VERŻJONI ELETTRONIKA

I assent.

(L.S.)

GEORGE ABELA
President

7th May, 2010

ACT No. II of 2010

AN ACT to amend various laws on Financial Institutions and other Financial Services and to implement Directive 2007/64/EC.

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 Financial Institutions and other Financial Services Laws (Amendment) Act, 2010 and to implement Directive 2007/64/EC. Short title.

PART I

AMENDMENT OF THE MALTA FINANCIAL SERVICES AUTHORITY ACT, CAP. 330

2. (1) This Part amends and shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as "the principal Act". Amendment of the Malta Financial Services Authority Act.

(2) The provisions of this Part shall come into force on the date of publication of this Act. Cap. 330.

3. Article 20A of the principal Act shall be amended as follows: Amendment of article 20A of the principal Act.

(a) article 20A thereof shall be re-numbered as subarticle (1) thereof;

(b) immediately after subarticle (1) thereof there shall be inserted the following new subarticle (2):

"(2) The Minister, acting on the advice of the competent authority, may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, prescribe anything that is to be or which may be prescribed and provide for any matter consequential, incidental to or connected with any of the above matters.".

PART II

AMENDMENT OF THE BANKING ACT, CAP. 371

Amendment of the Banking Act. Cap. 371.

4. (1) 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".

(2) The provisions of this Part shall come into force on the date of publication of this Act.

Amendment of article 30 of the principal Act.

5. In article 30 of the principal Act, for the words "or at any other time as may be exceptionally licensed by the competent authority -", there shall be substituted the words "or at any other time as may be authorised in writing by the competent authority -".

Amendment of the Schedule to the principal Act.

6. Activities 2 and 3 of the Schedule to the principal Act shall be substituted as follows:

Cap. 376.

"2. Payment Services as defined in the Financial Institutions Act;

3. Issuing and administering other means of payment (travellers' cheques, bankers' drafts and similar instruments) insofar as this activity is not covered by activity 2 above;".

PART III

AMENDMENT OF THE FINANCIAL INSTITUTIONS ACT, CAP. 376

Amendment of the Financial Institutions Act. Cap. 376.

7. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as "the principal Act".

(2) The provisions of this Part shall come into force on the date of publication of this Act.

Amendment of article 2 of the principal Act. Cap. 386.

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

(a) article 2 thereof shall be re-numbered as subarticle (1) thereof;

(b) in subarticle (1) as re-numbered:

(i) immediately after the words "In this Act, unless the context otherwise requires-" there shall be inserted the following new definition:

" "agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule to the Act;";

(ii) for the definition of "branch", there shall be substituted the following new definition:

" "branch" means a place of business other than the head office which is part of a financial institution not having a legal personality and which carries out directly some or all of the transactions, as authorised, inherent in the business of a financial institution; all the places of business set up in Malta by an institution with a head office in another Member State shall be regarded as a single branch;";

(iii) for the definition of "close links", there shall be substituted the following new definition:

" "close links" means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of

twenty per centum or more of the voting rights or capital of a body corporate;

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2 (2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or

(c) permanently to one and the same third person by a control relationship;";

(iv) for the definition of "control", there shall be substituted the following new definition:

" "control" in relation to a body corporate, is the power to determine in any manner the financial and operating policies of the body corporate";

(v) immediately after the definition of "credit facility", there shall be inserted the following new definition:

" "the Directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as may be amended from time to time, and includes any implementing measures that have been issued or may be issued thereunder;";

(vi) immediately after the definition of "director", there shall be inserted the following new definition:

" "EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;";

(vii) the definition of "equity share" shall be deleted;

(viii) for the definition of "financial institution", there shall be substituted the following new definition:

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

(ix) for the definition of "financial institutions directive", there shall be substituted the following new definition:

" "Financial Institutions Rule" means a Rule issued by the competent authority to regulate financial institutions in terms of powers arising under this Act, and "Rule" shall be read accordingly;", and for the words "financial institutions directive", "financial institutions directives" and, or "directives", wherever they appear in the principal Act, there shall be substituted the words "Financial Institutions Rule", "Financial Institutions Rules" and, or "Rules" respectively;

(x) for the definition of "group of companies", there shall be substituted the following new definition:

" "group of companies" means companies having a common holding company, and shall include the holding company itself;";

(xi) immediately after the definition of "holding company", there shall be inserted the following new definition:

