VERŻJONI ELETTRONIKA

L.N. 458 of 2011

FINANCIAL INSTITUTIONS ACT (CAP. 376)

European Passport Rights for Financial Institutions Regulations, 2011

IN exercise of the powers conferred by article 12 of the Financial Institutions Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Preliminary

1. The title of these regulations is the European Passport Rights for Financial Institutions Regulations, 2011. Citation.

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Financial Institutions Act; Cap. 376.

"Commission" means the Commission of the European Communities;

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

"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 may be issued thereunder;

"European financial institution" means an institution authorised by its European regulatory authority to provide payment services in terms of the Payment Services Directive and, or to issue electronic money in terms of the Electronic Money Directive;

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

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(a) to act as a supervisory authority in relation to the European financial institution concerned in that Member State or EEA State within the meaning of the Payment Services Directive and, or the Electronic Money Directive, as the case may be; or

(b) to carry out the duties provided for in the Payment Services Directive and, or the Electronic Money Directive, as the case may be, in relation to a Maltese financial institution exercising or proposing to exercise a European right;

"European right" means the entitlement of a person to establish a branch, or provide services, in a Member State or EEA State, other than that in which it has its registered office or, if under its national law it has no registered office, the Member State or EEA State in which it has its head office:

(a) in accordance with the Treaty of Rome signed in 1957, establishing the European Economic Community as subsequently amended, and as applied in the Member States or EEA States; and

(b) subject to the requirements of the Payment Services Directive and, or the Electronic Money Directive, and subject to any regulations or Financial Institutions Rules issued under the Act implementing such requirements;

"financial institution" means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in the First Schedule to the Act for the account and at the risk of the person carrying out the activity;

"home Member State or EEA State" means the Member State or EEA State in which the registered office of a financial institution is situated, or if under its national law it has no registered office, the Member State or EEA State in which its head office is situated;

"host Member State or EEA State" means the Member State or EEA State in which a Maltese financial institution exercises or proposes to exercise European rights;

"Maltese financial institution" means a financial institution licensed in terms of the Act, whose head office and registered office are in Malta;

"Payment Services Directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on

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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 may be issued thereunder;

(2) Words and expressions which are also used in the Act and are not defined herein shall have the same meaning as in the Act.

PART I - EXERCISE OF PASSPORT RIGHTS BY EUROPEAN FINANCIAL INSTITUTIONS

Exercise of passport rights by European financial institutions - services.

3. (1) A European financial institution seeking to provide payment services and, or issue electronic money in Malta in exercise of a European right shall satisfy the conditions prescribed in sub-regulation (2), and shall thereafter be exempt from the provisions of article 3 of the Act.

(2) For the purposes of this regulation, the conditions referred to in sub-regulation (1) hereof shall be the following:

(a) the European financial institution shall communicate to its European regulatory authority:

(i) its intention to provide payment services and, or issue electronic money in Malta;

(ii) the name and head office address of the European financial institution; and

(iii) the electronic money issuance and, or payment services activities which the European financial institution intends to provide in Malta;

(b) the competent authority shall receive the information referred to in paragraph (a) from the European regulatory authority of the European financial institution within one month from when the European financial institution has furnished the said information to the European regulatory authority, and the European regulatory authority shall inform the European financial institution of such transmission of information.

(3) Upon communication of the notification to the competent authority by the European regulatory authority, and after such European regulatory authority has confirmed to the European financial institution that such communication has been made, the European financial institution may commence to provide the notified electronic money and, or payment services activities in Malta.

(4) The competent authority shall subsequently proceed to publish the information contained in the notification form on its public register held in accordance with article 8D of the Act.

(5) The competent authority shall receive notification from the European regulatory authority of any changes relating to an existing notification of information required pursuant to sub-regulation (2).

Exercise of passport rights by European financial institutions - branch.

4. (1) A European financial institution intending to establish a branch in Malta in the exercise of a European right shall satisfy the conditions specified in sub-regulation (2) and shall thereafter be exempt from the provision of article 3 of the Act.

(2) For the purposes of this regulation, the conditions referred to in sub-regulation (1) shall be the following:

(a) the European financial institution shall communicate to its European regulatory authority:

(i) its intention to establish a branch in Malta to provide payment services and, or issue electronic money;

(ii) the name and head office address of the European financial institution;

(iii) the electronic money issuance and, or payment services activities which the European financial institution intends to provide in Malta;

(iv) the address of the proposed branch in Malta;

(v) the names of those responsible for the management of the proposed branch; and

(vi) the organisational structure of the proposed branch;

(b) the competent authority shall receive from the European regulatory authority of the European financial institution the information which the European financial institution had provided in terms of paragraph (a), and the competent authority shall notify the European regulatory authority of the receipt thereof:

Provided that the information notified pursuant to this sub-regulation and the transmission thereof shall not affect the right of the competent authority to request additional information, as may be necessary for the fulfilment of its supervisory duties in respect of the

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establishment of a branch:

Provided further that any additional requests for information made by the competent authority shall not affect the passporting procedure established in these regulations.

