A 582

I assent.

(L.S.) **GEORGE VELLA**
President

14th July, 2023

ACT No. XXV of 2023

AN ACT to provide for the establishment of a framework for crowdfunding service providers for business and the requirements for the provision of crowdfunding services, for the organisation, authorisation and supervision of crowdfunding service providers, for the operation of crowdfunding platforms as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the European Union.

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:-

ARRANGEMENT OF THE ACT

		Articles
Part I	Preliminary	1 - 4
Part II	Authorisation Requirements	5 - 11
Part III	Ongoing Obligations	12 - 15
Part IV	Regulatory and Investigatory Powers	16 - 26
Part V	Cooperation with Other Authorities	27 - 30
Part VI	Appeals, Sanctions and Confidentiality	31 - 34
Part VII	Amendments to the Financial Markets Act	35 - 37
Part VIII	Amendments to the Investment Services Act	38 - 41

PART I
PRELIMINARY

Short title, applicability and purpose.

1. (1) The short title of this Act is the Crowdfunding Service Providers Act, 2023.

(2) The applicability and purpose of this Act is to implement the relevant provisions of the ECSP Regulation as herein defined, and they shall be interpreted and applied accordingly.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:

"admitted instruments for crowdfunding purposes" shall have the same meaning as that assigned to it in paragraph (n) of Article 2(1) of the ECSP Regulation;

"client" shall have the same meaning as that assigned to it in paragraph (g) of Article 2(1) of the ECSP Regulation;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"crowdfunding offer" shall have the same meaning as that assigned to it in paragraph (f) of Article 2(1) of the ECSP Regulation;

"crowdfunding platform" shall have the same meaning as that assigned to it in paragraph (d) of Article 2(1) of the ECSP Regulation;

"crowdfunding project" shall have the same meaning as that assigned to it in paragraph (l) of Article 2(1) of the ECSP Regulation;

"crowdfunding service provider" shall have the same meaning as that assigned to it in paragraph (e) of Article 2(1) of the ECSP Regulation;

"crowdfunding service" shall have the same meaning as that assigned to it in paragraph (a) of Article 2(1) of the ECSP Regulation;

"ECSP Regulation" means Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, as may be amended from time to time, and includes any

implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"ESMA" means the European Securities and Markets Authority, established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"European regulatory authority" means the body or bodies designated by a Member State or EEA State other than Malta in accordance with Article 29 of the ECSP Regulation to carry out the functions and duties provided for in the ECSP Regulation;

"individual portfolio management of loans" shall have the same meaning as that assigned to it in paragraph (c) of Article 2(1) of the ECSP Regulation;

"investor" shall have the same meaning as that assigned to it in paragraph (i) of Article 2(1) of the ECSP Regulation;

"loan" shall have the same meaning as that assigned to it in paragraph (b) of Article 2(1) of the ECSP Regulation;

"management body" means the body or bodies of a licence holder which are appointed in accordance with national law and are empowered to set the strategy, objectives and overall direction of the licence holder, and oversee and monitor management decision making, and includes the persons who effectively direct the business of the licence holder;

"marketing communications" shall have the same meaning as that assigned to it in paragraph (o) of Article 2(1) of the ECSP Regulation;

"the Minister" means the Minister responsible for the regulation of financial services;

"overseas regulatory authority" means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;

Cap. 330.

"project owner" shall have the same meaning as that assigned to it in paragraph (h) of Article 2(1) of the ECSP Regulation;

"qualifying shareholding" means a direct or indirect holding in a company which represents ten *per centum* (10%) or more of the share capital or of the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of the 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC taking into account the conditions regarding the aggregation thereof laid in 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;

"Regulation (EU) No 1095/2010" means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Rules" means Rules issued by the competent authority in accordance with this Act;

"transferable securities" shall have the same meaning as that assigned to it in paragraph (m) of Article 2(1) of the ECSP Regulation;

"working days" means days which shall not include Saturdays and the days referred to in the National Holidays and other Public Holidays Act. Cap. 252.

(2) Words and expressions used in this Act which are also used in the ECSP Regulation but which are not defined herein, shall have the same meaning as that assigned to them in the ECSP Regulation.

