I assent.

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

29th March, 2019

ACT No. VIII of 2019

AN ACT to amend the Malta Financial Services Authority Act, Cap. 330.

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 Malta Financial Services Authority Act, 2019, and this Act shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter referred to as "the principal Act". Short title. Cap. 330.

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Amendment of article 2 of the principal Act.

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

(a) the definition "Board of Management and Resources" shall be deleted;

(b) immediately after the definition "Chief Executive Officer" there shall be added the following new definition:

" "Chief Officer" means the Officer responsible for a Directorate;";

(c) the definition "Chief Operations Officer" shall be deleted;

(d) the definition "Co-Ordination Committee" shall be deleted;

(e) the definition "Director-General" shall be deleted;

(f) immediately after the definition "Chief Officer" there shall be added the following new definitions:

" "Directorate" means a section of the Authority, established by the Board of Governors in terms of article 5, made up of a number of units and functions;

"Enforcement Decisions Committee" means the sub-committee of the Executive Committee established by article 11;";

(g) immediately after the definition "Directorate" there shall be added the following new definition:

" "Executive Committee" means the Committee appointed in terms of article 9;";

(h) immediately after the definition "financial services" there shall be added the following new definition:

" "General Counsel" means the Officer leading the Directorate for Legal and International Relations;";

(i) the definition "Registrar of Companies" shall be deleted; and

(j) the definition "Supervisory Council" shall be deleted.

3. Paragraph (b) of sub-article (1) of article 4 of the principal Act shall be substituted by the following: Amendment of article 4 of the principal Act.

"(b) to promote financial market integrity and the legitimate expectations of consumers of financial services, to promote fair competition practices and consumer choice in financial services and to complement the Central Bank of Malta in its role to ensure the stability of the financial system;".

4. In sub-article (1) of article 5 of the principal Act, for the words "the Co-Ordination Committee, the Supervisory Council, the Board of Management and Resources and the Legal Office" there shall be substituted the words "the Executive Committee and Directorates as may be established by the Board of Governors from time to time". Amendment of article 5 of the principal Act.

5. Article 7A of the principal Act shall be amended as follows: Amendment of article 7A of the principal Act.

(a) in sub-article (3) thereof, for the words "any one or more of the Listing Committees" there shall be substituted the words "the Listing Committee"; and

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

"(4) Where the Board of Governors when acting as the Listing Authority delegates any of its functions, powers or decisions in terms of sub-article (3), such delegation shall be made public on the website of the Authority.".

6. In sub-article (2) of article 7B of the principal Act, for the words "Supervisory Council" there shall be substituted the words "Executive Committee". Amendment of article 7B of the principal Act.

7. Article 9 of the principal Act shall be substituted by the Substitution of article 9 of the principal Act.

following:

"The Executive Committee.

9. (1) The Executive Committee shall be responsible for the implementation of the strategy and policies of the Authority, for the approval of regulation, for the approval of and for the issuing of licences and other authorisations, and for the monitoring and supervision of persons and other entities licensed or authorised by the Authority in the financial services sector, for the enforcement of the regulatory framework in the financial services sector, for carrying out the day-to-day management and the finances of the Authority including human resources and ancillary services, and for the general coordination of the Authority's administrative affairs.

(2) The Executive Committee may from time to time delegate in writing its functions and powers, on such matters and subject to such conditions and modalities as may be specified in the delegation, subject to the terms and duration as determined by the Executive Committee, to the Chief Executive Officer or one or more of the members of the Committee or a function or unit of the Authority, as may be specified. Any decisions so made shall be approved by the Board of Governors and subsequently made public on the website of the Authority.

(3) The Executive Committee shall also be responsible for establishing and empowering sub-committees, units and functions. The Executive Committee shall determine the respective remits of the sub-committees, units and functions.

(4) The Executive Committee shall consist of the Chief Executive Officer, who shall preside thereat, the General Counsel, and of each of the Chief Officers responsible respectively for supervision, enforcement, corporate services, operations, strategy, policy and innovation, and for any other aspect falling within the remit of the Authority as may be determined by the Board of Governors.