(3) If the competent authority has reasonable grounds to suspect that in connection with the intended establishment of the branch in Malta, money laundering or the funding of terrorism is taking place, has taken place or has been attempted, or that the establishment of such branch in Malta could increase the risk of money laundering or funding of terrorism, it shall proceed to notify the European regulatory authority thereof by not later than one month from receipt of the documents referred to in sub-regulation (2)(b), and such European regulatory authority may refuse to register the branch, or may withdraw the registration of the branch, if already made.

(4) If, within one month following the transmission of the information pursuant to sub-regulation (2)(b), the competent authority does not provide any information, or confirms that it has no relevant information, the European regulatory authority shall proceed to register the branch in a timely manner.

(5) The competent authority shall receive written notification of any decision taken by the European regulatory authority pursuant to sub-regulation (3) together with the reasons for the underlying decision, where it is in contradiction with the opinion provided by the competent authority.

(6) The competent authority shall subsequently proceed to publish the information contained in the notification form relating to the branch established in Malta on its public register held in accordance with article 8D of the Act.

(7) The competent authority shall receive notification from the European regulatory authority of any changes relating to an existing notification of information required pursuant to sub-regulation (2).

Exercise of passport rights by financial institutions - appointment of agents.

5. (1) A European financial institution wishing to provide payment services, and, or distribute and, or redeem electronic money in Malta by engaging an agent, shall satisfy the conditions prescribed hereunder:

(a) the European financial institution shall communicate to its European regulatory authority:

(i) the name and head office address of the European financial institution;

(ii) the name and address of the agent; and

(iii) the kind of payment services activities the agent intends to provide in Malta on behalf of the European financial institution and whether it is intended that the agent will also distribute or redeem electronic money on behalf of the European financial institution;

(b) where the European financial institution wishes to distribute and, or redeem electronic money and, or to provide payment services in Malta by engaging an agent established in Malta, the European financial institution shall provide the following information to its European regulatory authority, in addition to the information prescribed in paragraph (a):

(i) the names of the persons responsible for the management of the proposed agent; and

(ii) the organisational structure of the proposed agent in Malta;

(c) where the European financial institution wishes to distribute and, or redeem electronic money in Malta by engaging one or more agents, the European financial institution shall, in addition to the information prescribed in paragraph (b), provide the following information to its European regulatory authority:

(i) a list of all agents engaged to distribute and,or redeem electronic money;

(ii) a full description of the links to the internal control systems of the European financial institution, including compliance with anti-money laundering procedures in Malta; and

(iii) the name and address of each agent, and in the case of natural persons, their date of birth;

(d) the competent authority shall receive the information referred to in paragraph (a), (b) and (c), as applicable, from the European regulatory authority of the European financial institution and it shall notify receipt of all such documentation to such European regulatory authority.

(2) The information provided by the European financial institution pursuant to sub-regulation (1), and the transmission thereof, shall not affect the right of the competent authority to request

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additional information, as may be necessary for the fulfilment of its supervisory duties in respect of the establishment of a branch and, or the use of an agent:

Provided that any additional requests for information made by the competent authority shall not affect the passporting procedure established in these regulations.

(3) If the competent authority has reasonable grounds to suspect that in connection with the intended engagement of the agent, money laundering or the funding of terrorism is taking place, has taken place or has been attempted or that the engagement of such agent could increase the risk of money laundering or funding of terrorism, it shall proceed to notify the European regulatory authority thereof by not later than one month from receipt of the documents referred to in sub-regulation (1)(d). The European regulatory authority may refuse to register the agent, or may withdraw the registration, if already made, of the agent.

(4) If, within one month following the transmission of the information pursuant to sub-regulation (1), the competent authority does not provide any information, or confirms that it has no relevant information, the European regulatory authority will proceed to register the agent in a timely manner.

(5) The competent authority shall receive written notification of any decision taken by the European regulatory authority pursuant to sub-regulations (3) and (4) together with the reasons for the underlying decision, where this is in contradiction with the opinion provided by the competent authority.

(6) The competent authority shall subsequently proceed to publish the information contained in the notification form on its public register held in accordance with article 8D of the Act.

(7) The competent authority will receive written notification of any changes relating to the information required pursuant to sub-regulation (1).

On-site inspections by the European regulatory authority.

6. (1) The competent authority shall cooperate with the European regulatory authority in order to carry out the controls and take the necessary steps to ensure continued compliance in respect of an agent, branch or entity located in Malta to which activities are outsourced in respect of a European financial institution.

