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Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,397, 30 ta' April, 2020
Taqsima B

L.N. 165 of 2020

FINANCIAL INSTITUTIONS ACT
(CAP. 376)

European Passport Rights for Financial Institutions Regulations, 2020

IN EXERCISE of the powers conferred by article 12(1)(b), (c), (d) and (h) of the Financial Institutions Act, the Minister responsible for the regulation of Financial Services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

PRELIMINARY

Citation and scope.

1. (1) The title of these regulations is the European Passport Rights for Financial Institutions Regulations, 2020.

(2) The purpose of these regulations is to transpose Articles 19, 28, 29, 30, 100 (in part) and 111 (in part) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, and to provide for ancillary matters related thereto.

Interpretation.

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

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

"Commission Delegated Regulation" means Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions, as may be amended from time to time;

"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/

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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 a legal person authorised by a European regulatory authority to provide payment services in terms of the Payment Services Directive and, or to issue and, or distribute and, or redeem electronic money in terms of the Electronic Money Directive, or a person registered under the Payment Services Directive to provide solely account information services;

"European regulatory authority" means a body that is in another Member State and is empowered by law or regulation to supervise payment institutions, electronic money institutions and, or account information service providers;

"European right" means the entitlement of a person to engage an agent, or to establish a branch, or to appoint a distributor, or to provide services, in a Member 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 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; 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;

"home Member State" means:

(a) where the European financial institution or the Maltese financial institution is a natural person, the Member State in which his or her residence is situated;

(b) where the European financial institution or the Maltese financial institution is a legal person, the Member

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State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

"host Member State" means the Member State in which a Maltese financial institution or a European financial institution, as applicable, exercises or proposes to exercise a European right;

"Maltese financial institution" means a legal person licensed by the competent authority in terms of the Act to provide payment services and, or to issue and, or distribute and, or redeem electronic money, or a person registered by the competent authority in terms of the Act to provide solely account information services;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder.

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

PART I - EXERCISE OF PASSPORT RIGHTS BY EUROPEAN FINANCIAL INSTITUTIONS

Application for the exercise of a European right by European financial institutions - services.

3. (1) A European financial institution seeking to provide payment services and, or issue and, or distribute and, or redeem electronic money in Malta in exercise of a European right under the freedom to provide services shall communicate to its European regulatory authority the information prescribed in sub-regulation (2), and shall thereafter be exempt from the provisions of article 3 of the Act:

Provided that this regulation shall not apply to a European financial institution seeking to provide payment services and, or distribute and, or redeem electronic money in Malta through an agent and, or a distributor, as applicable.

(2) The information referred to in sub-regulation (1) shall be the following:

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

(ii) the name, the address and where applicable, the authorisation number and the unique identification number of the European financial institution;

(iii) whether the European financial institution intends to issue and, or distribute and, or redeem electronic money in Malta and, or which payment services activities it intends to carry out;

(iv) where the European financial institution intends to outsource operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money to other entities in Malta, the operational functions of the payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in Malta; and

(v) any other information which may be required in terms of Article 14(1) of the Commission Delegated Regulation.

(3) Within one month of receipt of all of the information referred to in sub-regulation (2), the competent authority shall, in terms of Article 28(2) of the Payment Services Directive, receive the said information from the European regulatory authority by means of the template set out in Annex V to the Commission Delegated Regulation.

(4) Where the competent authority receives all the information referred to in sub-regulation (2) from the European regulatory authority in accordance with Article 28(2) of the Payment Services Directive, it shall, within one month of receipt of the said information, assess that information and provide the European regulatory authority with relevant information in connection with the intended provision of payment services and, or issuance, and or distribution and, or redemption of electronic money by the relevant European financial institution in the exercise of a European right.

(5) Where the European regulatory authority does not agree with the assessment of the competent authority, the latter shall, in terms of Article 28(2) of the Payment Services Directive, be informed of the reasons for its decision.

(6) Within three months of receipt of all of the information referred to in sub-regulation (2), the competent authority shall, in

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terms of Article 28(3) of the Payment Services Directive, receive communication of the European regulatory authority's decision.

