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties involved.".

29. In article 16B of the principal Act, for the words "in terms of any provisions which transpose the Directive", there shall be substituted the words "in terms of any provisions which transpose the MIFID Directive and the UCITS Directive".

Amendment of
article 16B of
the principal
Act.

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Amendment of
article 17 of the
principal Act.

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

(a) in sub-article (1) thereof, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive, and it shall also exercise its powers and duties as provided for in the UCITS Directive";

(b) in sub-article (2) thereof:

(i) for the words "carrying out its duties under the Directive." there shall be substituted the words "carrying out its duties and exercising its powers under the MIFID Directive and the UCITS Directive.", and

(ii) for the words "In terms of the Directive", there shall be substituted the words "In terms of the MIFID Directive and the UCITS Directive";

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

(i) for the words "of the Directive", there shall be substituted the words "of the MIFID Directive", and

(ii) for the words "pursuant to the Directive" there shall be substituted the words "pursuant to the MIFID Directive";

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

(i) in paragraph (a) thereof, for the words "the business of investment services licence holders", there shall be substituted the words "the business of licence holders, including undertakings contributing towards the business activity of UCITS";

(ii) in paragraph (b) thereof, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive";

(iii) in paragraph (d) thereof, the word "or" shall be deleted;

(iv) in paragraph (e) thereof, for the words "Malta Financial Services Authority Act.", there shall be substituted the words "Malta Financial Services Authority Act; or"; and

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

"(f) in taking any decision in the implementation of the UCITS Directive and the MIFID Directive.";

(e) sub-articles (8), (9), (10) and (11) thereof shall be renumbered as sub-articles (9), (10), (11) and (12) respectively;

(f) immediately after sub-article (7) thereof, there shall be added the following new sub-article:

"(8) Sub-article (7) hereof and article 26 shall not preclude the competent authority from exchanging information, in terms of the UCITS Directive, with European regulatory authorities, where that information is to be divulged to:

(i) authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings or other financial organisations, or authorities responsible for the supervision of financial markets;

(ii) bodies involved in the liquidation or bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures; or

(iii) persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms or other financial institutions.";

(g) in sub-article (9) thereof, as renumbered, for the words "acts contrary to the provisions of the Directive", there shall be substituted the words "acts contrary to the provisions of the MIFID Directive or the UCITS Directive";

(h) in sub-article (11) thereof, as renumbered, for the words "contrary to the provisions of the Directive", there shall be substituted the words "contrary to the provisions of the MIFID Directive or the UCITS Directive"; and

(i) immediately after sub-article (12) thereof, as renumbered, there shall be inserted the following new sub-article:

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"(13) The competent authority shall have the powers conferred upon it by Article 101(8) of the UCITS Directive."

Amendment of
article 17A of
the principal
Act.

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

(a) in the proviso to sub-article (1) thereof, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive";

(b) sub-article (2) thereof shall be renumbered as sub-article (3);

(c) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article:

"(2) If, upon the request for cooperation by the competent authority in terms of Article 101(5) of the UCITS Directive, a verification or an investigation is carried out in a Member State by a European regulatory authority, the competent authority may request that its own officers, employees or agents accompany the officials carrying out the verification or investigation, and such officers, employees or agents shall, however, be subject to the overall control of such Member State.";

(d) sub-article (3) thereof, as renumbered, shall be amended as follows:

(i) in paragraph (b) thereof, for the words "or investigation" there shall be substituted the words "or investigation, and, it may also, in terms of Article 101(5) of the UCITS Directive, request that its own officers, employees or agents accompany the European regulatory authority in carrying out the verification or investigation"; and

(ii) in paragraph (c) thereof, for the words "allow inspectors or experts within the meaning of article 14" there shall be substituted the words "allow inspectors or experts within the meaning of article 14 and auditors within the meaning of article 18".

32. In article 17B of the principal Act, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive, or with European regulatory authorities designated under Article 101(1) of the UCITS Directive for the purpose of carrying out duties and exercising powers thereunder".

Amendment of
article 17B of
the principal
Act

33. Immediately after subarticle (3) of article 19 of the principal Act, there shall be added the following new subarticle:

Amendment of
article 19 of the
principal Act.

"(4) In pursuance of the UCITS Directive, the Tribunal referred to in this article shall also have the competence to hear appeals by European management companies, exercising a freedom of establishment or a freedom to provide services in Malta, from decisions of the competent authority to take measures for breaches incurred by European management companies and the phrases "aggrieved person" and "appellant" in article 21 of the Malta Financial Services Authority Act shall include European management companies."

