VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE LOUISE COLEIRO PRECA**
President

24th June, 2014

ACT No. XXII of 2014

AN ACT to amend the Investment Services Act, Cap. 370.

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 Investment Services (Amendment) Act, 2014, and this Act shall be read and construed as one with the Investment Services Act, hereinafter referred to as "the principal Act".

Cap. 370.

Amendment of article 2 of the principal Act.

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

(a) sub-article (1) thereof shall be amended as follows:

(i) the definition "the Community" shall be deleted;

(ii) in the definition "European regulatory authority", for the words "MIFID Directive and Article 97 of the UCITS Directive", there shall be substituted the words "MIFID Directive, Article 97 of the UCITS Directive and Article 4 of the CRD";

(iii) immediately after the definition "Malta's international commitments", there shall be added the following new definition:

" "Management body" means the body or bodies of a licence holder which are appointed in accordance with national law and are empowered to

set the strategy, objectives and overall direction of the licence holder, and oversee and monitor management decision making, and includes the persons who effectively direct the business of the licence holder;"; and

(b) in sub-article (3) thereof, for the words, "The objective of this Act is, in part, to transpose and implement the provisions of the AIFM Directive, the MIFID Directive and the UCITS Directive,", there shall be substituted the words "The objective of this Act is, in part, to transpose and implement the provisions of the AIFM Directive, the CRD, the MIFID Directive and the UCITS Directive,".

Amendment of article 2A of the principal Act.

3. For sub-article (2) of article 2A of the principal Act, there shall be substituted the following:

"(2) The competent authority shall also carry out the functions and duties as competent authority for all purposes of the AIFM Directive, the CRD, the CRR, the MIFID Directive and the UCITS Directive and the Commission of the European Union, ESMA, the EBA and European regulatory authorities shall be informed accordingly.".

Amendment of article 10A of the principal Act.

4. For paragraph (vi) of paragraph (b) of sub-article (6) of article 10A of the principal Act, there shall be substituted the following:

"(vi) the CRD.".

Amendment of article 10B of the principal Act.

5. Sub-article (1) of article 10B of the principal Act shall be amended as follows:

(a) for the words "The competent authority shall work in full consultation with European regulatory authority or overseas regulatory authorities", there shall be substituted the words "The competent authority shall work in full consultation with the European regulatory authorities or overseas regulatory authorities";

(b) in paragraph (a) thereof, for the words "a credit institution, an assurance undertaking, insurance undertaking, reinsurance undertaking," there shall be substituted the words "a credit institution, insurance undertaking, reinsurance undertaking,";

(c) in paragraph (b) thereof, for the words "the parent undertaking of a credit institution, assurance undertaking,

insurance undertaking, reinsurance undertaking," there shall be substituted the words "the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking,"; and

(d) in paragraph (c) thereof, for the words "a person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking,", there shall be substituted the words "a person controlling a credit institution, insurance undertaking, reinsurance undertaking,".

Amendment of article 12 of the principal Act.

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

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

(i) paragraph (j) thereof shall be deleted;

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

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

(b) sub-article (5) thereof shall be substituted as follows:

"(5) Regulations made under this article may impose:

(a) administrative penalties which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;

(b) punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment; and

(c) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), where deemed necessary or appropriate for any contravention of or failure of compliance with any EU Directive or EU Regulation or of any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation.";

(c) sub-article (6) thereof shall be renumbered as sub-article (7); and

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

"(6) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.".

Amendment of article 15 of the principal Act.

7. In paragraph (g) of sub-article (2) of article 15 of the principal Act, for the words "the AIFM Directive, the MIFID Directive and the UCITS Directive;", there shall be substituted the words "the AIFM Directive, the CRD, the MIFID Directive and the UCITS Directive;".

Amendment of article 16B of the principal Act.

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

Amendment of article 17 of the principal Act.