(2) The competent authority shall also cooperate by receiving written notification from the European regulatory authority whenever the latter intends to carry out an on-site inspection in the territory of

Malta:

Provided that the European regulatory authority may request the competent authority to carry out the on-site inspections of the European financial institution concerned on behalf of such European regulatory authority.

(3) The competent authority shall provide the European regulatory authority with all essential and, or relevant information, in particular in the case of infringements or suspected infringements by an agent or branch. In this regard, the competent authority and the European regulatory authority shall communicate, upon request, all relevant information and, on their own initiative, all essential information.

PART II - EXERCISE OF PASSPORT RIGHTS BY MALTESE FINANCIAL INSTITUTIONS

Exercise of passport rights by Maltese financial institutions - services.

7. (1) A Maltese financial institution may exercise a European right to provide payment services and, or issue electronic money in another Member State or EEA State if it satisfies the requirements prescribed in the following provisions of this regulation.

(2) The Maltese financial institution shall give the competent authority a notice of its intention to provide payment services and, or to issue electronic money in another Member State or EEA State, which notice shall be provided in English or in another language accepted by both the competent authority and the European regulatory authority and shall contain:

(a) the Member State or EEA State within the territory of which the Maltese financial institution intends to provide payment services and, or issue electronic money;

(b) the name and head office address of the Maltese financial institution; and

(c) the electronic money issuance and, or payment services activities which the Maltese financial institution intends to provide in the host Member State or EEA State.

(3) The competent authority shall transmit the information referred to in sub-regulation (2) to the European regulatory authority within one month from its receipt of the said information provided by the Maltese financial institution.

(4) Upon communication of the notification by the competent authority to the European regulatory authority pursuant to sub-

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regulation (3), the competent authority shall confirm to the Maltese financial institution that such communication has been made. The Maltese financial institution may then provide the notified electronic money and, or payment services activities in the host Member State or EEA State.

(5) The competent authority shall subsequently add the details of the electronic money issuance and, or payment services activities which the Maltese financial institution will provide, in the host Member State or EEA State in a public register in terms of article 8D of the Act in a timely manner.

(6) The competent authority shall, not later than one month from date of receipt of the information required pursuant to sub-regulation (2), notify the European regulatory authority of any changes relating to such information.

Exercise of passport rights by Maltese financial institutions - branch.

8. (1) A Maltese financial institution may exercise a European right to establish a branch in another Member State or EEA State if it satisfies the requirements set out in the following provisions of this regulation.

(2) The Maltese financial institution shall give the competent authority a notice of its intention to establish a branch in another Member State or EEA State, which notice shall be provided in English or in another language accepted by both the competent authority and the European regulatory authority and shall contain:

(a) the Member State or EEA State within the territory of which the Maltese financial institution intends to establish a branch;

(b) the name and head office address of the Maltese financial institution;

(c) the electronic money issuance and, or payment services activities which the Maltese financial institution intends to provide in the host Member State or EEA State;

(d) the address of the proposed branch;

(e) the names of those responsible for the management of the proposed branch; and

(f) the organisational structure of the proposed branch.

(3) The competent authority shall transmit the information referred to in sub-regulation (2) to the European regulatory authority

within one month from receipt thereof.

(4) The information provided pursuant to sub-regulation (2) and the transmission thereof shall not affect the right of the competent authority to request additional information, as may be necessary for the fulfilment of its supervisory duties, in respect of the establishment of a branch:

Provided that any additional requests for information made by the competent authority shall not affect the passporting procedure established in these regulations.

(5) Upon communication of the information by the competent authority to the European regulatory authority pursuant to sub-regulation (3), the competent authority shall confirm to the Maltese financial institution that such communication has been made.

(6) The competent authority shall receive notification from the European regulatory authority where the latter has reasonable grounds to suspect that, in connection with the intended establishment of the branch by the Maltese financial institution, money laundering or the funding of terrorism is taking place, has taken place or has been attempted, or that the establishment of such branch by the Maltese financial institution could increase the risk of money laundering or funding of terrorism.

(7) Following receipt of such notification pursuant to sub-regulation (6), the competent authority may refuse to register the branch, or may withdraw the registration of the branch, if already made.

(8) If, within one month following the transmission of the information pursuant to sub-regulation (3), the European regulatory authority does not provide any information, or confirms that it has no relevant information, the competent authority shall proceed to register the branch in a timely manner.

(9) The competent authority shall add the details of the electronic money issuance and, or payment services activities which the Maltese financial institution will provide in the host Member State or EEA State in a public register in terms of article 8D of the Act, in a timely manner.