(7) Following communication to the competent authority of the European regulatory authority's decision in terms of sub-regulation (6), the competent authority shall publish the information referred to in sub-regulation (2)(ii) and (iii) in the public register established and maintained by the competent authority in accordance with article 8D of the Act.

(8) In the event of a change regarding the information communicated in accordance with sub-regulation (2), including any additional entities to which activities are outsourced in Malta, the competent authority shall, in terms of Article 28(4) of the Payment Services Directive and Article 16 of the Commission Delegated Regulation, be informed of such changes by the European regulatory authority and, in such cases, the provisions of sub-regulations (3) to (6) shall apply.

Application for the exercise of a European right by European financial institutions - branch.

4. (1) A European financial institution seeking to establish a branch in Malta in the exercise of a European right shall communicate to its European regulatory authority the information specified in sub-regulation (2) and shall thereafter be exempt from the provision of article 3 of the Act.

(2) The information referred to in sub-regulation (1) shall be the following:

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

(ii) the name, the address and, where applicable, the authorisation number and the unique identification number of the European financial institution;

(iii) whether the European financial institution intends to issue and, or distribute and, or redeem electronic money in Malta and, or which payment services activities it intends to carry out;

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

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

(vi) a description of the organisational structure of the proposed branch;

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(vii) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the European financial institution is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly with regard to the proposed provision of payment services and, or the issuance and, or the distribution and, or the redemption of the electronic money through the proposed branch in Malta;

(viii) a description of the European financial institution's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate with regard to the proposed provision of payment services and, or the issuance, distribution or redemption of the electronic money through the proposed branch in Malta;

(ix) where the European financial institution intends to outsource operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money to other entities in Malta, the operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in Malta; and

(x) any other information which may be required in terms of Article 6(1) of the Commission Delegated Regulation.

(3) Within one month of receipt of all of the information referred to in sub-regulation (2), the competent authority shall, in terms of Article 28(2) of the Payment Services Directive, receive the said information from the European regulatory authority by means of the template set out in Annex II to the Commission Delegated Regulation.

(4) Where the competent authority receives all the information referred to in sub-regulation (2) from the European regulatory authority in accordance with sub-regulation (3), it shall, within one month of receipt of the said information, assess that information and provide the European regulatory authority with relevant information in connection with the intended provision of payment services and, or issuance and, or distribution and, or redemption of electronic money by the relevant European financial institution in the exercise of a European right.

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(5) If the competent authority has any reasonable grounds for concern in connection with the intended establishment of the branch in Malta with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849, it shall inform the European regulatory authority accordingly.

(6) Where the European regulatory authority does not agree with the assessment of the competent authority, the latter shall, in terms of Article 28(2) of the Payment Services Directive, be informed of the reasons for its decision.

(7) Within three months of receipt of all of the information referred to in sub-regulation (2), the competent authority shall, in terms of Article 28(3) of the Payment Services Directive, receive communication of the European regulatory authority's decision.

(8) Upon entry in the public register of the home Member State in terms of Article 14 of the Payment Services Directive, the European financial institution may commence its activities in Malta through the branch. The competent authority shall enter the branch of the European financial institution in the register established and maintained by the competent authority in accordance with article 8D of the Act.

(9) The competent authority shall, in terms of Article 18(3) of the Payment Services Directive, be informed by the European regulatory authority of the date from which the European financial institution shall commence its activities in Malta through the branch by means of the template set out in Annex VI to the Commission Delegated Regulation.

(10) In the event of a change regarding the information communicated in accordance with sub-regulation (2), including any additional branches or entities to which activities are outsourced in Malta, the competent authority shall, in terms of Article 28(4) of the Payment Services Directive and Article 8 of the Commission Delegated Regulation, be informed of such changes by the European regulatory authority concerned and, in such cases, the provisions of sub-regulations (3) to (9) shall apply.

Application for the exercise of a European right by European financial institutions – an agent and distributor.