34. In article 23 of the principal Act, for the words "fine (*multa*) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68)" there shall be substituted the words "fine (*multa*) not exceeding four hundred and sixty six thousand (466,000) euro".

Amendment of
article 23 of the
principal Act.

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

Amendment of
article 26 of the
principal Act.

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

(i) in paragraph (d) thereof, for the words "identity of any persons to whom the information relates", there shall be substituted the words "identity of any persons, including UCITS, their management companies and custodians to whom the information relates"; and

(ii) in the proviso thereof:

1. for the words "in accordance with the Directive" there shall be substituted the words "in accordance with the MIFID Directive, the UCITS Directive,"; and

2. for the words "pension funds, UCITS," there shall be substituted the words "pensions funds,";

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(b) in sub-article (2) thereof, for the words "of the Directive", there shall be substituted the words "of the MIFID Directive and of Article 102 of the UCITS Directive";

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

(i) for the words "where appropriate, to other public authorities" there shall be substituted the words "where appropriate, to recognised clearing houses or other similar body performing clearing or settlement services, to bodies which administer compensation schemes, and to other public authorities"; and

(ii) for the words "their functions." there shall be substituted the words "their functions:", and immediately thereafter there shall be added the following new proviso:

"Provided that where the exchange of information is carried out in terms of the UCITS Directive, the express consent of the European regulatory authority shall be obtained."; and

(d) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) Where an officer or an employee of a licence holder has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.".

Cap. 373.

PART V

AMENDMENTS TO THE BANKING ACT

Amendment of
the Banking
Act.
Cap. 371.

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

37. In sub-article (1) of article 2 of the principal Act, for the definition "competent authority" there shall be substituted the following:

Amendment of article 2 of the principal Act.

" "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;"

Cap. 330.

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

Amendment of article 3 of the principal Act.

(a) sub-article (1) thereof shall be deleted; and

(b) sub-articles (2) and (3) thereof shall be renumbered as sub-articles (1) and (2) respectively.

39. In sub-article (3) of article 34 of the principal Act, for the words "has reason to believe that a transaction or a proposed transaction could involve money laundering," there shall be substituted the words "has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism,".

Amendment of article 34 of the principal Act.

40. In the proviso to sub-article (7) of article 35 of the principal Act, for the words "an administrative penalty may not impose a financial penalty greater than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67)." there shall be substituted the words "an administrative penalty may not impose a financial penalty greater than one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

Amendment of article 35 of the principal Act.

41. In the Schedule to the principal Act, for the title "Schedule (Article 2(4)) List of Additional Activities", there shall be substituted the title "Schedule (Article 2(3)) List of Additional Activities".

Amendment of the Schedule to the principal Act.

PART VI

AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

42. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as "the principal Act".

Amendment of the Financial Institutions Act. Cap. 376.

(2) The provisions of paragraphs (c) and (d) of article 54 shall be deemed to have come into force on the 1st January, 2011.

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

Amendment of article 2 of the principal Act.

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

" "agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule, other than issuing electronic money;"

(b) immediately after the definition "agent" there shall be added the following new definition:

" "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;"

(c) for the definition "the competent authority" there shall be substituted the following:

Cap. 330. " "the competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;"

(d) the definition "the Directive" shall be deleted;

(e) immediately after the definition "EEA State" there shall be inserted the following new definition:

" "Electronic Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder, and "electronic money" shall have the meaning assigned to it in the Third Schedule;" and

(f) immediately after the definition "payment institution" there shall be inserted the following new definition:

" "Payment Services Directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder."

44. Article 3 of the principal Act shall be amended as follows: Amendment of article 3 of the principal Act.
- (a) for sub-article (5) thereof, there shall be substituted the following:

"(5) A licensed financial institution may not take deposits or other repayable funds from the public within the meaning of the Banking Act."; and

Cap. 371.

- (b) immediately after sub-article (6) thereof, there shall be added the following new sub-articles:

"(7) The competent authority may, in relation to a licensed company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in this Act and in any Financial Institutions Rules applying to financial institutions authorised to issue electronic money, in cases where:

(a) the total business activities of the company generate an average outstanding electronic money that does not exceed the amount of two million euro (€ 2,000,000); and

(b) none of the natural persons responsible for the management or operation of the company's business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes:

Provided that, the underlying contractual arrangements of the company shall provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty euro (€ 250).

(8) A company that issues electronic money which has been granted a waiver in terms of the preceding sub-article shall be entered into a public register of financial institutions held in accordance with article 8D.