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

(a) in sub-article (2) thereof, for the words "AIFM Directive, the MIFID Directive and the UCITS Directive", wherever they appear in the said sub-article, there shall be substituted the words "AIFM Directive, the CRD, the MIFID Directive and the UCITS Directive";

(b) sub-articles (9) to (13) thereof shall be re-numbered as sub-articles (10) to (14);

(c) immediately after sub-article (8) thereof there shall be added the following new sub-article (9):

"(9) Sub-article (7) of this article and article 26 shall not preclude the competent authority from exchanging information with European regulatory

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authorities, or other overseas regulatory authorities or other bodies and entities in pursuance of the requirements and terms of the CRD and the CRR, as may be prescribed."";

(d) in sub-article (10) thereof, as renumbered, for the words "acts contrary to the provisions of the AIFM Directive, the MIFID Directive or the UCITS Directive", there shall be substituted the words "acts contrary to the provisions of the AIFM Directive, the CRD, the CRR, the MIFID Directive or the UCITS Directive"; and

(e) in sub-article (12) thereof, as renumbered, for the words "which are contrary to the provisions of the AIFM Directive, the MIFID Directive or the UCITS Directive", there shall be substituted the words "which are contrary to the provisions of the AIFM Directive, the CRD, the CRR, the MIFID Directive or the UCITS Directive".

Amendment of article 17A of the principal Act.

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

(a) in sub-article (2) thereof, for the words "If, upon the request for the cooperation by the competent authority in terms of Article 54(2) of the AIFM Directive and Article 101(5) of the UCITS Directive,", there shall be substituted the words "If, upon the request for the cooperation by the competent authority in terms of Article 54(2) of the AIFM Directive, Articles 52 and 118 of the CRD and Article 101(5) of the UCITS Directive,"; and

(b) for paragraph (a) of sub-article (3) thereof, there shall be substituted the following:

"(a) carry out the verifications or the investigation itself, and in respect of requests pursuant to Article 118 of the CRD with the participation of the requesting authority; or".

Amendment of article 18 of the principal Act.

11. Immediately after sub-article (4) of article 18 of the principal Act, there shall be added the following new sub-article:

"(5) An auditor of a licence holder shall, in the absence of compelling reasons not to do so, simultaneously report the information specified in sub-articles (1) and (2), in accordance with the provisions of sub-articles (3) and (4), to the management body of the licence holder.".

Amendment of article 26 of the principal Act.

12. Sub-article (1) of article 26 of the principal Act shall be amended as follows:

(a) in paragraph (f) thereof, for the words "in terms of law; and", there shall be substituted the words "in terms of law;";

(b) in paragraph (g) thereof:

(i) for the words "local or overseas regulatory", there shall be substituted the words "local or European or overseas regulatory"; and

(ii) for the words "or criminal nature:", there shall be substituted the words "or criminal nature; and";

(c) immediately after paragraph (g) thereof, there shall be added the following new paragraph:

"(h) where the competent authority publishes the outcome of stress tests in accordance with Article 100 of the CRD or Article 32 of Regulation (EU) No 1093/2010 and, or transmits the results to the EBA:"; and

(d) in the first proviso thereto, for the words "in accordance with the MIFID Directive, the UCITS Directive and with other Directives of the European Community", there shall be substituted the words "in accordance with the AIFM Directive, the CRD, the CRR, the MIFID Directive, the UCITS Directive and with other Directives of the European Union".

Amendment of article 12 of the Income Tax Act. Cap. 123.

13. Paragraph (h) of sub-article (1) of article 12 of the Income Tax Act shall be amended as follows:

(a) for the words "provide pension payments);" there shall be substituted the words "provide pension payments):"; and

(b) immediately after the words "provide pension payments):" there shall be added the following new proviso:

"Provided that in the case of commutation of pensions in relation to retirement schemes, licensed, registered or otherwise authorised under the Special Funds (Regulation) Act or any Act replacing the same, the maximum capital sum that may benefit from this exemption shall be as provided under that Act, including any regulations or directives issued thereunder;".

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14. I n sub-article (8) of article 16 of the Malta Financial Services Authority Act, for the words "shall be subject to publication in such medium" there shall be substituted the words "shall be published in such medium". Amendment of article 16 of the Malta Financial Services Authority Act. Cap. 330.

15. In sub-article (1) of article 2 of the Companies Act, immediately after the definition " "small and medium-sized enterprises" or "SMEs" ", there shall be inserted the following new definition: Amendment of article 2 of the Companies Act. Cap. 386.

" "system of interconnection of registers" means the system of interconnection of central, commercial and companies registers composed of the registers of Member States and EEA States, the European central platform, and the European e-Justice portal serving as the European electronic access point, in terms of Directive 2009/101/EC, as amended by Directive 2012/17/EU;".