5. (1) A European financial institution seeking to provide payment services in Malta through an agent shall communicate to its European regulatory authority:

(i) its intention to provide payment services in Malta through an agent;

(ii) the name, the address and, where applicable, the

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authorisation number and the unique identification number of the European financial institution;

(ii) the name, the address and, where applicable, the unique identification code or number of the proposed agent;

(iii) which payment services activities the European financial institution intends to carry out in Malta;

(iv) a description of the internal control mechanisms that will be used by the proposed agent in order to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849, which shall be updated without delay in the event of material changes to the particulars communicated at the initial notification;

(v) the identity of the directors and persons responsible for the management of the proposed agent and, for agents other than payment service providers, evidence that they are fit and proper persons;

(vi) where the European financial institution intends to outsource operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money to other entities in Malta, the operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in Malta; and

(vii) any other information which may be required in terms of Article 10(1) of the Commission Delegated Regulation.

(2) A European financial institution seeking to distribute and, or redeem electronic money in Malta through a distributor shall communicate to its European regulatory authority:

(i) its intention to distribute and, or redeem electronic money in Malta through a distributor;

(ii) the name, the address and, where applicable, the authorisation number and the unique identification number of the European financial institution;

(iii) the name, the address and, where applicable, the unique identification code or number of the proposed distributor;

(iv) a description of the internal control mechanisms that will be used by the proposed distributor in order to comply

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with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849, which shall be updated without delay in the event of material changes to the particulars communicated at the initial notification;

(v) the identity of the directors and persons responsible for the management of the proposed distributor and, where applicable, for distributors other than payment service providers, evidence that they are fit and proper persons;

(vi) where the European financial institution intends to outsource operational functions of the issuance and, or distribution and, or redemption of electronic money to other entities in Malta, the operational functions of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in Malta; and

(vii) any other information which may be required in terms of the Commission Delegated Regulation.

(3) Within one month of receipt of all of the information referred to in sub-regulations (1) or (2) as applicable, the competent authority shall, in terms of Article 28(2) of the Payment Services Directive, receive the information from the European regulatory authority by means of the templates set out in Annexes III and IV to the Commission Delegated Regulation.

(4) Where the competent authority receives all the information referred to in sub-regulations (1) or (2), as applicable, from the European regulatory authority in accordance with sub-regulation (3), it shall, within one month of receipt of the said information, assess that information and provide the European regulatory authority with relevant information in connection with the intended provision of payment services and, or distribution and, or redemption of electronic money, as applicable, by the relevant European financial institution in the exercise of a European right.

(5) If the competent authority has any reasonable grounds for concern in connection with the intended engagement of the agent or distributor, as applicable, with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849, it shall inform the European regulatory authority accordingly.

(6) Where the European regulatory authority does not agree with the assessment of the competent authority it shall, in terms of Article 28(2) of the Payment Services Directive, provide the latter with the reasons for its decision.

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(7) Within three months of receipt of all of the information referred to in sub-regulation (1) or (2), as applicable and in terms of Article 28(3) of the Payment Services Directive, the competent authority shall receive communication of the European regulatory authority's decision.

(8) Following communication to the competent authority of the European regulatory authority's decision in terms of sub-regulation (7), the competent authority shall publish the information referred to in sub-regulation (1)(i) to (iii), in the public register established and maintained by the competent authority in accordance with article 8D of the Act.

(9) Upon entry in the public register of the home Member State in terms of Article 14 of the Payment Services Directive, the agent, may commence its activities in Malta.

(10) The competent authority shall, in terms of Article 18(3) of the Payment Services Directive, be informed by the European regulatory authority of the date from which the European financial institution shall commence its activities in Malta through the agent or distributor by means of the template set out in Annex VI to the Commission Delegated Regulation.

(11) In the event of a change regarding the information communicated in accordance with sub-regulation (1) or (2), including any additional agents, distributors or entities to which activities are outsourced in Malta, as applicable, the competent authority shall, in terms of Article 28(4) of the Payment Services Directive and Article 8 of the Commission Delegated Regulation, be informed of such changes by the European regulatory authority concerned and, in such cases, the provisions of sub-regulations (3) to (10) shall apply.

Supervision of a European financial institution exercising a European right.

6. (1) Where Malta is the host Member State, the competent authority may require European financial institutions having agents or branches in Malta to report periodically to the competent authority on the activities carried out in Malta.

(2) The reports referred to in sub-regulation (1) shall be required for information or statistical purposes and, as far as the agents and branches conduct their activities under the right of establishment, to monitor compliance with articles 11A and 11B of the Act.