(9) The competent authority shall determine which of the activities in the Third Schedule may be provided by the companies registered in accordance with the provisions of sub-article (8).

(10) A company that has been granted a waiver in terms of sub-article (7) shall:

(a) notify the competent authority of any change in its situation which is relevant to the conditions laid down in sub-article (7); and

(b) report periodically, at least annually or during any other period which the competent authority may determine, on its average outstanding electronic money;

Provided that, where the conditions laid down in sub-article (7) are no longer met, the company shall within thirty calendar days apply to the competent authority for a modification of the licence to reflect the new circumstances of the company:

Provided further that where a company as referred to in the preceding proviso has not sought for the modification of the licence within such period, it shall be prohibited from issuing electronic money in accordance with this Act.

(11) A company as referred to in sub-article (7) shall be treated as a financial institution authorised to issue electronic money but shall not benefit from the freedom to provide services and the right of establishment.

(12) For the better carrying out of the provisions of this article on the granting of waivers, the competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on licence holders as specified therein.

(13) Notwithstanding anything provided for in this article, the application of the provisions of the Prevention of Money Laundering Act shall not be waived.".

Cap. 373.

45. In paragraph (b) of sub-article (4) of article 5 of the principal Act, for the words "to better transpose the provisions of the Directive" there shall be substituted the words "to better transpose the provisions of the Electronic Money Directive and the Payment Services Directive".

Amendment of article 5 of the principal Act.

46. In sub-article (2) of article 5A of the principal Act, for the words "listed in the Second Schedule" there shall be substituted the words "listed in the Second or the Third Schedule".

Amendment of article 5A of the principal Act.

47. In paragraph (h) of sub-article (1) of article 6 of the principal Act, for the words "within the meaning of the Second Schedule." there shall be substituted the words "within the meaning of the Second and Third Schedules.".

Amendment of article 6 of the principal Act.

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

Amendment of article 8 of the principal Act.

(a) in paragraph (a) of sub-article (3) thereof, for the words "other than paragraph 4 thereof" there shall be substituted the words "other than paragraphs 4 and 10 thereof"; and

(b) in sub-article (4) thereof, for the words "any licensed financial institution carrying out payment services" there shall be substituted the words "any licensed financial institution carrying out payment services or issuing electronic money, or both,".

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

Amendment of article 8A of the principal Act.

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(a) sub-articles (2) and (3) thereof shall be renumbered as sub-articles (3) and (4) respectively;

(b) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article:

"(2) A financial institution authorised to issue electronic money shall not issue electronic money through agents:

Provided that a financial institution authorised to issue electronic money may, subject to such conditions as may be established by the competent authority, distribute and redeem electronic money through agents."; and

(c) immediately after sub-article (4) thereof, as renumbered, there shall be inserted the following new sub-article:

"(5) Where the financial institution licensed or holding an equivalent authorisation in another Member State or EEA State carries out the activities listed in the Schedules in Malta through a branch or by engaging an agent, the financial institution shall follow the procedures laid out in a Financial Institutions Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch or agent, money laundering or terrorist financing, within the meaning of Council Directive 2005/60/EC, is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or terrorist financing, it shall inform the Member State or EEA State in which the financial institution is established, and may refuse to register the branch or agent, or may withdraw the registration of the branch or agent.".

Amendment of article 8B of the principal Act.

50. Sub-article (4) of article 8B of the principal Act shall be deleted.

Addition of new articles to the principal Act.

51. Immediately after article 8D of the principal Act, there shall be added the following new articles:

"Opening of branches having their head office outside the European Union.

8E. (1) In the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community, the competent authority may not apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community.

(2) The competent authority shall notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community as stated in sub-article (1).

Issuance and redeemability of electronic money.

8F. (1) Financial institutions authorised to issue electronic money shall issue electronic money at par value on the receipt of funds.

(2) A financial institution authorised to issue electronic money shall ensure that, at any moment, upon request by the holder thereof, it is in a position to redeem the monetary value of any electronic money held, at par value and without delay.

(3) For the better carrying out of the provisions of this article and to better transpose the provisions of the Electronic Money Directive on issuance and redeemability of electronic money, the competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on financial institutions authorised to issue electronic money as specified therein."

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

Amendment of article 9 of the principal Act.

(a) in paragraph (a) of sub-article (1) thereof, for the words "or to increase or reduce, directly or indirectly" there shall be substituted the words "or to further increase or reduce, directly or indirectly";

(b) for sub-article (4) thereof, there shall be substituted the following:

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"(4) (a) Where a person intends to take any action as set out in sub-article (1)(a) and (b), such person shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Financial Institutions Rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person. The competent authority shall, within two months of receiving such notification, give its approval or otherwise and if such period elapses without the competent authority having notified its decision, such decision shall be deemed to be an approval.

