VERŻJONI ELETTRONIKA

I assent.

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

21st December, 2018

ACT No. XLIV of 2018

AN ACT to further 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:-

1. The short title of this Act is the Various Financial Services Laws (Amendment No. 2) Act, 2018. Short title.

PART I
Amendments to the Financial Markets Act

2. 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". Amendments to the Financial Markets Act. Cap. 345.

3. Immediately after the definition "dematerialized form" in article 2 of the principal Act there shall be added the following new definition: Amendment of article 2 of the principal Act.

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" "depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;".

PART II
Amendments to the Investment Services Act

Amendments to the Investment Services Act. Cap. 370.

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

Amendment of article 2 of the principal Act.

5. Immediately after the definition "the CRR" in article 2 of the principal Act there shall be added the following new definition:

" "depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;".

Amendment of article 15 of the principal Act.

6. Article 15 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, the words "or scheme as is referred to in article 13(1)" shall be deleted; and

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

"Provided that the competent authority may give any such directive even where a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act.".

Amendment of article 15A of the principal Act.

7. Article 15A of the principal Act shall be amended as follows:

(a) in paragraph (c) of sub-article (1) thereof, for the words "or part thereof, as the competent authority may direct;" there shall be substituted the words "or part thereof, including to take the necessary action for the licence holder to be dissolved and wound up, as the competent authority may direct;";

(b) paragraph (c) of sub-article (2) thereof shall be

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amended as follows:

(i) for the words "or by any other person, including the legal and judicial representation of such legal person" there shall be substituted the words "or by any other person, including for the purpose of the dissolution and winding up of the licence holder as well as the legal and judicial representation of such legal person"; and

(ii) for the words "to the exclusion of any other person." there shall be substituted the words "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the licence holder unless the competent authority issues a directive to that effect in terms of article 15, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.";

(c) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a licence holder where it appears to the competent authority that a licence holder should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply."; and

Cap. 386.

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

"(5) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a licence holder ceases to hold a licence for whatever reason, unless the competent authority otherwise directs.".

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PART III
Amendments to the Banking Act

Amendments to the Banking Act. Cap. 371.

8. 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".

Amendment of article 2 of the principal Act.

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

(a) in sub-article (1) thereof, after the definition "representative office" there shall be added the following new definition:

" "Resolution Fund" means the resolution financing arrangement under the Recovery and Resolution Regulations;"; and S.L. 330.09.

(b) in sub-article (3) thereof, for the words "the relevant provisions of the CRD and CRR, and shall be interpreted and applied accordingly." there shall be substituted the words "the relevant provisions of the BRRD, the CRD and the CRR, and shall be interpreted and applied accordingly.".

Amendment of article 4B of the principal Act.

10. Immediately after sub-article (1) of article 4B of the principal Act, there shall be added the following new provisos:

"Provided that the competent authority may give any such directive even where a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect.".

Amendment of article 29 of the principal Act.

11. Article 29 of the principal Act shall be amended as follows:

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

(i) for the words "may, without prejudice to the provisions of article 9(2) -" there shall be substituted the words, "may, without prejudice to the provisions of article 9(2) and to any other powers conferred on the competent authority under this Act or any other applicable law –";

(ii) in paragraph (d) thereof, for the words "or part thereof, as the competent authority may direct;" there shall be substituted the words "or part thereof, including to take the necessary action for the credit institution to be dissolved

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and wound up, as the competent authority may direct;";

(iii) in paragraph (g) thereof, for the words "to any competent person appointed under this sub-article." there shall be substituted the words "to any person appointed under this sub-article;"; and

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

"(h) appoint a person to act as controller and, or to assume control of a credit institution for the purposes of the Controlled Companies (Procedure for Liquidation) Act;

Cap. 383.

and having adopted any one or more of the measures aforesaid, the competent authority may further adopt any one or more measures, whether in addition thereto or in substitution therefor.";

(b) paragraph (c) of sub-article (2) thereof shall be amended as follows:

(i) for the words "any other person, including the legal and judicial representation of the credit institution" there shall be substituted the words "any other person, including for the purpose of the dissolution and winding up of the credit institution as well as the legal and judicial representation of the credit institution"; and

(ii) for the words "to the exclusion of any other person." there shall be substituted the words "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the credit institution unless the competent authority, after consulting with the Central Bank, issues a directive to that effect in terms of article 4B and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up."; and

(c) immediately after sub-article (9) thereof, there shall be

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added the following new sub-articles:

"(10) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a credit institution where it appears to the competent authority that a credit institution should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

Cap. 386.