(3) The power of the competent authority to require periodic reports under sub-regulation (1) shall be exercised in close cooperation with the Central Bank where reports as referred to in the said sub-

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regulation are required to monitor compliance with articles 11A and 11B of the Act.

(4) The information which European financial institutions shall provide in the periodic reports required by the competent authority in terms of sub-regulation (1) and the form and frequency of such reports shall be prescribed in a Financial Institutions Rule.

(5) The competent authority shall provide the European regulatory authority of the home Member State with all essential and, or relevant information, in particular in the case of infringements or suspected infringements by an agent or a branch of a European financial institution, and where such infringements occurred in the context of the freedom to provide services. In that regard, the competent authority shall communicate to the European regulatory authority all relevant information and, on its own initiative, all essential information, including on the compliance with the conditions under Article 11(3) of the Payment Services Directive.

(6) The competent authority shall cooperate closely with the Central Bank in order to ensure and monitor effective compliance with articles 11A and 11B of the Act by agents and branches conducted under a right of establishment and, in the event of an infringement or suspected infringement of articles 11A and 11B of the Act by an agent or a branch conducted under the right of establishment, the competent authority in close cooperation with the Central Bank shall take all appropriate measures to ensure such compliance.

(7) Without prejudice to any provisions on anti-money laundering and combatting the funding of terrorism, and to facilitate supervision by the competent authority, the Central Bank and the European regulatory authority of the home Member State, the competent authority may, in cooperation with the Central Bank, require European financial institutions operating in Malta through agents under the right of establishment, the head office of which is situated in another Member State, to appoint a central contact point in Malta to ensure adequate communication and information reporting on compliance with articles 11A and 11B of the Act and the provisions of Titles III and IV of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act, including by providing the competent authority with documents and information upon request.

(8) The competent authority shall, upon the appointment of a central contact point by a European financial institution in terms of sub-regulation (7), notify the Central Bank of such appointment.

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(9) A central contact point appointed by a European financial institution pursuant to sub-regulation (7) shall provide the competent authority with any documents and, or information required by the competent authority.

On-site inspections by the European regulatory authority.

7. (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 or branch located in Malta of a European financial institution.

(2) By way of cooperation in accordance with sub-regulation (1), the competent authority shall, in terms of Article 29(1) of the Payment Services Directive, receive written notification from the European regulatory authority whenever the latter intends to carry out an on-site inspection in the territory of Malta.

(3) Notwithstanding the provisions of sub-regulation (2), the competent authority may be requested by the European regulatory authority to carry out on-site inspections of the European financial institution concerned on behalf of such European regulatory authority.

Measures in case of non-compliance, including precautionary measures.

8. (1) Without prejudice to the responsibility of the European regulatory authority of the home Member State, where the competent authority ascertains that a European financial institution having agents or branches or distributors in Malta does not comply with the provisions of the Act and any regulations or Rules issued thereunder, other than articles 11A and 11B of the Act, the competent authority shall inform the European regulatory authority of the home Member State without delay:

Provided that, where the competent authority ascertains that a European financial institution having agents or branches or distributors in Malta does not comply with articles 11A and 11B of the Act, the competent authority shall cooperate with the Central Bank for the purposes of informing the European regulatory authority of the home Member State without delay in terms of Article 30(1) of the Payment Services Directive as transposed in Directives issued by the Central Bank under the Central Bank of Malta Act.

(2) In emergency situations, where immediate action is necessary to address a serious threat to the collective interests of those making use of the services of the European financial institution in Malta through an agent or branch or distributor, the competent authority may, in parallel to the cross-border cooperation between the competent authority and the European regulatory authority of the home Member State and pending measures by the said European regulatory authority of the home Member State, take precautionary

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measures:

Provided that where a proposed precautionary measure relates to a failure to comply with articles 11A or 11B of the Act, such precautionary measure shall be taken in close cooperation with the Central Bank.

(3) Any precautionary measures referred to in sub-article (2) shall be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of those making use of the services of the European financial institution in Malta through an agent or branch or distributor. The said precautionary measures shall not result in a preference for those making use of such service in Malta over those making use of such services in other Member States.