(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the competent authority shall, regardless of any other sanction which may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast or the possibility of annulling those votes."; and

(c) immediately after sub-article (5) thereof, there shall be inserted the following new sub-article (6):

"(6) The competent authority may, by means of a Financial Institutions Rule and subject to such criteria as may be established therein, provide that all or part of the provisions of this article be waived."

Addition of new
articles to the
principal Act.

53. Immediately after article 10 of the principal Act, there shall be inserted the following new articles:

"Prohibition
of interest.

10A. The granting of interest or of any other benefit related to the length of time during which a financial institution providing the services listed in the Third Schedule holds electronic money shall be prohibited.

Safeguarding
requirements.

10B. (1) A financial institution shall safeguard all funds received from payment services users or in exchange for electronic money that has been issued.

(2) For the better carrying out of the provisions of this Act on safeguarding requirements, the competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on financial institutions authorised to issue electronic money as specified therein."

54. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) sub-article (1) thereof shall be deleted;

(b) sub-article (2) thereof shall be renumbered as sub-article (1);

(c) for paragraph (b) of sub-article (1) thereof, as renumbered, there shall be substituted the following:

"(b) determine the circumstances under which a company may be exempted from requiring a licence under this Act;

(c) transpose, implement and give effect to the requirements of the Electronic Money Directive and the Payment Services Directive;

(d) regulate the transposition, implementation and giving effect to the provisions, requirements, obligations and commitments relating to the regulation of payment institutions and electronic money institutions arising out of membership of, affiliation to or relationship with international or regional organisations or groupings of countries or out of any treaty, convention or other international agreement whether bilateral, regional or multilateral, to which Malta is a party; and

(e) provide that any other law, or any provision thereof, shall not apply to matters falling under the regulations, and, in particular, may exempt activities as may be designated from the application of any article or provision of the Civil Code."; and

Cap. 16.

(d) immediately after sub-article (1) thereof, as renumbered, there shall be inserted the following new sub-

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article:

"(2) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may also be so specified."

Amendment of
article 13 of the
principal Act.

55. Article 13 of the principal Act shall be amended as follows:

(a) in paragraph (d) of sub-article (1) thereof, for the words "other than those listed in the Schedule" there shall be substituted the words "other than those listed in the Schedules"; and

(b) immediately after sub-article (4) thereof, there shall be added the following new sub-article:

"(5) Where the competent authority has availed itself of the waiver provided for in article 3(7), it shall:

(a) notify the European Commission forthwith of any subsequent change;

(b) inform the European Commission of the number of legal persons concerned; and

(c) inform the European Commission, on an annual basis, of the total amount of outstanding electronic money issued as at 31 December of each calendar year."

Amendment of
article 14 of the
principal Act.

56. For sub-article (3) of article 14 of the principal Act, there shall be substituted the following:

"(3) Financial institutions providing the services listed in paragraphs 2 and 3 of the Second Schedule and financial institutions authorised to issue electronic money carrying out the additional activities listed in paragraphs 2(b) to (e) of the Third Schedule, shall provide separate accounting information as specified in a Financial Institutions Rule issued by the competent authority. The accounting information shall be subject to an auditor's report."

Amendment of
article 20 of the
principal Act.

57. Article 20 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "financial institutions carrying out payment services solely for their supervisory and regulatory purposes" there shall be substituted the words "financial institutions carrying out payment services or issuing electronic money or both solely for their supervisory and regulatory purposes";

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

"(c) other relevant authorities designated under Directive 2007/64/EC, Directive 2009/110/EC, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to financial institutions authorised to provide payment services and to issue electronic money, including measures regulating the protection of individuals with regard to the processing of personal data and the prevention of money laundering and funding of terrorism."; and

(b) for the proviso to sub-article (3) thereof, there shall be substituted the following:

"Provided that the competent authority may exchange information and communicate with other overseas regulatory authorities either upon their request or on its own initiative:

Provided further that in the case of cross-border consumer disputes, the competent authority may use any of its powers under this article and shall co-operate and exchange information for the purpose of investigating and resolving any such disputes.".

58. In sub-article (1) of article 23 of the principal Act, for the words "an administrative penalty which may not exceed ninety-three thousand and one hundred seventy four euro and ninety-four cents (€93,174.94)." there shall be substituted the words "an administrative penalty which may not exceed one hundred and fifty thousand (€150,000) euro for each infringement or failure to comply, as the case may be.".