(11) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect, unless the competent authority otherwise directs.".

Amendment of article 29A of the principal Act.

12. Article 29A of the principal Act shall be amended as follows:

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

(i) in sub-paragraph (ii) of paragraph (b) thereof, for the words "under the Depositor Compensation Scheme Regulations:" there shall be substituted the words "under the Depositor Compensation Scheme Regulations;";

(ii) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

"(c) the Resolution Fund in relation to any contribution or contributions that may be due to it by the credit institution in accordance with the provisions of the Recovery and Resolution Regulations:"; and

S.L. 330.09.

(iii) in the proviso thereof, for the words "mentioned in paragraph (b)(i) and the contribution/s due to the Scheme mentioned in paragraph (b)(ii) shall rank *pari passu*." there shall be substituted the words "mentioned in paragraph

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(b)(i), the contribution or contributions due to the Scheme mentioned in paragraph (b)(ii) and the contribution or contributions due to the Resolution Fund mentioned in paragraph (c) shall rank *pari passu*.";

(b) in sub-article (3) thereof, for the words "provided for the claims of ordinary unsecured, non-preferred creditors:" there shall be substituted the words "provided for the claims of ordinary unsecured creditors:";

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

"(3A) Without prejudice to the provisions of sub-articles (1), (2) and (3), ordinary unsecured claims shall have a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(a) the original contractual maturity of the debt instruments is of at least one year;

(b) the debt instruments contain no embedded derivatives and are not derivatives themselves:

Provided that debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features;

(c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this sub-article.";

(d) in sub-article (4) thereof, for the words "all other ordinary unsecured, non-preferred creditors" there shall be substituted the words "all other unsecured creditors"; and

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

"(5) For the purposes of this article:

(a) "debt instruments" shall mean bonds and other forms of transferable debt and instruments creating or

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acknowledging a debt;

(b) "derivatives" shall mean those financial instruments defined in point (44) (c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto.".

PART IV
AMENDMENTS TO THE PREVENTION OF FINANCIAL MARKETS ABUSE ACT

Amendments to the Prevention of Financial Markets Abuse Act. Cap. 476.

13. 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.

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

(a) in the definition "trading venue" for the words "Article 3(1)(24)" there shall be substituted the words "Article 3(1)(10)"; and

(b) in the definition "wholesale energy product" for the words "Article 2(4)" there shall be substituted the words "Article 3(1)(22)".

Amendment of article 4 of the principal Act.

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

(a) sub-article (3) thereof shall be amended as follows:

(i) for the words "This Act shall not apply to:" there shall be substituted the words "Articles 6, 6A and 8 shall not apply to:"; and

(ii) paragraph (c) thereof shall be deleted;

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

"(3A) (a) This Act shall not apply to transactions, orders or behaviour carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of the Market Abuse Regulation, transactions, orders or behaviour carried out in accordance with Article 6(2) thereof, activities in pursuit of the European Union’s climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the European Union’s Common Agricultural Policy or of the European

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Union's Common Fisheries Policy in accordance with Article 6(4) thereof.

(b) Paragraph (a) shall not apply to persons working under a contract of employment or otherwise for the entities referred to in the said paragraph where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account."; and

(c) in sub-article (4)(a) thereof, for the words "referred to in sub-article (2);" there shall be substituted the words "referred to in sub-article (1);".

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

(a) the marginal note thereof shall be substituted by the words "Insider dealing.";

(b) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) (a) A person shall not engage or attempt to engage in insider dealing, or recommend that another person engage in insider dealing, or induce another person to engage in insider dealing.