(4) Any precautionary measures referred to in sub-article (2) shall be temporary and shall be terminated when the serious threats identified are addressed, including with the assistance of, or in cooperation with, the European regulatory authority of the home Member State or, as provided for in Article 27(1) of the Payment Services Directive, with the EBA.

(5) Where compatible with the emergency situation referred to in sub-article (2), the competent authority, , shall inform the European regulatory authority of the home Member State and those of any other Member State concerned, the European Commission and the EBA in advance, and in any case without undue delay, of the precautionary measures taken under sub-article (2) and of their justification.

(6) In the event of an infringement or suspected infringement of the Act or regulations or Rules issued thereunder, by an agent or branch or distributor of a European financial institution conducted under the right of establishment, the competent authority shall have the power to exercise all the powers granted to it under the Act and any regulations and Rules issued thereunder in relation to such agent or branch or distributor:

Provided that in relation to an infringement or suspected infringement of Articles 11A or 11B of the Act, in exercising the powers granted to it under the Act and any regulations or Rules issued thereunder, the competent authority shall collaborate closely with the Central Bank.

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PART II -
EXERCISE OF PASSPORT RIGHTS BY MALTESE FINANCIAL INSTITUTIONS

Application for the exercise of a European right by Maltese financial institutions - services.

9. (1) A Maltese financial institution may exercise a European right to provide payment services and, or issue and, or distribute and, or redeem electronic money in another Member State under the freedom to provide services if it satisfies the conditions set out in this regulation:

Provided that this regulation shall not apply to a Maltese financial institution seeking to provide payment services and, or distribute and, or redeem electronic money in another Member State through an agent and, or a distributor, as applicable.

(2) A Maltese Financial Institution wishing to provide payment services and, or issue and, or distribute and, or redeem electronic money, for the first time, in another Member State in the exercise of a European right shall give notice of its intention to provide payment services and, or to issue and, or distribute and, or redeem electronic money in another Member 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 the following information:

(i) the name and address of the Maltese financial institution;

(ii) the licence number or registration number of the Maltese financial institution, as applicable;

(iii) the Member State in which the Maltese financial institution intends to provide payment services and, or issue and, or distribute and, or redeem electronic money;

(iv) the payment services which the Maltese financial institution intends to provide in such other Member State and whether it intends to issue and, or distribute and, or redeem electronic money in such other Member State;

(v) where the Maltese financial institution intends to outsource operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money to other entities in a host Member State, the operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in that host Member State; and

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(vi) any other information which may be required in terms of Article 14(1) of the Commission Delegated Regulation.

(3) Within one month of receipt of all of the information referred to in sub-regulation (2), the competent authority shall send to the European regulatory authority the said information by means of the template set out in Annex V to the Commission Delegated Regulation.

(4) Where the European regulatory authority receives all the information referred to in sub-regulation (2) from the competent authority in accordance with sub-regulation (3), it shall, in terms of Article 28(2) of the Payment Services Directive, within one month of receipt of the said information, assess that information and provide the competent authority with relevant information in connection with the intended provision of payment services and, or issuance and, or distribution and, or redemption of electronic money by the relevant Maltese financial institution in the exercise of a European right.

(5) Where the competent authority does not agree with the assessment of the European regulatory authority, it shall provide the latter with the reasons for its decision.

(6) If the assessment of the competent authority, particularly in light of the information received from the European regulatory authority of the host Member State is not favourable, the competent authority shall refuse to publish the information in the register referred to in Article 8D of the Act or shall withdraw the registration if already made.

(7) Within three months of receipt of all of the information referred to in sub-regulation (2), the competent authority shall communicate its decision to the European regulatory authority and to the Maltese financial institution.

(8) Upon communication to the European regulatory authority of its decision in terms of sub-regulation (7), the competent authority shall publish the information referred to in sub-regulation (2)(i) to (iv) in the public register established and maintained by the competent authority in accordance with article 8D of the Act.

(9) The Maltese financial institution shall notify the competent authority, without undue delay, of the date from which it commences its activities in the relevant host Member State.