Amendment of
article 23 of the
principal Act.

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Amendment of
article 25 of the
principal Act.

59. For sub-article (3) of article 25 of the principal Act, there shall be substituted the following:

Cap. 373.

"(3) Where an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality."

Substitution of
article 26 of the
principal Act.

60. For article 26 of the principal Act there shall be substituted the following:

Cap. 330.

"26. (1) (a) Without prejudice to the generality of article 20 of the Malta Financial Services Authority Act, the Consumer Complaints Manager shall also have the function of investigating complaints from a payment service user and a holder of electronic money arising out of, or in connection with, any alleged infringement by a financial institution of the provisions of this Act implementing the Payment Services Directive and the Electronic Money Directive.

(b) The provisions of article 20 of the Malta Financial Services Authority Act shall, *mutatis mutandis*, apply to complaints made under this article.

Cap. 378.

(c) Complaints as described in sub-article (1) may include complaints from interested parties, within the meaning of the Payment Services Directive and the Electronic Money Directive, as well as complaints from registered consumer associations as defined in the Consumer Affairs Act.

Cap. 387. (2) (a) A dispute between a payment service user or a holder of electronic money and a financial institution may, at the discretion of the payment service user or a holder of electronic money, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.

(b) Reference of a dispute to arbitration in accordance with paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.

(c) The Consumer Complaints Manager shall, when replying to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article.

Cap. 378. (3) Any action taken by the Consumer Complaints Manager under this article shall be without prejudice to the right of a consumer, within the meaning of the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal established under that Act, or to exercise any other rights under that Act."

61. For article 27 of the principal Act there shall be substituted the following: Substitution of article 27 of the principal Act.

"27. The objective of this Act is, in part, to implement the provisions of Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and of Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions and shall be interpreted and applied accordingly."

62. For the First Schedule to the principal Act, there shall be substituted the following: Amendment of the First Schedule to the principal Act.

"FIRST SCHEDULE

(Article 2)

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ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfeiting);
2. Financial leasing;
3. Venture or risk capital;
4. Payment services as defined in the Second Schedule;
5. Issuing and administering other means of payment (travellers cheques and bankers' drafts and similar instruments) in so far as this activity is not covered by point 4 above;
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposit and similar instruments);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
8. Underwriting share issues and participation in such issues;
9. Money broking;
10. Issuing of electronic money as defined in the Third Schedule."

Amendment of
the Second
Schedule to the
principal Act.

63. In paragraph 1 of the Second Schedule to the principal Act, for the definition "payment institution" there shall be substituted the following:

" "payment institution" means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive, to provide and execute payment services;"

64. Immediately after the Second Schedule to the principal Act, there shall be inserted the following new Third Schedule:

Addition of a Third Schedule to the principal Act.

"THIRD SCHEDULE

(Article 2)

FINANCIAL INSTITUTIONS ISSUING ELECTRONIC MONEY

Objective

The purpose of this Schedule is to set out the activities that may be undertaken by financial institutions that issue electronic money in terms of this Act.

Interpretation

1. In this Schedule, unless the context otherwise requires, the following definitions shall apply -

"electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in paragraph 1 of the Second Schedule and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money;

"electronic money institution" means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money.

Activities

2. In addition to issuing electronic money, electronic money institutions may also engage in any of the following activities:

(a) the provision of payment services listed in paragraph 2 of the Second Schedule;

(b) the granting of credit related to payment services referred to in paragraph 2(d), (e) and (g) of the Second Schedule, where the conditions laid down in paragraph 3(e) of the Second Schedule are met;

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(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);

(d) the operation of payment systems as defined in the Second Schedule;

(e) business activities other than the issuance of electronic money, having regard to the applicable law regulating such activities.

Credit referred to in point (b) above shall not be granted from the funds received in exchange of electronic money and held in accordance with safeguarding requirements prescribed."

PART VII

AMENDMENT OF THE CONTROLLED COMPANIES (PROCEDURE FOR LIQUIDATION) ACT

Amendment of
the Controlled
Companies
(Procedure for
Liquidation)
Act.
Cap. 383.

65. This Part amends and shall be read and construed as one with the Controlled Companies (Procedure for Liquidation) Act, hereinafter in this Part referred to as "the principal Act".

Amendment of
article 2 of the
principal Act.

66. In article 2 of the principal Act, for the definition "competent authority" there shall be substituted the following:

" "competent authority" means the body appointed as the competent authority under and for the purposes of the Banking Act;"

Cap. 371.