" "initial capital" means paid up capital and reserves as defined in a Financial Institutions Rule;";

(xii) immediately after the definition of "licence", there shall be inserted the following new definition:

" "Member State" means a Member State of the European Communities;";

(xiii) immediately after the definition of "officer", there shall be inserted the following new definition:

" "overseas regulatory authority" means an authority which in a country or territory outside Malta exercises any function corresponding to the functions of the competent authority under this Act;";

(xiv) immediately after the definition of "own funds", there shall be inserted the following new definition:

" "payment institution" shall have the meaning assigned to it in the Second Schedule;";

(xv) for the definition of "qualifying shareholding", there shall be substituted the following new definition:

" "qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights, taking into account, the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12 (4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may

hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;";

(xvi) immediately after the definition of "subsidiary", there shall be inserted the following new definition:

" "third country" means a country that is not a Member State or an EEA state;";

(c) immediately at the end of the definition "trade bills", there shall be inserted the following new subarticle (2):

"(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.".

Amendment of article 3 of the principal Act.

9. Article 3 of the principal Act shall be amended as follows:

(a) in subarticle (2) (a) thereof, for the words "the activities listed in the Schedule to this Act", there shall be substituted the words "the activities listed in the First Schedule to this Act";

(b) immediately after subarticle (4) thereof, there shall be inserted the following new subarticles (5) and (6):

"(5) A licensed financial institution may not take deposits or other repayable funds within the meaning of the Banking Act.

(6) Where a person is already licensed under the Banking Act or the Investment Services Act to carry out an activity listed in the First Schedule to this Act, such person shall not require a licence for such an activity under this Act.".

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Amendment of article 4 of the principal Act.

10. In subarticle (3) of article 4 of the principal Act, for the words "necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.", there shall be substituted the words "necessary for the purposes of determining an application for a licence.".

Amendment of article 5 of the principal Act.

11. Article 5 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "its own funds whether in euro or in any other currency", there shall be substituted the words "its initial capital whether in Euro or in any other currency", and for the words "the competent authority as appropriate", there shall be substituted the words "the competent authority in a Rule and as may be appropriate";

(ii) paragraph (d) thereof shall be re-numbered as paragraph (e);

(iii) immediately after paragraph (c) thereof, there shall be inserted the following new paragraph (d):

"(d) the competent authority is satisfied that the financial institution has sound and prudent management, and has robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the institution;";

(iv) for the proviso to paragraph (e) thereof, as re-numbered, there shall be substituted the following:

"Provided that the company shall, after being licensed under this Act, inform the competent

authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this paragraph on a continuous basis.";

(b) for subarticle (4) thereof, there shall be substituted the following new subarticle:

"(4) (a) In granting a licence the competent authority may subject a financial institution to such conditions as it may deem appropriate and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act and to better transpose the provisions of the Directive, the competent authority may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Such Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate.";

(c) for subarticle (6) thereof, there shall be substituted the following new subarticle:

"(6) Where a licensed financial institution proposes to engage in business activities not listed in any of the Schedules, the competent authority may require the establishment of a separate entity, where the proposed activities may in the opinion of the competent authority impair or threaten to impair either the financial soundness of the institution or the ability of the competent authority to monitor the financial institution's compliance with all the obligations laid down in this Act or any regulations and Rules issued thereunder.";

(d) immediately after subarticle (6) thereof, there shall be inserted the following new subarticle (7):

"(7) Where the applicant is a financial institution licensed or holding an equivalent authorisation in another country, it shall have its head office in the same country where it is registered and, or licensed.".

Addition of new article 5A to the principal Act.

12. Immediately after article 5 of the principal Act, there shall be inserted the following new article 5A:

"Own funds.

5A. (1) Without prejudice to the minimum level of the capital requirements laid down in a Financial Institutions Rule, the own funds of a financial institution may not fall below the amount of initial capital or any such amount as may be required by the competent authority from time to time, unless such a reduction is of a temporary nature and is effected after having obtained the prior approval of the competent authority.

(2) Notwithstanding the initial capital requirements as may be set out in a Financial Institutions Rule, financial institutions providing any of the services listed in the Second Schedule to the Act shall at all times hold own funds calculated in accordance with one of the three methods laid down in the said Rule.