(10) The competent authority shall inform the European regulatory authority of the host Member State of the notification received from the Maltese financial institution pursuant to sub-

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regulation (9) by means of the template set out in Annex V to the Commission Delegation Regulation.

(11) The Maltese financial institution shall communicate to the competent authority, without undue delay, any relevant change regarding the information communicated in accordance with sub-regulation (2) including entities to which activities are outsourced in the host Member States in which it operates and, in such cases, the provisions of sub-regulations (3) to (10) shall apply.

Application for the exercise of a European right by Maltese financial institutions - branch.

10. (1) A Maltese financial institution may exercise a European right to establish a branch in another Member State if it satisfies the requirements set out in 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, 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 the following information:

(i) the name and address of the Maltese financial institution;

(ii) the licence number or registration number of the Maltese financial institution, as applicable;

(iii) the Member State in which the Maltese financial institution intends to establish a branch;

(iv) the payment services which the Maltese financial institution intends to provide in such other Member State and whether it intends to issue and, or distribute and, or redeem electronic money in such other Member State;

(v) the address of the proposed branch in the host Member State;

(vi) the identity of those responsible for the management of the proposed branch;

(vii) a description of the organisational structure of the proposed branch;

(viii) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the Maltese financial institution is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly with regard to the proposed provision of

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payment services and, or the issuance and, or distribution and, or redemption of the electronic money through the proposed branch in the host Member State;

(ix) a description of the Maltese financial institution's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate with regard to the proposed provision of payment services and, or the issuance and, or distribution and, or redemption of the electronic money through the proposed branch in the host Member State;

(x) where the Maltese financial institution intends to outsource operational functions of payment services and or of the issuance, and, or distribution and, or redemption of electronic money to other entities in the host Member State, the operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in that host Member State; and

(xi) any other information as may be required in terms of Article 6(1) of the Commission Delegated Regulation.

(3) Within one month of receipt of all of the information referred to in sub-regulation (2), the competent authority shall send to the European regulatory authority the said information by means of the template set out in Annex II to the Commission Delegated Regulation and the competent authority shall inform the Maltese financial institution of such transmission of information.

(4) Where the European regulatory authority receives all the information referred to in sub-regulation (2) from the competent authority in accordance with sub-regulation (3), it shall, in terms of Article 28(2) of the Payment Services Directive, within one month of receipt of the said information, assess that information and provide the competent authority with relevant information in connection with the intended provision of payment services and, or issuance and, or distribution and, or redemption of electronic money by the relevant Maltese financial institution in the exercise of a European right. The European regulatory authority shall, in terms of Article 28(2) of the Payment Services Directive, inform the competent authority in particular of any reasonable grounds for concern in connection with the intended establishment of a branch with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849.

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(5) Where the competent authority does not agree with the assessment of the European regulatory authority, it shall provide the latter with the reasons for its decision.

(6) If the assessment of the competent authority, particularly in light of the information received from the European regulatory authority of the host Member State is not favourable, the competent authority shall refuse to register the branch or shall withdraw the registration if already made.

(7) Within three months of receipt of all of the information referred to in sub-regulation (2), the competent authority shall communicate its decision to the European regulatory authority and to the Maltese financial institution.

(8) Upon communication to the European regulatory authority of its decision in terms of sub-regulation (7), the competent authority shall register the branch in the public register established and maintained by the competent authority in accordance with article 8D of the Act and shall publish in the said register the information referred to in sub-regulation (2)(i) to (v).

(9) Upon entry in the register referred to in article 8D of the Act, the branch of the Maltese financial institution may commence its activities in the host Member State.

(10) The Maltese financial institution shall notify the competent authority, without undue delay, of the date from which it commences its activities through the branch in the relevant host Member State.

(11) The competent authority shall inform the European regulatory authority of the host Member State of the date from which the Maltese financial institution shall commence its activities through the branch in the relevant host Member State by means of the template set out in Annex VI to the Commission Delegated Regulation.

(12) The Maltese financial institution shall communicate to the competent authority, without undue delay, any relevant change regarding the information communicated in accordance with sub-regulation (2) including additional branches or entities to which activities are outsourced in the host Member States in which it operates and, in such cases, the provisions of sub-regulations (3) to (11) shall apply.