PART VIII

AMENDMENTS TO THE COMPANIES ACT

Amendment of
the Companies
Act.
Cap. 386.

67. 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 2 of the
principal Act.

68. Paragraph (ii) of the definition "home Member State" in sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) for the words "for any issues of non-equity securities whose denomination per unit amounts to at least one thousand and one euro and sixty-three cents (1,001.63)" there shall be

substituted the words "for any issues of non-equity securities whose denomination per unit amounts to at least one thousand euro (1,000)"; and

(b) for the words "provided that the value of such minimum denomination is nearly equivalent to one thousand and one euro and sixty-three cents (1,001.63)", there shall be substituted the words "provided that the value of such minimum denomination is nearly equivalent to one thousand euro (1,000)".

69. Article 170 of the principal Act shall be amended as follows:

Amendment of
article 170 of
the principal
Act.

(a) sub-articles (5), (7) and (8) thereof shall be deleted;
and

(b) sub-article (6) thereof shall be renumbered as sub-article (5).

70. In paragraph (f) of sub-article (3) of article 420 of the principal Act, for the words "the recognised stock exchange" there shall be substituted the words "the regulated market".

Amendment of
article 420 of
the principal
Act.

71. Article 425 of the principal Act shall be amended as follows:

Amendment of
article 425 of
the principal
Act.

(a) paragraph (d) of sub-article (2) thereof shall be amended as follows:

(i) in sub-paragraph (i) thereof, for the words "of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro and thirty-four cents (232,937.34)" there shall be substituted the words "of not more than two hundred and thirty thousand (230,000) euro"; and

(ii) in sub-paragraph (ii) thereof, for the words "not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), or daily default penalties not exceeding forty-six euro and fifty-nine cents (46.59) for every day" there shall be substituted the words "not exceeding two thousand and three hundred (2,300) euro, or daily default penalties not exceeding fifty (50) euro for every day";

(b) sub-articles (6) and (7) thereof shall be renumbered as sub-articles (8) and (9) respectively; and

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(c) immediately after sub-article (5) thereof, there shall be inserted the following new sub-articles (6) and (7):

"(6) (a) The Minister may by regulations provide for the registration of company services providers with the Registrar and for the further regulation of such providers. In this sub-article, "company services providers" refers to natural or legal persons which by way of business provide services in respect of the formation, operation or management of companies and other commercial partnerships; including acting as director or in a similar administrative position or as company secretary, arranging for another person to act as such or for another person to provide nominee or other fiduciary services in respect of shares, providing registered office or business address facilities and providing any other ancillary or related services.

(b) Without prejudice to the generality of the foregoing, regulations made by the Minister in virtue of paragraph (a) may, in particular prescribe:

(i) the conditions to be satisfied for registration and for the renewal thereof;

(ii) the form, content and manner of application for registration;

(iii) the fees that may be levied in relation to the registration and renewal thereof;

(iv) offences and administrative penalties for failure to comply with, or for any contravention of, any provision of the regulations made by virtue of this sub-article;

(v) powers exercisable by the Registrar in respect of company services providers, including powers to investigate their activities and to require information, to give directives, to issue procedures and guidelines and powers to cancel registration; and

(vi) for any matter incidental to or connected with any of the above.

(7) The Minister may make regulations to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder."

72. Article 426 of the principal Act shall be amended as follows:

Amendment of article 426 of the principal Act.

(a) in sub-article (1) thereof, for the words "shall on conviction be liable to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75)" there shall be substituted the words "shall on conviction be liable to a fine (*multa*) of not more than two hundred and thirty thousand (230,000) euro"; and

(b) in sub-article (2) thereof, for the words "of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) and, where applicable, to a further penalty of forty-six euro and fifty-nine cents (46.59) for every day" there shall be substituted the words "of not more than two thousand and three hundred (2,300) euro and, where applicable, to a further penalty of fifty (50) euro for every day".

PART IX

AMENDMENTS TO THE INSURANCE BUSINESS ACT

73. 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".

Amendment of the Insurance Business Act. Cap. 403.

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

Amendment of article 2 of the principal Act.

(a) for the definition "competent authority" there shall be substituted the following:

" "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;"

Cap. 330.

and

(b) in the definition "insurance rule" for the words "issued by the competent authority in virtue of article 4(3);" there shall be substituted the words "issued by the competent

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authority in virtue of article 4(2);".

Amendment of
article 3 of the
principal Act.

75. For article 3 of the principal Act, there shall be substituted the following:

"Competent
authority.