(3) Where the amount of own funds of a financial institution falls below the amount established under subarticles (1) and (2), the competent authority shall require that financial institution to take the necessary measures to restore the level of own funds within such period as the competent authority may determine:

Provided that if the level of own funds of a financial institution is not restored within the determined period, the competent authority may, in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 6(4).".

Amendment of article 6 of the principal Act.

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

(a) for subarticle (1) thereof, there shall be substituted the following new subarticle:

"(1) The authority shall withdraw a licence issued to a financial institution where the latter:

(a) expressly renounces the licence,

(b) does not commence business pursuant to the licence within twelve months of its issue, or has ceased to engage in business for more than six months or within such other period of time as may be specified in the licence;

(c) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act;

(d) no longer fulfils the conditions required for the granting of the licence;

(e) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved;

(f) has ceased to operate as a result of a merger with another financial institution;

(g) is a branch of an institution incorporated outside Malta and the overseas regulatory authority in the country of incorporation withdrew the authorisation of the institution; or

(h) would constitute a threat to the stability of the payment system by continuing its payment services within the meaning of the Second Schedule to this Act.";

(b) subarticles (2), (3), (4), (5), (6) and (7) thereof shall be re-numbered as subarticles (3), (4), (5), (6), (7) and (8) thereof;

(c) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle (2):

"(2) Where the competent authority withdraws a licence, it shall inform the financial institution of the reasons for the withdrawal of a licence and notice of such withdrawal shall be made public.";

(d) for subarticle (3) thereof as re-numbered, there shall be substituted the following new subarticle:

"(3) The competent authority may impose restrictions or revoke a licence in any of the following circumstances:

(a) if the holder no longer possesses sufficient own funds;

(b) if the holder is likely to become unable to meet its obligations;

(c) if the holder has insufficient assets to cover its liabilities; or

(d) if the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability of the financial system.";

(e) for subarticle (4) thereof as re-numbered, there shall be substituted the following new subarticle:

"(4) Restrictions imposed by the competent authority pursuant to subarticle (3) shall be such restrictions as the competent authority shall consider appropriate for the proper compliance by the financial institution with the provisions of this Act or any regulations and Rules issued under this Act and the conditions, if any, of its licence and for the protection of the integrity of the country's financial system and may include-

(a) the removal of any officer of the financial institution or the replacement of any officer by such person as the competent authority may designate;

(b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the financial institution to divest himself of all or part of that holding;

(c) the requirement for the financial institution to take or refrain from taking any action;

(d) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the First Schedule to this Act or be permitted to undertake any transaction or transactions or any activity listed in the First Schedule to this Act only upon such terms as the competent authority may prescribe.";

(f) in subarticle (6) thereof as re-numbered, for the words "after consultation with the competent authorities of the country of incorporation,", there shall be substituted the words "after consultation with the overseas regulatory authority of the country of incorporation,";

(g) in subarticle (7) thereof as re-numbered, for the words "shall inform the competent authorities of the country of any foreign states in which the financial institution or its subsidiaries are carrying on any activity under the Schedule to this Act", there shall be substituted the words "shall inform the overseas regulatory authorities of the country in which the financial institution or its subsidiaries are carrying on any activity under the First Schedule to this Act".

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Amendment of article 8 of the principal Act.

14. For article 8 of the principal Act there shall be substituted the following:

"Opening of branches and exercise of European Rights.

8. (1) A financial institution shall inform the competent authority in writing before opening a new branch in Malta.

(2) A financial institution incorporated in Malta wishing to open a branch, agency or office outside Malta and a financial institution incorporated in Malta wishing to set up or acquire any subsidiary in or outside Malta shall require the prior written approval of the competent authority.

(3) Subarticle (2) shall not apply to any licensed financial institution which:

(a) provides any of the activities listed in the First Schedule to this Act, other than paragraph 4 thereof,

(b) fulfils the conditions of regulation 13 of the European Rights Regulations, and

(c) wishes to provide services in a Member State or an EEA State, in exercise of a European right; and accordingly is subject to the European Rights Regulations.

(4) Subarticle (2) shall not apply to any licensed financial institution carrying out payment services wishing to provide services for the first time in a Member State or an EEA State, in exercise of a European right.

(5) Licensed financial institutions referred to in subarticle (4) shall inform the competent authority of their intention to exercise a European right and the competent authority shall within one month of receiving this information, inform the overseas regulatory authority concerned of:

(a) the name and address of the financial institution;

(b) the names of those responsible for the management of the branch;

(c) its organisational structure; and

(d) the kind of services it intends to provide in the territory of the Member State or EEA State.