(5) The Executive Committee shall designate one of the officers of the Authority, engaged in any of its functions mentioned in sub-article (1), to act as Secretary to the Executive Committee for such period and under such terms as the Executive Committee shall deem appropriate.

(6) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Executive Committee and to keep minutes of those meetings.

(7) The provisions of article 7, in so far as applicable, shall apply to the meetings of the Executive Committee as they apply to the meetings of the Board of Governors.

(8) The Executive Committee may from time to time make internal arrangements to authorize one or more of the senior officers, responsible for the approval of and for the issuing of licences and other authorisations, to sign a licence, category of licences or any other form of authorisation as it may deem appropriate.

(9) The Executive Committee shall act as the Listing Committee in terms of article 14 of the Financial Markets Act.". Cap. 345.

8. Article 10 of the principal Act shall be deleted. Deletion of article 10 of the principal Act.

9. Article 11 of the principal Act shall be substituted by the following: Substitution of article 11 of the principal Act.

"The Enforcement Decisions Committee.

11. (1) The Enforcement Decisions Committee shall decide or take such action as it considers appropriate, promptly and without delay, in relation to any recommendation for enforcement action brought before it by the Chief Officer responsible for Enforcement or any other official from the Directorate responsible for enforcement:

Provided that the Executive Committee may take any enforcement action itself if:

(a) it considers that, in the particular case, the action proposed should occur before it is practicable or possible to convene the Enforcement Decisions Committee; or

(b) it considers that, in the particular case, an urgent decision on the proposed action is necessary to protect the interests of consumers.

(2) The members of the Enforcement Decisions Committee shall be appointed by the Board of Governors.

(3) The Executive Committee may, after seeking the approval of the Board of Governors, establish a detailed remit for the Enforcement Decisions Committee and may also establish that certain enforcement action, which it does not deem to be material, may be taken by the Chief Officer responsible for enforcement.

(4) The Enforcement Decisions Committee shall be composed of a chairman and four (4) other members appointed by the Board of Governors for such term, being a period of not more than three (3) years, as may be specified in the letter of appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Authority may from time to time determine.

(5) The chairman of the Enforcement Decisions Committee shall be an advocate who for a period of, or periods amounting in the aggregate to, not less than seven (7) years has served as an advocate in Malta or served as a judge or magistrate in Malta, or partly so practiced and partly so served, and who in the opinion of the Board of Governors possesses the necessary expertise and experience in the business or regulation of financial services, or in finance.

(6) The members of the Enforcement Decisions Committee shall be persons who in the opinion of the Board of Governors possess the necessary expertise and experience in the business or regulation of financial services, or in finance.

(7) For the better carrying out of its functions, and before arriving at any decision, the Enforcement Decisions Committee may decide to hear any person in relation to any matter being considered by the said Committee.

(8) Before arriving at a decision, the Enforcement Decisions Committee shall serve written notice of the decision it proposes to take on the persons being the subject of the recommendation for enforcement action being considered by the said Committee, setting out the reasons for its proposed decisions. Such notice shall also specify therein the period in which the person upon whom the notice is served shall be entitled to make representations in writing to the Enforcement Decisions Committee as to why the proposed decision should not be taken, in accordance with the relevant provisions of the Acts administered by the Authority:

Provided that the Enforcement Decisions Committee may, where it decides that the matter is urgent, take the final decision prior to the expiration of the period stated in the notice.

(9) The Executive Committee, with the approval of the Board of Governors, may make rules governing the procedure for conducting any hearings that may take place before the Enforcement Decisions Committee.

(10) The Board of Governors shall designate one of the officers of the Authority, engaged in any of its functions mentioned in article 9(1), to act as Secretary to the Enforcement Decisions Committee for such period and under such terms as the Board of Governors shall deem appropriate.

(11) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Enforcement Decisions Committee and to keep minutes of those meetings.

(12) The Enforcement Decisions Committee shall report to the Board of Governors on the progress made in its area of competence:

Provided that the Enforcement Decisions Committee shall be independent of the Executive Committee and the Board of Governors, and shall act independently of them.