16. Article 3A of the Companies Act shall be amended as follows: Amendment of article 3A of the Companies Act. Cap. 386.

(a) paragraphs (n), (o) and (p) of article 3A of the Companies Act shall be renumbered as paragraphs (o), (p) and (q) respectively; and

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

"(n) Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;".

17. (a) This article shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish. Amendment of article 7 of the Companies Act. Cap. 386.

(b) The second proviso of article 7 of the principal Act shall be substituted as follows:

"Provided further that where, and for as long as, none of the partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members, the provisions of article 7A shall also apply to that partnership.".

Amendment of article 7A of the Companies Act. Cap. 386.

18. (a) This article shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

(b) Immediately after article 7 of the Companies Act, there shall be added the following new article:

"When none of the partners is an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

7A. (1) The provisions of this article shall apply to a partnership where, and for as long as, none of the partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

(2) A partnership which, either on formation or at any time thereafter, becomes subject to the provisions of this article shall, within fourteen days, deliver to the Registrar for registration a notice specifying that it is subject to this article and that it shall comply with the provisions laid down in this article.

(3) When a partnership ceases to be subject to the provisions of this article, the partnership shall, within fourteen days of such cessation, deliver to the Registrar for registration a notice specifying that it is no longer subject to this article and that the provisions of this article shall not apply to such partnership as from the date that it has ceased to be so subject.

(4) Notwithstanding any other penalties imposed by this Act, any partner who fails to comply with the provisions of sub-articles (2) and (3) shall be liable to a penalty, and, for every day during which the default continued, to a further penalty.

(5) The provisions of Chapters IX and X of Part V of this Act, other than the provisions of article 184, shall *mutatis mutandis* apply to a partnership subject to this article for as long as such partnership continues to be so subject.

(6) Where a partnership subject to the provisions of this article is dissolved, a liquidator shall be appointed and the provisions of articles 305 and 306 shall *mutatis mutandis* apply. The provisions of article 37(1) and article 48 shall not apply.

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(7) (a) As soon as the affairs of the partnership are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the partnership has been disposed of, and shall draw up a scheme of distribution and he shall cause the account to be audited by one or more auditors appointed by a decision of the partners. The liquidator shall serve on each of the partners a copy of the accounts and of the scheme of distribution, if any, together with the auditors' report and any explanation thereof.

(b) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by application by any of the partners within three months of the service referred to in paragraph (a).

(c) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (a). Such auditor shall not be a person who has held the office of auditor of the partnership at any time during the last three years immediately preceding the date of dissolution.

(8) The Minister may make regulations for the better carrying out of any of the provisions of this article; and without prejudice to the generality of the foregoing may, by such regulations, in particular exempt or provide for the exemption of such partnership from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions that may be specified thereunder.".

Amendment of article 51 of the Companies Act. Cap. 386.

19. (a) This article shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

(b) The proviso of article 51 of the Companies Act shall be substituted as follows:

"Provided that where, and for as long as, none of the general partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members, the provisions of article 51A shall also apply to that partnership *en commandite* or limited partnership.".

Addition of new article 51A of the Companies Act.
Cap. 386.

20. (a) This article shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

(b) Immediately after article 51 of the Companies Act, there shall be inserted the following new article:

"When none of the general partners is an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

51A. (1) The provisions of this article shall apply to a partnership *en commandite* or limited partnership where, and for as long as, none of the general partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

(2) A partnership *en commandite* or limited partnership which, either on formation or at any time thereafter, becomes subject to the provisions of this article shall, within fourteen days, deliver to the Registrar for registration a notice specifying that it is subject to this article and that it shall comply with the provisions laid down in this article.

(3) When a partnership *en commandite* or limited partnership ceases to be subject to the provisions of this article, the partnership shall, within fourteen days of such cessation, deliver to the Registrar for registration a notice specifying that it is no longer subject to this article and that the provisions of this article shall not apply to such partnership as from the date that it has ceased to be so subject.

(4) Notwithstanding any other penalties imposed by this Act, any partner of the partnership *en commandite* or limited partnership who fails to comply with the provisions of sub-articles (2) and (3) shall be liable to a penalty, and, for every day during which the default continued, to a further penalty.