(b) Any person who intentionally engages or attempts to engage in insider dealing, or recommends that another person engage in insider dealing, or induces another person to engage in insider dealing, shall be guilty of a criminal offence.";

(c) in sub-article (6) thereof, for the words "a cancellation or amendment: Provided that the use of the recommendations or inducements amounts to insider dealing where the person using the recommendation or inducement knows that it is based upon inside information." there shall be substituted the words "a cancellation or amendment.";

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

"(6A) The use of the recommendations or inducements referred to in sub-article (6) amount to insider dealing where the person using the recommendation or inducement knows that it is based upon inside

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information."; and

(e) in sub-article (8) thereof, for the words "in sub-article (5)" there shall be substituted the words "in sub-article (7)".

Amendment of article 6A of the principal Act.

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

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) (a) A person shall not unlawfully disclose inside information.

(b) Any person who intentionally and unlawfully discloses inside information shall be guilty of a criminal offence."; and

(b) in sub-article (3) thereof, the words "as defined under sub-article (5)" shall be deleted.

Amendment of article 8 of the principal Act.

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

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) (a) A person shall not engage in or attempt to engage in market manipulation.

(b) Any person who intentionally engages in or attempts to engage in market manipulation shall be guilty of a criminal offence."; and

(b) in the proviso to sub-article (4)(a) thereof, for the words "Provided that the reasons" there shall be substituted the words "Unless the reasons".

Amendment of article 13 of the principal Act.

19. In sub-article (2) of article 13 of the principal Act, for the words "it shall in terms of its powers under this Part" there shall be substituted the words "it shall, in terms of its powers under this Act, the Market Abuse Regulation or any other applicable law".

Amendment of article 22 of the principal Act.

20. Sub-article (1) of article 22 of the principal Act shall be substituted by the following:

"(1) Without prejudice to the powers, functions and duties assigned to the competent authority in terms of this Act, the Market Abuse Regulation or any other applicable law, where the competent authority is satisfied that a person’s conduct amounts to a breach of any of Articles 14 and 15, Article 16(1) and (2),

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Article 17(1), (2), (4), (5) and (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1) of the Market Abuse Regulation, the competent authority may by notice in writing and without recourse to a court hearing, take the following administrative sanctions and measures:

(a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement, insofar as they can be determined;

(c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of an investment firm;

(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

(f) in the event of repeated infringements of Article 14 or 15 of the Market Abuse Regulation, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary sanctions of at least three (3) times the amount of the profits gained or losses avoided because of the infringement, insofar as those can be determined;

(i) in respect of a natural person, an administrative pecuniary sanction which does not exceed:

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(i) five million euro (€5,000,000) for infringements of Articles 14 and 15 of the Market Abuse Regulation;

(ii) one million euro (€1,000,000) for infringements of Articles 16 and 17 of the Market Abuse Regulation; and

(iii) five hundred thousand euro (€500,000) for infringements of Articles 18, 19 and 20 of the Market Abuse Regulation.

(j) in respect of legal persons, an administrative pecuniary sanction which does not exceed:

(i) fifteen million euro (€15,000,000) or 15% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Articles 14 and 15 of the Market Abuse Regulation;

(ii) two million five hundred thousand euro (€2,500,000) or 2% of its total annual turnover according to the last available accounts approved by the management body for infringements of Articles 16 and 17 of the Market Abuse Regulation;

(iii) one million euro (€1,000,000) for infringements of Articles 18, 19 and 20 of the Market Abuse Regulation.

For the purposes of sub-paragraphs (i) and (ii) of paragraph (j), where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives – Council Directive 86/635/EEC for banks and Council Directive 91/674/EEC for insurance companies – according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.".

Addition of new article 22A to the principal Act.

21. Immediately after article 22 of the principal Act, there shall be inserted a new article 22A as follows:

"22A.When determining the type and level of administrative sanctions, the competent authority shall take into account all relevant circumstances, including, where appropriate:

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(a) the gravity and duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous infringements by the person responsible for the infringement; and

(g) measures taken by the person responsible for the infringement to prevent its repetition.".

Passed by the House of Representatives at Sitting No. 181 of the 12th December, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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