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

3. The provisions of this Act and any regulations or Rules issued thereunder shall not apply to: Applicability.

(a) crowdfunding services that are provided to project

owners that are consumers, as defined in point (a) of Article 3 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC;

(b) other services related to a crowdfunding service and that are provided in accordance with national law;

(c) crowdfunding offers with a consideration of more than five million euro (€5,000,000), which shall be calculated over a period of twelve (12) months as the sum of:

(i) the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and

(ii) the total consideration of offers to the public of transferable securities made by the project owner referred to in sub-paragraph (i) in its capacity as an offeror pursuant to the exemption under Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

Competent authority.

4. (1) The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of the ECSP Regulation, this Act and any regulations and Rules issued thereunder.

(2) The competent authority shall also carry out the functions and duties as competent authority for all purposes of the ECSP Regulation.

PART II
AUTHORISATION REQUIREMENTS

Authorisation as a crowdfunding service provider.

5. (1) Without prejudice to Article 18 of the ECSP Regulation, no crowdfunding services shall be provided in Malta unless they are provided by a legal person which is duly authorised by the competent authority or any European regulatory authority as a crowdfunding services provider.

(2) No legal person established in Malta shall provide, or hold itself out as providing, crowdfunding services unless it is duly

authorised by the competent authority as a crowdfunding services provider.

(3) Notwithstanding anything contained in any other law, a legal person shall not require any authorisation, including a licence under the Banking Act, any exemption or any dispensation in connection with the provision of crowdfunding services in the following situations: Cap. 371.

(a) for project owners that in respect of loans facilitated by the crowdfunding service provider accept funds from investors; or

(b) for investors that grant loans to project owners facilitated by the crowdfunding service provider:

Provided that this sub-article shall not apply where a crowdfunding service provider, a project owner or an investor is authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

6. (1) A legal person established in Malta intending to provide crowdfunding services shall apply to the competent authority for authorisation as a crowdfunding service provider. Application for authorisation.

(2) The application referred to in sub-article (1) shall contain all the information set out in Article 12(2) of the ECSP Regulation.

(3) The competent authority shall, within twenty-five (25) working days of receipt of the application referred to in sub-article (1), assess whether that application is complete by verifying that the information referred to in sub-article (2) has been submitted. Where the application is not complete, the competent authority shall set a deadline by which the prospective crowdfunding service provider shall provide the missing information.

(4) Where an application referred to in sub-article (1) remains incomplete after the deadline referred to in sub-article (3), the competent authority may refuse to review the application and, in the event of such refusal, shall return the submitted documents to the prospective crowdfunding service provider.

(5) Where an application referred to in sub-article (1) is complete, the competent authority shall immediately notify the

prospective crowdfunding service provider thereof.

(6) The competent authority shall, within three (3) months from the date of receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements set out in the ECSP Regulation, and in this Act and any regulations and Rules issued thereunder, and shall adopt a fully reasoned decision granting or refusing to grant authorisation as a crowdfunding service provider:

Provided that the assessment to be carried out in terms of this sub-article shall take into account the nature, scale and complexity of the crowdfunding services that the prospective crowdfunding service provider intends to provide.

(7) The competent authority shall notify the prospective crowdfunding service provider of its decision to grant or refuse to grant authorisation as a crowdfunding service provider within three (3) working days of the date of the said decision.

(8) In granting an authorisation under this article, the competent authority may subject a crowdfunding service provider to such conditions as it may deem appropriate and having granted such an authorisation, it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(9) The competent authority shall establish a register of all holders of an authorisation as a crowdfunding service provider which shall be publicly available. This register shall also specify the crowdfunding services which every crowdfunding service provider is authorised to provide and shall be updated on a regular basis.

Scope of authorisation.

7. (1) An authorisation as a crowdfunding service provider granted by the competent authority in terms of article 6 shall specify the crowdfunding services which the crowdfunding service provider is authorised to provide.

(2) A crowdfunding service provider intending to extend its business to additional crowdfunding services not foreseen at the time of the authorisation granted to it under article 6 shall submit a request for the extension of its authorisation to the competent authority by complementing and updating the information referred to in article 6(2):

Provided that a request for the extension of an authorisation made in terms of this sub-article shall be processed in accordance with Article 12(4) to (11) of the ECSP Regulation.

Refusal of authorisation.

8. (1) The competent authority may refuse to grant authorisation as a crowdfunding service provider if there are objective and demonstrable grounds for believing that the management body of the prospective crowdfunding service provider may pose a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market.