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Application for the exercise of European right by Maltese financial institutions agent and distributor.

11. (1) A Maltese financial institution may exercise a European right to provide payment services and, or distribute and, or redeem electronic money in another Member State through an agent and or to distribute and, or redeem electronic money in another Member State through a distributor if it satisfies the requirements set out in this regulation.

(2) A Maltese financial institution seeking to provide payment services in another Member State through an agent shall communicate to the competent authority:

(i) the name and address of the Maltese financial institution;

(ii) the licence number or registration number of the Maltese financial institution, as applicable;

(iii) the Member State in which the Maltese financial institution intends to provide payment services through the agent;

(iv) the name, the address and, where applicable, the unique identification code or number of the proposed agent;

(v) the payment services activities which the proposed agent intends to provide in another Member State on behalf of the Maltese financial institution;

(vi) a description of the internal control mechanisms that will be used by the proposed agent in order to comply with their obligations at law in relation to money laundering and terrorist financing under Directive (EU) 2015/849, which shall be updated without delay in the event of material changes to the particulars communicated at the initial notification;

(vii) the identity of the directors and persons responsible for the management of the proposed agent and, for agents other than payment service providers, evidence that they are fit and proper persons;

(viii) where the Maltese financial institution intends to outsource operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money to other entities in another Member State, the operational functions of payment services and, or of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in that Member State; and

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(ix) any other information which may be required in terms of Article 10(1) of the Commission Delegated Regulation.

(3) A Maltese financial institution seeking to distribute and, or redeem electronic money in another Member State through a distributor shall communicate to the competent authority:

(i) the name and address, of the Maltese financial institution;

(ii) the licence number or registration number of the Maltese financial institution, as applicable;

(iii) the Member State in which the Maltese financial institution intends to distribute and, or redeem electronic money through a distributor;

(iv) the name, the address and, where applicable, the unique identification code or number of the proposed distributor;

(v) whether the distributor intends to distribute and, or redeem electronic money by the Maltese financial institution;

(vi) a description of the internal control mechanisms that will be used by the proposed distributor in order to comply with their obligations at law in relation to money laundering and terrorist financing under Directive (EU) 2015/849, which shall be updated without delay in the event of material changes to the particulars communicated at the initial notification;

(vii) the identity of the directors and persons responsible for the management of the proposed distributor and, where applicable, for distributors other than payment service providers, evidence that they are fit and proper persons;

(viii) where the Maltese financial institution intends to outsource operational functions of the issuance and, or distribution and, or redemption of electronic money to other entities in another Member State, the operational functions of the issuance and, or distribution and, or redemption of electronic money which it will be outsourcing to other entities in that Member State; and

(ix) any other information which may be required in terms of the Commission Delegated Regulation.

(4) Within one month of receipt of all of the information referred to in sub-regulation (2) or (3), as applicable, the competent

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authority shall send to the European regulatory authority the said information by means of the templates set out in Annexes III and IV to the Commission Delegated Regulation.

(5) Where the European regulatory authority receives all the information referred to in sub-regulation (2) or (3), as applicable, from the competent authority in accordance with sub-regulation (4), it shall, in terms of Article 28(2) of the Payment Services Directive, within one month of receipt of the said information, assess that information and provide the competent authority with relevant information in connection with the intended provision of payment services and, or distribution and, or redemption of electronic money, as applicable, by the relevant Maltese financial institution in the exercise of a European right. The European regulatory authority shall, in terms of Article 28(2) of the Payment Services Directive, inform the competent authority in particular of any reasonable grounds for concern in connection with the intended engagement of an agent or distributor, as applicable, with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849.

(6) Where the competent authority does not agree with the assessment of the European regulatory authority, it shall provide the latter with the reasons for its decision.

(7) If the assessment of the competent authority, particularly in light of the information received from the European regulatory authority of the host Member State is not favourable, the competent authority shall refuse to register the agent or the distributor, as applicable, or shall withdraw the registration if already made.

(8) Within three months of receipt of all of the information referred to in sub-regulation (2) or (3), the competent authority shall communicate its decision to the European regulatory authority and to the Maltese financial institution.