(10) The competent authority shall proceed to notify any decision taken pursuant to sub-regulations (6) to (8) to both the European regulatory authority and the financial institution in a timely manner:

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Provided that the notification transmitted to the European regulatory authority will include reasons for the underlying decision, where this is in contradiction with the opinion provided by the European regulatory authority.

(11) The competent authority shall notify the European regulatory authority of any changes relating to notification of information required pursuant to sub-regulation (2):

Provided that notification of such changes shall be made by the competent authority to the European regulatory authority as soon as practicable and not later than one month from the date of receipt of notification of such changes of information required pursuant to sub-regulation (2).

Exercise of passport rights by Maltese financial institutions - appointment of agents.

9. (1) A Maltese financial institution may not exercise a European right to provide payment services and, or to distribute and, or redeem electronic money in another Member State or EEA State by engaging an agent, unless the Maltese financial institution has given the competent authority notice of its intention to provide the services as specified in sub-regulation (2).

(2) For the purposes of this regulation, the Maltese financial institution shall provide the competent authority with the following information, which shall be provided in English or in another language accepted by both the competent authority and the European regulatory authority:

(a) the name and head office address of the Maltese financial institution;

(b) the name and address of the agent; and

(c) the kind of payment services activities the agent intends to provide in the host Member State or EEA State on behalf of the Maltese financial institution, and whether it is intended that the agent will also distribute or redeem electronic money on behalf of the Maltese financial institution.

(3) Where a Maltese financial institution intends to provide payment services and, or to distribute and, or redeem electronic money in another Member State or EEA State by engaging an agent established in the host Member State or EEA State, it shall, in addition to that provided in sub-regulation (2), provide the competent authority with the following information:

(a) the names of the persons responsible for the management of the proposed agent; and

(b) the organisational structure of the proposed agent in the host Member State or EEA State. Where more than one agent is appointed, the Maltese financial institution shall provide separate organisational structures for each agent appointed.

(4) Where a Maltese financial institution wishes to distribute and, or redeem electronic money in another Member State or EEA State by engaging one or more agents, in addition to the information provided to the competent authority in accordance with sub-regulations (2) and (3), the financial institution shall also provide the competent authority with the following additional information:

(a) a list of all agents engaged to distribute and,or redeem electronic money;

(b) a full description of the links to the internal control systems of the Maltese financial institution, including compliance with anti-money laundering procedures in the host Member State or EEA State; and

(c) the name and address of each agent, and in the case of natural persons, their date of birth.

(5) The competent authority shall, within one month of receiving the information referred to in sub-regulations (2) to (4), send a copy thereof to the European regulatory authority.

(6) The information provided pursuant to sub-regulations (2) to (4) and the transmission thereof shall not affect the right of the competent authority to request additional information, as may be necessary for the fulfilment of its supervisory duties, in respect of the use of an agent:

Provided that any additional requests for information made by the competent authority shall not affect the passporting procedure set out in these regulations.

(7) The competent authority shall receive written notification from the European regulatory authority, where the latter has reasonable grounds to suspect that in connection with the intended engagement of the agent, money laundering or funding of terrorism is taking place, has taken place or has been attempted or that the engagement of such agent could increase the risk of money laundering or funding of terrorism.

(8) Following receipt of such notification pursuant to sub-

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regulation (7), the competent authority may refuse to register the agent, or may withdraw the registration, if already made, of the agent.

(9) If, within one month following the transmission of the information pursuant to sub-regulations (2) to (4), the European regulatory authority does not provide any information, or confirms that it has no relevant information, the competent authority shall proceed to register the branch in a timely manner.

(10) The competent authority shall add the details of the electronic money issuance and, or payment services activities which the Maltese financial institution will provide in the host Member State or EEA State in a public register in terms of article 8D of the Act, in a timely manner.

(11) The competent authority shall proceed to promptly notify any decision taken pursuant to sub-regulations (7) to (9) to both the European regulatory authority and the Maltese financial institution:

Provided that the notification transmitted to the European regulatory authority shall include reasons for the underlying decision, where this is in contradiction with the opinion provided by the European regulatory authority.

(12) The competent authority shall, within one month from date of receipt of notification from the Maltese financial institution, notify the European regulatory authority of any changes relating to notification of information required pursuant to sub-regulations (2) to (4).

On-site inspections by the competent authority.

10. (1) The competent authority shall cooperate with the European regulatory authority in order to carry out the controls and take the necessary steps to exercise supervision in respect of an agent, branch or entity located in another Member State or EEA State to which activities are outsourced in respect of a Maltese financial institution.

(2) By way of cooperation, the competent authority shall notify the European regulatory authority whenever it intends to carry out an on-site inspection in the territory of the host Member State or EEA State:

Provided that the competent authority may delegate to the European regulatory authority the task of carrying out the on-site inspections of the Maltese financial institution concerned.

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