3. It shall be the duty of the competent authority to carry out the functions assigned to it by or under this Act and to ensure that persons authorised to carry on the business of insurance in or from Malta comply with the provisions of this Act and of any regulations made thereunder, with any insurance rule made by the competent authority in virtue of this Act and of any regulations made thereunder and with the conditions specified in their respective authorisation."

Amendment of
article 4 of the
principal Act.

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

(a) sub-article (1) thereof shall be deleted; and

(b) sub-articles (2), (3), (4) and (5) thereof shall be renumbered as sub-articles (1), (2), (3) and (4) respectively.

Amendment of
article 58 of the
principal Act

77. Sub-article (1) of article 58 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "under articles 7, 13 or 21", there shall be substituted the words "under articles 7 or 21"; and

(b) in paragraph (b) thereof, for the words "issued or held under articles 7, 13 or 21", there shall be substituted the words "issued or held under articles 7 or 21".

Amendment of
article 59 of the
principal Act.

78. For sub-article (6) of article 59 of the principal Act there shall be substituted the following:

Cap. 373.

"(6) Where an officer or an employee of an authorised company has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality."

79. Article 64 of the principal Act shall be amended as follows:

Amendment of article 64 of the principal Act.

(a) in paragraph (i) of sub-article (1) thereof, for the words "being penalties not exceeding ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94), in respect of any offence and in respect of a continuing offence of a further penalty and not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) for each day during which the offence continues." there shall be substituted the words "being penalties not exceeding one hundred and fifty thousand (150,000) euro, in respect of any offence and in respect of a continuing offence of a further penalty and not exceeding two hundred and thirty (230) euro for each day during which the offence continues."; and

(b) in sub-article (2) thereof, for the words "shall be liable to a penalty of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not exceeding ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94), in respect of each offence and in the case of a continuing offence to a further penalty not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) for each day during which the offence continues." there shall be substituted the words "shall be liable to a penalty of not less than two hundred and thirty (230) euro and not exceeding one hundred and fifty thousand (150,000) euro, in respect of each offence and in the case of a continuing offence to a further penalty not exceeding two hundred and thirty (230) euro for each day during which the offence continues.".

80. Article 67 of the principal Act shall be amended as follows:

Amendment of article 67 of the principal Act.

(a) in paragraph (b) of sub-article (5) thereof, for the words "shall not provide for a fine (*multa*) of less than two hundred and thirty-two euro and ninety-four cents (232.94) or greater than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67)." there shall be substituted the words "shall not provide for a fine (*multa*) of less than two hundred and thirty (230) euro or greater than one hundred and sixteen thousand (116,000) euro."; and

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

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(i) for the first proviso thereto, there shall be substituted the following:

"Provided that an administrative penalty may not be greater than a financial penalty of one hundred and fifty thousand (150,000) euro in respect of each infringement or failure to comply, as the case may be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen (116) euro for each day during which the infringement or failure to comply continues:"; and

(ii) in the second proviso thereto, for the words "may, in no case, exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "may, in no case, exceed one hundred and fifty thousand (150,000) euro.".

Amendment of article 69 of the principal Act.

81. In sub-article (8) of article 69 of the principal Act, for the words "Any reference to an insurance directive issued by the competent authority in virtue of article 4(3) in any licence, notice, decision or other act made or taken by the competent authority" there shall be substituted the words "Any reference in any licence, notice, decision or other act made or taken by the competent authority, to an insurance directive issued by the competent authority,".

PART X

AMENDMENTS TO THE PREVENTION OF FINANCIAL MARKETS ABUSE ACT

Amendment of the Prevention of Financial Markets Abuse Act. Cap. 476.

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

Amendment of article 2 of the principal Act.

83. In sub-article (1) of article 2 of the principal Act, in the definition "the competent authority" the words "as appointed in terms of article 2 of the Financial Markets Act and article 2A of the Investment Services Act" shall be deleted.

Amendment of article 19 of the principal Act.

84. In the first proviso to paragraph (a) of sub-article (1) of article 19 of the principal Act, for the words "of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year" there shall be substituted the words "of fourteen thousand (14,000) euro every year".

85. In sub-article (1) of article 22 of the principal Act, for the words "not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94)." there shall be substituted the words "not exceed one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

Amendment of
article 22 of the
principal Act.

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

Amendment of
article 24 of the
principal Act.