(5) The provisions of Chapters IX and X of Part V of this Act, other than the provisions of article 184, shall *mutatis mutandis* apply to a partnership *en commandite* or limited partnership subject to this article for as long as such partnership continues to be so subject.

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(6) Where a partnership *en commandite* or limited partnership subject to the provisions of this article is dissolved, a liquidator shall be appointed and the provisions of articles 305 and 306 shall *mutatis mutandis* apply. The provisions of article 37(1) and article 48 shall not apply.

(7) (a) As soon as the affairs of the partnership *en commandite* or limited partnership are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of such partnership has been disposed of, and shall draw up a scheme of distribution and he shall cause the account to be audited by one or more auditors appointed by a decision of the general partners. The liquidator shall serve on each of the partners a copy of the accounts and of the scheme of distribution, if any, together with the auditors' report and any explanation thereof.

(b) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by application by any of the partners within three months of the service referred to in paragraph (a).

(c) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (a). Such auditor shall not be a person who has held the office of auditor of the partnership *en commandite* or limited partnership at any time during the last three years immediately preceding the date of dissolution.

(8) The Minister may make regulations for the better carrying out of any of the provisions of this article; and without prejudice to the generality of the foregoing may, by such regulations, in particular exempt or provide for the exemption of such partnership *en commandite* or limited partnership from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions that may be specified thereunder.".

Amendment of article 401 of the Companies Act. Cap. 386.

21. Article 401 of the Companies Act shall be amended as follows:

(a) in paragraph (e) of sub-article (1) thereof:

(i) for the words "to cause without delay a statement to be published in the Gazette or on a website"

there shall be substituted the words "to cause without delay, normally within twenty one days from receipt of the complete documentation including any legality checks as may be required for entry in the register, a statement to be published in the Gazette or on a website";

(ii) immediately after the words "the commercial partnership to which the statement related:" there shall be added the following new proviso:

"Provided that the twenty one day period referred to in this sub-paragraph shall not apply to annual accounts delivered to the Registrar for registration in accordance with this Act:";

(iii) for the words "Provided that the Registrar shall additionally be required" there shall be substituted the words "Provided further that the Registrar shall additionally be required";

(b) in paragraph (g) thereof, for the words "as the Director may consider appropriate." there shall be substituted the words "as the Director may consider appropriate;";

(c) immediately after paragraph (g) thereof there shall be added the following new paragraph:

"(h) when processing personal data to do so in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data."; and

(d) in sub-article (2) thereof, immediately after the second proviso thereof, there shall be inserted the following new paragraph:

"The Registrar shall make available on a website maintained by him up to date information explaining the provisions of this article according to which third parties can rely on documents and particulars which are registered in terms of any of the provisions of this Act, or any other Act requiring such registration. Such information shall also be made available by the Registrar on the European e-Justice portal in accordance with the portal's rules and technical requirements as stipulated in Article 3a(2) of Directive 2009/101/EC.".

Amendment of article 425 of the Companies Act. Cap. 386.

22. Sub-article (1) of article 425 of the Companies Act shall be amended as follows:

(a) paragraphs (m) and (n) thereof shall be renumbered as paragraphs (n) and (o) respectively; and

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

"(m) prescribe requirements in relation to the system of interconnection of registers and the interoperability of registers within the system of interconnection of registers through the European e-Justice portal, and such requirements may stipulate any further conditions necessary to implement Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;".

Amendment of the Eleventh Schedule of the Companies Act. Cap. 386.

23. (a) This article shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

(b) In the Eleventh Schedule of the Companies Act:

(i) immediately after article 6(9) thereof, there shall be added the following new article:

"7A(4)	Failure of partner of partnership *en nom collectif* to comply with article 7A(2) and (3)	€465.87	€23.29"

and;

(ii) immediately after article 50(5) thereof, there shall be added the following new article:

"51A(4)	Failure of partner of partnership *en nom commandite* or limited partnership to comply with article 51A(2) and (3)	€465.87	€23.29".

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Passed by the House of Representatives at Sitting No. 163 of the 16th June, 2014.

ANĠLU FARRUGIA

Speaker

RAYMOND SCICLUNA
Clerk to the House of Representatives