(2) Without prejudice to sub-article (1), the competent authority shall not grant an authorisation as a crowdfunding service provider unless:

(a) it is satisfied that the applicant complies with the requirements set out in the ECSP Regulation, and in this Act and any regulations and Rules issued thereunder;

(b) it is satisfied that the applicant and its qualifying shareholders, members, directors and officers are fit and proper persons to provide crowdfunding services;

(c) without prejudice to paragraph (b), it is satisfied that the members of the management body of the applicant are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions as such with the applicant; and

(d) the applicant has its registered office and, or its head office in Malta.

Withdrawal of authorisation.

9. (1) The competent authority may at any time withdraw an authorisation granted under article 6 if:

(a) the crowdfunding service provider has not used its authorisation within eighteen (18) months of the date of granting of the authorisation;

(b) the crowdfunding service provider has expressly renounced its authorisation;

(c) the crowdfunding service provider has not provided crowdfunding services for nine (9) successive months and is also no longer involved in the administration of existing contracts that are the result of initial matching of business funding interests through the use of its crowdfunding platform;

(d) the crowdfunding service provider has obtained its authorisation by irregular means, including making false statements in its application for authorisation;

(e) the crowdfunding service provider no longer meets the conditions under which the authorisation was granted or in any other circumstances where the competent authority would have been precluded from issuing an authorisation, or entitled to refuse to grant such authorisation, under the ECSP Regulation or this Act;

(f) the crowdfunding service provider has seriously infringed any provisions of the ECSP Regulation, this Act and, or any regulations or Rules issued thereunder;

(g) the competent authority has been furnished by or on behalf of the crowdfunding service provider with information which is false, inaccurate or misleading;

(h) the competent authority considers it desirable to withdraw the authorisation of the crowdfunding service provider for the protection of investors and the general public, and the reputation of Malta taking into account Malta's international commitments; and, or

(i) the crowdfunding service provider is either declared bankrupt, or goes into liquidation, or makes a composition with its creditors, or is otherwise dissolved.

(2) Without prejudice to sub-article (1), the competent authority may at any time withdraw an authorisation granted under article 6:

(a) where the crowdfunding service provider is also a payment service provider as defined in article 2(1) of the Financial Institutions Act and it, or its managers, employees or third parties acting on its behalf, have infringed the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as transposed in national law, in respect of money laundering or terrorist financing; or

Cap. 376.

(b) where the crowdfunding service provider or a third party acting on its behalf has its licence allowing for the provision of payment services as defined in article 2(1) of the Financial Institutions Act or investment services as defined in article 2(1) of the Investment Services Act has been withdrawn

Cap. 376.

Cap. 370.

or cancelled, as applicable, and that crowdfunding service provider or third party has failed to remedy the situation within forty (40) calendar days.

Notification of proposed refusal, variation, or withdrawal of an authorisation.

10. (1) Where the competent authority proposes to:

(a) refuse an application for authorisation as a crowdfunding service provider or to withdraw the authorisation of a crowdfunding service provider; or

(b) vary any condition to which the licence is subject or to impose a condition thereon,

it shall give the prospective crowdfunding service provider or the crowdfunding service provider, as applicable, notice in writing of its intention to do so, while setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice, make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) Subject to the provisions of article 6, the competent authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under sub-article (1).

Cross-border provision of crowdfunding services.

11. (1) Where a crowdfunding service provider authorised under this Act intends to provide crowdfunding services in a Member State or EEA State other than Malta, it shall submit to the competent authority the following information:

(a) a list of the Member States and, or EEA States in which the crowdfunding service provider intends to provide crowdfunding services;

(b) the identity of the natural and legal persons responsible for the provision of the crowdfunding services in those Member States and, or EEA States;

(c) the starting date of the intended provision of the crowdfunding services by the crowdfunding service provider; and

(d) a list of any other activities provided by the crowdfunding service provider not covered by the ECSP Regulation.

(2) The competent authority shall, within ten (10) working days of receipt of the information referred to in sub-article (1), communicate that information to the European regulatory authority of the Member States and, or EEA States in which the crowdfunding service provider intends to provide crowdfunding services as referred to in sub-article (1).

(3) The competent authority shall thereafter inform without delay the crowdfunding service provider of the communication referred to in sub-article (2).

PART III
ONGOING OBLIGATIONS

Changes in information.

12. A crowdfunding service provider, or any person having responsibility for the day to day administration or management of such crowdfunding service provider, shall provide the competent authority with details of any changes in the information provided under the ECSP Regulation, this Act, or any regulations or Rules issued thereunder as soon as such crowdfunding service provider or such person becomes aware of such changes.

Responsibility for the key investment information sheet.