(9) Upon communication to the European regulatory authority of its decision in terms of sub-regulation (8), the competent authority shall register the agent in the public register established and maintained by the competent authority in accordance with article 8D of the Act and shall publish in the said register the information referred to in sub-regulation (2)(i) to (v).

(10) Upon entry in the register referred to in article 8D of the Act, the Maltese financial institution may commence its activities in the host Member State through the agent.

(11) The Maltese financial institution shall notify the competent

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authority, without undue delay, the date from which it commences its activities through the agent and, or distributor, as applicable, in the relevant host Member State.

(12) The competent authority shall inform the European regulatory authority of the host Member State of the date from which the Maltese financial institution shall commence its activities through the agent and, or distributor, as applicable, in the host Member State by means of the template set out in Annex VI to the Commission Delegated Regulation.

(13) The Maltese financial institution shall communicate to the competent authority, without undue delay, any relevant change regarding the information communicated in accordance with sub-regulation (2) or (3) including additional agents and, or distributors, as applicable, or additional entities to which activities are outsourced in the host Member States in which it operates and, in such cases, the provisions of sub-regulations (4) to (12) shall apply.

Supervision of Maltese financial institutions exercising a European Right.

12. The competent authority shall provide the European regulatory authority of the host Member State with all essential and, or relevant information, in particular in the case of infringements or suspected infringements by an agent or a branch of a Maltese financial institution, and where such infringements occurred in the context of the freedom to provide services. In that regard, the competent authority shall communicate to the European regulatory authority, upon request, all relevant information and, on their own initiative, all essential information, including on the compliance with the conditions under Article 11(3) of the Payment Services Directive:

Provided that in order to carry out the controls and take the necessary steps provided for in articles 11A and 11B of the Act, in respect of the agent or branch of a Maltese financial institution located in the territory of another Member State, the competent authority shall also cooperate closely with the Central Bank and the European regulatory authority of the host Member State.

On-site inspections by the competent authority.

13. (1) Where Malta is the home Member State, the competent authority shall, with the assistance of the Central Bank where necessary, cooperate with the European regulatory authority of the host Member State in order to carry out the controls and take the necessary steps to ensure continued compliance in respect of an agent or branch located in another Member State in respect of a Maltese financial institution.

(2) By way of cooperation in accordance with sub-regulation (1), the competent authority shall notify the European regulatory

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authority of the host Member State whenever it intends to carry out an on-site inspection in the territory of the latter.

(3) Notwithstanding the provisions of sub-regulation (2), the competent authority may delegate to the European regulatory authority of the host Member State the task of carrying out on-site inspections of the Maltese financial institution concerned.

Measures in case of non-compliance, including precautionary measures.

14. (1) Where the competent authority, in accordance with Article 30(1) of the Payment Services Directive, receives information from any European regulatory authority of a host Member State, that a Maltese financial institution having agents or branches or distributors in the host Member State concerned, does not comply with Title II of the Payment Services Directive or with national law transposing Titles III or IV of the Payment Services Directive in the host Member State concerned, the competent authority shall, after having evaluated the information received from the European regulatory authority of the host Member State, without undue delay, take all appropriate measures to ensure that the Maltese financial institution puts an end to its irregular situation:

Provided that where the information received from a European regulatory authority of a host Member State relates to a failure to comply with Articles 95 or 96 of the Payment Services Directive, the appropriate measure referred to in this sub-article shall be taken in close cooperation with the Central Bank.

(2) The competent authority, or with respect to Articles 95 or 96 of the Payment Services Directive the competent authority in close cooperation with the Central Bank, shall communicate without delay to the European regulatory authority of the host Member State, and to any other European regulatory authority of any other Member State concerned, any measures taken in accordance with sub-article (1).

PART III - REVOCATION

Revocation of the European Passport Rights for Financial Institutions Regulations, 2011. S.L. 376.05.

15. (1) The European Passport Rights for Financial Institutions Regulations, 2011, hereinafter referred to as "the revoked regulations", are hereby revoked, and any references in any law to the revoked regulations shall be construed as references to these Regulations.

(2) Nothing in these regulations shall be deemed to affect anything done, or omitted to be done, under the revoked regulations prior to the coming into force of these regulations.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.08