(6) In this article:

(a) "European Right" refers to the rights described in the European Rights Regulations; and

(b) "European Rights Regulations" means the European Passport Rights for Credit Institutions Regulations, 2004.". L.N. 88 of 2004.

Amendment of article 8A of the principal Act.

15. For article 8A of the principal Act there shall be substituted the following:

"Agency Arrangements.

8A. (1) No financial institution shall enter into agency arrangements, with third parties, unless it has communicated the following information to the competent authority:

(a) the name and address of the agent;

(b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligation in relation to Money Laundering and Terrorist Financing under the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008; and Cap. 373. L.N. 180 of 2008.

(c) the identity of the directors and persons responsible for the management of the agent to be used in the provision of services, and evidence that they are suitable persons:

Provided that a person who is appointed as agent of a financial institution shall only act as agent:

(i) in respect of those activities for which the financial institution to which he will act as agent, is licensed under this Act;

(ii) to not more than one person licensed under this Act; and

(iii) subsequent to the verification by the competent authority of the information provided by the financial institution.

(2) The competent authority may subject the person who will be appointed as agent to any of the obligations imposed on the company licensed under this Act.

(3) The competent authority may list the agent in the public register as provided for in article 8D and if it refuses to list such agent it shall inform the financial institution in writing of the reasons for the refusal:

Provided that if the competent authority is not satisfied that the information provided to it is correct, it shall refuse to list the agent in the public register as provided for in article 8D.".

Addition of new articles 8B, 8C and 8D to the principal Act.

16. Immediately after article 8A of the principal Act, there shall be inserted the following new articles 8B, 8C and 8D:

"Outsourcing of operational functions.

8B. (1) Where a financial institution intends to outsource operational functions of its services and, or activities, such outsourcing provider shall require the recognition of the competent authority:

Provided that the outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of its internal control and the ability of the competent authority to monitor the financial institution's compliance with all obligations provided for under this Act, and any Regulation or Rules made thereunder.

(2) For the purpose of this Act or any Regulations or Rules issued thereunder, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a financial institution with the requirements of its licence or its other obligations under this Act or any Regulations or Rules issued thereunder, or its financial performance, or the soundness or continuity of its services:

Provided that the competent authority shall ensure that, when financial institutions outsource important operational functions, the financial institutions comply with the following conditions:

(a) the outsourcing shall not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the financial institution towards its service users under this Act, Regulations or Rules issued under the Act, shall not be altered;

(c) the conditions with which the financial institution must comply in order to be licensed in accordance with this Act, Regulations or Rules issued under this Act, and to remain so, must not be undermined; and

(d) none of the other conditions subject to which the financial institution's licence was granted must be removed or modified.

(3) The competent authority may issue a Rule, laying down the requirements for the recognition of the outsourcing service providers and the provision of such outsourced services.

(4) Where the financial institution licensed or holding an equivalent authorisation in another Member State or EEA State and benefitting from the right of establishment and freedom to provide services, carries out the activities listed in the Schedules to the Act in Malta through a branch or by engaging an agent, as the case may be, the financial institution shall follow the procedures set out in a Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch or agent, money laundering or terrorist financing, within the meaning of Council Directive 2005/60/EC, is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or terrorist financing, it shall inform the home Member State, which may refuse to register the branch or agent, or may withdraw the registration, if already made, of the branch or agent.

Liability.

8C. (1) Where financial institutions rely on third parties for the performance of operational functions, those financial institutions shall take reasonable steps to ensure that the requirements of this Act are complied with.

(2) Financial institutions shall remain fully liable for any acts of their employees, or any agent, branch or entity to which activities may have been outsourced.

Registration.

8D. (1) It shall be the duty of the competent authority to maintain a public register of all licensed financial institutions or financial institutions holding an equivalent authorisation in another country, and their branches and agents, within which there shall be identified the services for which the financial institution is licensed. Such records shall be kept for a period of time as may be laid out in a Rule.

(2) Such register shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis.".

Amendment of article 9 of the principal Act.