(13) The provisions of article 7, in so far as applicable, shall apply to the meetings of the Enforcement Decisions Committee as they apply to the meetings of the Board of Governors.

(14) The provisions of paragraphs (a), (b), (d) and (e) of article 6(6) shall, as far as applicable, *mutatis mutandis,* apply to the office of the chairman and members of the Enforcement Decisions Committee.".

Substitution of article 12 of the principal Act.

10. Article 12 of the principal Act shall be substituted by the following:

"The Enforcement Directorate.

12. (1) It shall be the function of the Enforcement Directorate to:

(a) deal with enforcement:

(i) under the provisions of this Act or any other Act administered by the Authority, or of any regulations or rules made thereunder; or

(ii) in relation to any of the conditions imposed in a licence or other authorisation; or

(iii) in relation to any administrative measure or penalty imposed by the Authority in terms of this Act or any other Act administered by the Authority, or of any regulations or rules made thereunder;

(b) investigate any referrals made to it by any other organ of the Authority;

(c) conduct investigations in relation to any enforcement action;

(d) make recommendations for any enforcement action to the Enforcement Decisions Committee established in article 11;

(e) implement any decision of the Enforcement Decisions Committee, including the making of appropriate arrangements for such purpose;

(f) assist, as applicable, in the conduct of proceedings before the Financial Services Tribunal in relation to such enforcement action;

(g) carry out such other duties as may be assigned to it by the Executive Committee.

(2) The Enforcement Directorate shall, for the purpose of discharging its functions, have all the powers vested in the Authority under this Act or any other Act administered by the Authority.

(3) The Enforcement Directorate shall be composed of the Chief Officer responsible for enforcement, and such number of officers and employees as may be required for the proper exercise of its functions.".

Amendment of article 12A of the principal Act.

11. In sub-article (3) of article 12A of the principal Act, for the words "the Director General and the Chief Operations Officer" there shall be substituted the words "the Chief Executive Officer".

Amendment of article 13 of the principal Act.

12. Sub-article (1) of article 13 of the principal Act shall be substituted by the following:

"(1) The Authority may appoint a General Counsel, Chief Officers, Heads, Deputy Heads and such other officers and employees as it may consider necessary for the efficient discharge of its functions, powers and duties under this Act or any other law. The appointment of the General Counsel and Chief Officers shall be made by the Chief Executive Officer in consultation with the Board of Governors. The appointment of officers and other employees of the Authority other than the General Counsel and the Chief Officers shall be made by the Executive Committee on such terms and conditions as the Board of Governors may establish.".

Amendment of article 23 of the principal Act.

13. Article 23 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "Co-Ordination Committee" there shall be substituted the words "Executive Committee"; and

(b) in sub-article (4) thereof, for the words "Co-Ordination Committee" there shall be substituted the words "Executive Committee".

Amendment of article 29 of the principal Act.

14. In article 29 of the principal Act, for the words "Co-Ordination Committee, of the Resolution Committee, of the Supervisory Committee, of the Board of Management and Resources and of the Legal Office" there shall be substituted the words "Executive Committee or any sub-committee thereof and of the Resolution Committee".

Addition of new article to the principal Act.

15. Immediately after article 30 of the principal Act there shall

be added the following new article:

"Transitory provisions and construction of references.

31. (1) Any decision taken by the Co-ordination Committee, the Supervisory Council and the Board of Management and Resources, prior to the date of entry into force of this article, shall continue to apply:

Provided that, for purposes of this article, the term "decision" shall, in the case of the Supervisory Council, include licences issued, approvals and authorisations granted, and regulatory action taken.

(2) Any reference in any law to the Director General or Chief Operations Officer of the Authority shall be read and construed as a reference to the Chief Executive Officer of the Authority as so defined in article 2.

(3) Any reference in any law to the Co-ordination Committee, the Supervisory Council, or the Board of Management and Resources shall be read and construed as a reference to the Executive Committee and shall include a reference to any sub-committees, directorates, functions or units established under this Act, as the case may require.".

Passed by the House of Representatives at Sitting No. 210 of the 25th March, 2019.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

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