(a) in sub-article (5) thereof, for the words "fine (*multa*) of not less than two thousand and three hundred and twenty-nine euro and thirty seven cents (2,329.37) and not exceeding nine hundred and thirty one thousand and seven hundred and forty-nine euro and thirty-six cents (931,749.36)" there shall be substituted the words "fine (*multa*) of not less than two thousand and five hundred (2,500) euro and not exceeding nine hundred forty thousand (940,000) euro";

(b) in sub-article (6) thereof, for the words "fine (*multa*) not exceeding eleven thousand and six hundred and forty -six euro and eighty-seven cents (11,646.87)" there shall be substituted the words "fine (*multa*) not exceeding twelve thousand (12,000) euro"; and

(c) in sub-article (7) thereof, for the words "fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87)" there shall be substituted the words "fine (*multa*) not exceeding twelve thousand (12,000) euro".

87. Sub-article (3) of article 25 of the principal Act shall be amended as follows:

Amendment of
article 25 of the
principal Act.

(a) in paragraph (a) thereof, for the words "a fine (*multa*) of ninety-three thousand and one hundred and seventy four euro and ninety-four cents (93,174.94)" there shall be substituted the words "a fine (*multa*) of ninety-five thousand (95,000) euro"; and

(b) in paragraph (b) thereof, for the words "a fine of ninety-three thousand and one hundred and seventy four euro and ninety-four cents (93,174.94)." there shall be substituted the words "a fine of one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may be.".

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PART XI

AMENDMENT OF THE SECURITISATION ACT

Amendment of
the
Securitisation
Act.
Cap. 484.

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

Amendment of
article 2 of the
principal Act.

89. In article 2 of the principal Act, for the definition "the competent authority" there shall be substituted the following:

" "the competent authority" means the Malta
Financial Services Authority established by the
Cap. 330. Malta Financial Services Authority Act;"

PART XII

AMENDMENTS TO THE INSURANCE INTERMEDIARIES ACT

Amendment of
the Insurance
Intermediaries
Act.
Cap. 487.

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

Amendment of
article 2 of the
principal Act.

91. In sub-article (1) of article 2 of the principal Act, for the definition "competent authority" there shall be substituted the following:

" "competent authority" means the Malta
Financial Services Authority established by the
Cap. 330. Malta Financial Services Authority Act;"

Amendment of
article 3 of the
principal Act.

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

(a) for sub-article (1) thereof, there shall be substituted the following:

"(1) The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of this Act."; and

(b) in sub-article (2) thereof:

(i) for the first proviso of paragraph (h) thereof there shall be substituted the following:

"Provided that, an administrative penalty may not be greater than a financial penalty of one hundred and fifty thousand (150,000) euro for each infringement or failure to comply, as the case may

be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen (116) euro for each day during which the infringement or failure to comply continues:";

(ii) in the second proviso of paragraph (h) thereof, for the words "may, in no case, exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94);" there shall be substituted the words "may, in no case, exceed one hundred and fifty thousand (150,000) euro;" and

(iii) in paragraph (i) thereof, for the words "being penalties of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not exceeding ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94), in respect of any offence and in respect of a continuing offence of a further penalty not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) for each day during which the offence continues," there shall be substituted the words "being penalties of not less than two hundred and thirty (230) euro and not exceeding one hundred and fifty thousand (150,000) euro, in respect of any offence and in respect of a continuing offence of a further penalty not exceeding two hundred and thirty (230) euro for each day during which the offence continues;".

93. For sub-article (6) of article 46 of the principal Act, there shall be substituted the following:

Amendment of
article 46 of the
principal Act.

Cap. 373.

"(6) When an officer or an employee of an enrolled company, or a person registered or enrolled, or an officer or an employee of such person, has reason to believe that an activity or proposed activity could involve money laundering, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.".

94. Sub-article (1) of article 53 of the principal Act shall be amended as follows:

Amendment of
article 53 of the
principal Act.

(a) in paragraph (b) thereof, for the words "shall not

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provide for a fine (*multa*) of less than two hundred and thirty-two euro and ninety-four cents (232.94) or greater than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67);" there shall be substituted the words "shall not provide for a fine (*multa*) of less than two hundred thirty (230) euro or greater than one hundred sixteen thousand (116,000) euro;"; and

(b) in paragraph (c) thereof, for the words "shall not provide for a fine (*multa*) of less than one hundred and sixteen euro and forty-seven cents (116.47) or greater than two hundred and thirty-two euro and ninety-four cents (232.94) for each day during which the offence continues." there shall be substituted the words "shall not provide for a fine (*multa*) of less than one hundred and sixteen (116) euro or greater than two hundred thirty (230) euro for each day during which the offence continues."

Passed by the House of Representatives at Sitting No. 366 of the 15th June, 2011.

MICHAEL FRENDU

Speaker

PAULINE ABELA

Clerk to the House of Representatives