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

(a) subarticle (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "to acquire or dispose of a qualifying shareholding in a financial institution or to increase or reduce such qualifying shareholding", there shall be substituted

the words "to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to increase or reduce, directly or indirectly, such qualifying shareholding", and for the words "falls below 20 per cent, 33 per cent or 50 per cent", there shall be substituted the words "falls below 20 per cent, 30 per cent or 50 per cent";

(ii) for the words "without obtaining the prior consent of the competent authority or, alternatively, if after having obtained such consent", there shall be substituted the words "without obtaining the prior approval of the competent authority or, alternatively, if after having obtained such approval";

(iii) for the words "any other penalty which may be imposed under this Act,", there shall be substituted the words "any other penalty which may be imposed under this Act or any regulations or Rules issued thereunder,";

(b) in subarticle (2) thereof, for the words "the competent authority to consider any request made by such person for the consent of the competent authority under the provisions of this article to constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act.", there shall be substituted the words "the competent authority to consider whether any request made by such person for the approval of the competent authority under the provisions of this article constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act or any regulations and Rules issued under this Act.";

(c) in subarticle (3) thereof, for the words "shares listed on a recognised investment exchange in terms of the Financial Markets Act.", there shall be substituted the words "shares listed on a regulated market in terms of the Financial Markets Act, or on an equivalent market in a third country.";

(d) in subarticle (4) thereof, for the words "he shall before taking such action notify the competent authority. The competent authority shall within two months of receiving such notification give its consent or otherwise", there shall be substituted the words "he shall before taking such action

notify the competent authority in writing. The competent authority shall within two months of receiving such notification give its approval or otherwise";

(e) in subarticle (5) (a) thereof, for the words "shall notify to the competent authority full particulars of any person", there shall be substituted the words "shall notify to the competent authority in writing the full particulars of any person".

Amendment of article 10 of the principal Act.

18. In subarticle (1) of article 10 of the principal Act, for the words "A financial institution shall not-", there shall be substituted the words "Without prejudice to the provisions of paragraph 3(e) of the Second Schedule to the Act, a financial institution shall not-".

Amendment of article 12 of the principal Act.

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

(a) for subarticle (2) thereof, there shall be substituted the following new subarticle:

"(2) The Minister, acting on the advice of the competent authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

(a) amend any of the Schedules to this Act;

(b) transpose, implement and give effect to the requirements of the Directive.";

(b) immediately after subarticle (2) thereof there shall be inserted the following new subarticle (3):

"(3) Where regulations have been issued in terms of this article, the competent authority may issue Rules within the meaning of this Act for the better carrying out and to better implement the provisions of the regulations.".

Deletion of article 12A of the principal Act.

20. Article 12A of the principal Act shall be deleted.

Renumbering of article 12B of the principal Act.

21. Article 12B of the principal Act shall be re-numbered as article 12A of the principal Act.

Amendment of article 13 of the principal Act.

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

(a) subarticle (1) thereof shall be substituted as follows:

"(1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and to ensure that financial institutions carrying on business in Malta comply with this Act, regulations, directives and Rules issued under this Act and with the conditions of their licences. In carrying out such functions, the competent authority shall ensure that the controls exercised for checking continued compliance in terms of this Act, or any Regulations and Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed.

Such functions consist inter alia of the following:

(a) to require the financial institution in terms of article 14 of this Act to provide any information needed to monitor compliance;

(b) to carry out on-site inspections at the financial institution, at any agent or branch providing licensable activities under the responsibility of the financial institution, or at any entity to which activities are outsourced;

(c) to suspend or withdraw authorisation in cases referred to in article 6 of the Act; and

(d) notwithstanding the requirements of articles 5 and 5A, to take all necessary steps to ensure sufficient capital for the activities carried out by a financial institution, in particular where activities of a financial institution other than those listed in the Schedule to the Act impair or are likely to impair the financial soundness of the institution.";

(b) in subarticle (3) thereof, for the words "shall make copies thereof available to the public.", there shall be substituted the words "shall make copies thereof available to the public upon request.".

Amendment of article 14 of the principal Act.

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

(a) in subarticle (1) thereof, for the words "such information and statements relating to its branches in or outside Malta as the competent authority may require in the discharge of its duties under this Act or any other law.", there shall be substituted the words "such information and statements as the competent authority may require in the discharge of its duties under this Act or any regulations and Rules issued thereunder or any other law.";

(b) subarticle (5) thereof shall be deleted;

(c) subarticles (3) and (4) thereof shall be re-numbered as subarticles (4) and (5) respectively;

(d) immediately after subarticle (2) thereof, there shall be inserted the following new subarticle (3):

"(3) Financial institutions providing services listed under the Second Schedule to the Act shall provide separate accounting information for payment services listed in point 2 and point 3 of the said Schedule, subject to an auditor's report.";

(e) in subarticle (6), paragraph (c) thereof, for the words "may reasonably require for the performance of its functions under this Act.", there shall be substituted the words "may reasonably require for the performance of its functions under this Act or any regulations and Rules issued thereunder.";

(f) subarticle (12) thereof shall be amended as follows:

(i) in paragraph (d) thereof, for the words "a controller of that financial institution; or", there shall be substituted the words "a controller of that financial institution;";

(ii) in paragraph (e) thereof, for the words "a qualifying shareholder of that financial institution,", there shall be substituted the words "a qualifying shareholder of that financial institution; or";

(iii) immediately after paragraph (e) thereof, there shall be inserted the following new paragraph (f):

"(f) an agent appointed in terms of article 8A of this Act.";

(iv) immediately after the new paragraph (f) thereof, the words "and the provisions of this article shall apply to that person." shall be deleted;

(g) in subarticle (13) thereof, for the words "is guilty of committing any offence under this Act.", there shall be substituted the words "is guilty of committing any offence under this Act or any regulations and Rules issued thereunder.".

Amendment of article 17 of the principal Act.

24. Subarticle (1) of article 17 of the principal Act shall be amended as follows:

(a) for the words "that any of the circumstances indicated in article 6(2) apply", there shall be substituted the words "that any of the circumstances indicated in article 6(3) apply", and for the words "revoke a licence under the provisions of article 6(2)", there shall be substituted the words "revoke a licence under the provisions of article 6(3)";

(b) in paragraph (d) thereof, for the words "appoint a competent person to assume control of the business", there shall be substituted the words "appoint a competent person to take over the business".

Amendment of article 19 of the principal Act.

25. In paragraph (a) of article 19 of the principal Act, for the words "is required to be communicated by virtue of this Act;", there shall be substituted the words " is required to be communicated by virtue of this Act or any regulations and Rules issued thereunder;".

Amendment of article 20 of the principal Act.

26. Article 20 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "may share its supervisory duties with other foreign competent authorities in the case of a financial institution", there shall be substituted the words "may share its supervisory duties with other overseas regulatory authorities in the case of a financial institution";

(b) for subarticle (2) thereof, there shall be substituted the following new subarticle:

"(2) The competent authority shall, further, exchange information with the following:

(a) overseas regulatory authorities responsible for the licensing and supervision of financial institutions carrying out payment services solely for their supervisory and regulatory purposes or for such other purposes as may be specifically agreed upon with the competent authority ;

(b) the European Central Bank, other Member States' central banks and the Central Bank, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) other relevant authorities designated under Directive 2007/64/EC, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to payment service providers, including measures regulating the protection of individuals with regard to the processing of personal data and the prevention of money laundering and terrorist financing.";

(c) for subarticle (3) thereof, there shall be substituted the following new subarticle:

"(3) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, disclose information to the overseas regulatory authorities, in particular, in the case of infringements or suspected infringements by an agent, a branch, or an entity to which activities are outsourced:

Provided that the competent authority shall communicate upon request, all relevant information and, on their own initiative, all the requested information.";

(d) for subarticle (4) thereof, there shall be substituted the following new subarticle:

"(4) The competent authority shall notify the relevant overseas regulatory authority whenever it intends to carry out an on-site inspection in another Member State:

Provided that the competent authority may upon agreement delegate to the relevant overseas regulatory authority, the task of carrying out on-site inspections of the institution concerned.";

(e) in subarticle (5) thereof, for the words "disclose to the Central Bank any information", there shall be substituted the words "disclose to the European Central Bank and, or the Central Bank any information", and for the words "for the discharge of the duties of the Central Bank under the law.", there shall be substituted the words "for the discharge of the duties of the European Central Bank and, or the Central bank under the law.";

(f) for subarticle (8) thereof, there shall be substituted the following new subarticle:

"(8) The competent authority and the Central Bank shall periodically discuss matters of mutual interest regarding financial institutions, and they shall at all times afford such co-operation to each other as may be necessary for the discharge of their respective duties.".

Amendment of article 22 of the principal Act.

27. Article 22 of the principal Act shall be amended as follows:

(a) in subarticle (1) (f) thereof, for the words "any person under this Act,", there shall be substituted the words "any person under this Act or any regulations and Rules issued thereunder,";

(b) subarticle (3) thereof shall be deleted;

(c) subarticle (2) thereof shall be re-numbered as subarticle (3) thereof;

(d) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle (2):

"(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations or Rules made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.";

(e) for subarticle (4) thereof, there shall be substituted the following new subarticle:

"(4) A person guilty of an offence under the provisions of this article shall be liable on conviction to a fine (multa) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.".

Amendment of article 23 of the principal Act.

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

(a) subarticles (1) and (2) thereof shall be re-numbered as subarticles (2) and (3) respectively;

(b) immediately before subarticle (2) as re-numbered there shall be inserted the following new subarticle (1):

"(1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any person as the case may be, an administrative penalty which may not exceed ninety-

three thousand and one hundred seventy four euro and ninety-four cents (93,174.94).".

Amendment of article 24 of the principal Act.

29. In paragraph (a) of article 24 of the principal Act, for the words "licence revoked under article 6(2) and", there shall be substituted the words "licence revoked under article 6(3) and".

Amendment of article 25 of the principal Act.

30. Article 25 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "Nothing in this Act shall", there shall be substituted the words "Nothing in this Act or any regulations and Rules issued thereunder shall";

(b) in subarticle (2) thereof, for the words "under this Act except -", there shall be substituted the words "under this Act or any regulations and Rules issued thereunder except -";

(c) for subarticle (4) thereof, there shall be substituted the following new subarticle:

"(4) Officers of the competent authority, including past and present officers, as well as auditors or experts acting on behalf of the competent authority, shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties and which is governed by the obligation of professional secrecy, unless such disclosure of information be done in summary or collective form, so as not to enable the identity of the financial institution, to whom such information relates, to be ascertained:

Provided that the said officers, auditors or experts may divulge such information for the purpose of the performance of their duties or the exercise of their functions, or when lawfully required to do so by any court or under a provision of any law.";

(d) in subarticle (6) thereof, for the words "the activities referred to in the Schedule.", there shall be substituted the words "the activities referred to in the Schedule issued under the Banking Act, 1994.".

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Amendment of the sub-title preceding article 26 of the principal Act.

31. The sub-title "MISCELLANEOUS" immediately preceding article 26 shall be substituted by the new sub-title "CONSUMER COMPLAINTS".

Substitution of article 26 of the principal Act.

32. For article 26 of the principal Act, there shall be substituted the following new article:

"Investigation of complaints by the Consumer Complaints Manager.

Cap. 330.

26. (1) (a) The Consumer Complaints Manager appointed under article 20 of the Malta Financial Services Authority Act shall have the function of investigating complaints from a payment service user arising out of, or in connection with, any alleged infringement by a service provider of the provisions of this Act implementing the Directive.

Cap. 387.

(b) The provisions of article 20 of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, to complaints made under this article.

(c) Complaints from a payment service user under subarticle 1(a) may include complaints from interested parties, within the meaning of the Directive, as well as complaints from consumer associations.

(2) (a) A dispute between a payment service user and payment service provider may, at the discretion of the payment service user, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.

Cap. 378.

(b) Reference of a dispute to arbitration in accordance with paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.

(c) The Consumer Complaints Manager shall, in his reply to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article:

Provided that any action taken by the Consumer Complaints Manager shall be without prejudice to the right of a consumer, within the meaning of the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal established under that Act, or to exercise any other rights under that Act.

(3) "Payment services user", "payment service provider" and "payment transaction" shall have the meaning assigned to the terms in the Second Schedule to the Act.".

Inserts a new sub-title preceding article 27 of the principal Act.

33. Immediately after article 26 of the principal Act there shall be inserted the new sub-title "MISCELLANEOUS".

Amendment of article 27 of the principal Act.

34. For article 27 of the principal Act, there shall be substituted the following new article:

"Objective.

27. The objective of this Act is, in part, to implement the provisions of the Directive of the European Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and shall be interpreted and applied accordingly.".

Amendment of the Schedule to the principal Act.

35. For the Schedule to the principal Act, there shall be substituted the following:

"FIRST SCHEDULE

(Article 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);

2. Financial leasing;

3. Venture or risk capital;

4. Payment services as defined in the Second Schedule;

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5. Issuing and administering other means of payment (travellers cheques, bankers' drafts and similar instruments) in so far as this activity is not covered by point 4 above;

6. Guarantees and commitments;

7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, Certificates of deposits and similar instruments);
(b) foreign exchange;
(c) financial futures and options;
(d) exchange and interest rate instruments;
(e) transferable instruments;

8. Underwriting share issues and the participation in such issues;

9. Money broking.".

Addition of new Second Schedule to the principal Act.

36. Immediately after the First Schedule, there shall be inserted the following new Schedule:

"SECOND SCHEDULE

FINANCIAL INSTITUTIONS CARRYING OUT PAYMENT SERVICES

Objective

The purpose of this Schedule is to set out the regulatory framework under which payment services within the means of issuing and administering payment as referred to in the First Schedule to this Act, may be carried out.

Interpretation

1. In this Schedule, unless the context otherwise requires, the following definitions shall apply -

"direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, or payee's payment service provider or to the payer's own payment service provider;

"funds" means banknotes and coins, scriptural money and electronic money;

"group" means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.

"money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

"outsourcing" means a licensed entity's use of a third party (the outsourcing service provider) to perform activities that would normally be undertaken by the licensed entity, now or in the future. The supplier may or may not be a licensed entity;

"outsourcing service provider" means the supplier of goods, services or facilities, which may or may not be a licensed entity, and which may be an affiliated entity within a corporate group or an entity that is external to the group;

"payee" means a person who is the intended recipient of funds which have been the subject of a payment transaction;

"payer" means either a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a person who places an order for a payment transaction;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment institution" means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Directive to provide and execute payment services;

"payment instrument" means any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;

"payment order" means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

"payment service" means the business activity referred to in paragraph 4 of the First Schedule and includes the activities that a payment institution may carry out in terms of this Schedule;

"payment service provider" means undertakings referred to in this Act;

"payment service user" means a person who makes use of a payment service in the capacity of either payer or payee, or both;

"payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;

"payment transaction" means the act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

List of Activities

2. Payment institutions may engage in the following activities:

(a) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;

(b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

(c) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:

(i) execution of direct debits, including one-off direct debits;
(ii) execution of payment transactions through a payment card or a similar device;
(iii) execution of credit transfers, including standing orders;

(d) Execution of payment transactions where the funds are covered by a credit line for a payment service user:

(i) execution of direct debits, including one-off direct debits;
(ii) execution of payment transactions through a payment card or a similar device;
(iii) execution of credit transfers, including standing orders;

(e) Issuing and/or acquiring of payment instruments;

(f) Money remittance;

(g) Execution of payment transactions where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user and the supplier of the goods and services;

3. The following additional activities may also be carried out by a payment institution:

(a) The provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services strictly in relation to payment services, safekeeping activities, and storage and processing of data;

(b) The operation of payment systems;

(c) Without prejudice to the provisions of Article 5 (6) of the Act, business activities other than the provision of payment services;

(d) When payment institutions engage in the provision of payment services, they may only hold payment accounts used exclusively for transactions; any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2 of the Banking Act;

(e) Payment institutions may grant credit related to payment services referred to in paragraphs (d), (e) or (g) of paragraph (2) of this Schedule only if the following requirements are met:

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction; and

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months; and

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

(iv) the own funds of the payment institution are at all times, to the satisfaction of the supervisory authority, appropriate in view of the overall amount of credit granted.”.

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Savings.

37. (1) This article applies to persons who on the coming into force of this Act hold a licence as a financial institution carrying out money transmission services, and after the coming into force of this Act wish to provide payment services in terms of the Second Schedule.

(2) Such persons need not re-apply for a new licence under the principal Act to carry out payment services activities, provided they have given to the satisfaction of the competent authority such information as it may request within such period as it may prescribe. Upon the lapse of a transitional period to be established by notice by the competent authority, such persons may only carry out payment services activities in accordance with the provisions of the principal Act, as amended by this Act.

Passed by the House of Representatives at Sitting No. 213 of 3rd May, 2010.

MICHAEL FRENDO
Speaker

PAULINE ABELA
Clerk to the House of Representatives

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 riċiklata — *Printed at the Government Printing Press on recycled paper*

Prezz/*Price*
€3.35