13. (1) The project owner or the members of its administrative, management or supervisory bodies, as the case may be, shall be responsible for the information to be provided in the key investment information sheet in terms of Article 23 of the ECSP Regulation and the translation of the said information.

(2) Without prejudice to the generality of sub-article (1), the persons referred to in the said sub-article shall ensure that:

(a) the information to be provided in the key investment information sheet is not false, misleading or inaccurate; and

(b) the key investment information sheet does not omit key information needed to aid investors when considering whether to finance the crowdfunding project.

Responsibility for the key investment information sheet at platform level.

14. (1) The crowdfunding service provider shall be responsible for the information to be provided in the key investment information sheet at platform level in terms of Article 24 of the ECSP Regulation and the translation of the said information.

(2) Without prejudice to the generality of sub-article (1), the

persons referred to in the said sub-article shall ensure that:

(a) the information to be provided in the key investment information sheet is not false, misleading or inaccurate; and

(b) the key investment information sheet at platform level does not omit key information needed to aid investors when considering whether to invest through individual portfolio management of loans.

Marketing communications.

15. Where a crowdfunding service provider disseminates, in terms of Article 27 of the ECSP Regulation, marketing communications about its services, it shall comply with relevant requirements as may be specified in Rules issued for these purposes.

PART IV
REGULATORY AND INVESTIGATORY POWERS

Minister's power to make regulations.

16. (1) 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) provide for and regulate the payment by any person or body, as the case may be, of authorisation or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(b) exempt any person, service or activity from any one or more of the provisions of this Act, subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(c) transpose, implement and give effect to the provisions and requirements of the ECSP Regulation;

(d) transpose, implement and give effect to the provisions and requirements of European Union Directives, European Union Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to authorised persons and others as may be specified therein; regulations made under this paragraph, and strictly related to transposition or

implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(e) assign powers and functions to the competent authority for the purposes of this Act;

(f) to provide for the exercise of powers and the performance of functions assigned to the competent authority under this Act;

(g) provide for any matter relating to the operation of a contingency fund which may be established by a crowdfunding service provider for its activity related to the individual portfolio management of loans;

(h) prescribe anything that is to be or which may be prescribed;

(i) provide for and regulate the payment by any person of authorisation or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under the ECSP Regulation, this Act and any regulations or Rules issued thereunder, including the fees and charges in respect of any permission, licence, authorisation, exemption or other benefit, as well as any fees and charges in respect of the competent authority's regulatory, supervisory or investigative functions under the ECSP Regulation, this Act, and any regulations or Rules issued thereunder, as may be prescribed;

(j) provide for the establishment and imposition of administrative penalties and other administrative measures on crowdfunding service providers or others as may be specified therein;

(k) prescribe that a breach of any regulations made under this Act may amount to a criminal offence as may be specified, and such regulations may impose punishments in respect of any breach, consisting of a fine (*multa*) not exceeding five hundred thousand euro (€500,000) or imprisonment for a term not exceeding three (3) years or both such fine and imprisonment in the case of a natural person; and a fine (*multa*) not exceeding eight hundred thousand euro (€800,000) in the case of a legal person; and a higher fine (*multa*) may be imposed

on such natural or legal person, as the case may be, where deemed necessary or appropriate for any breach or failure of compliance with any EU Directive or EU Regulation or with any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation; and

(l) provide for any matter incidental to or connected with any of the above.

(2) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provisions for different cases, circumstances or purposes and may also grant to the competent authority such powers of adaptation of the regulations as may also be so specified.

(3) Where regulations have been made in terms of this article, the competent authority may issue Rules for the better carrying out of, and implementation of the provisions of the regulations.

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

(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

Power to issue Rules.

17. (1) The competent authority may, from time to time, issue and publish Rules which shall be binding on all persons authorised by it or falling under its regulatory or supervisory functions and others as may be specified therein.

(2) Without prejudice to the generality of sub-article (1), Rules issued by the competent authority may:

(a) lay down additional requirements and conditions in relation to persons authorised by it, seeking its approval, or falling under the regulatory or supervisory functions of the competent authority, their activities, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, financial and other resources, and related requirements, and any other matters as the competent authority may consider appropriate;

(b) provide for the statements and notices that shall be made or given for any purposes in regard to which the competent authority exercises supervisory or regulatory

functions, and the form and contents thereof;

(c) prescribe the information that such persons are to submit to the competent authority;

(d) transpose, implement and give effect to the provisions and requirements of the ECSP Regulation;

(e) transpose, implement and give effect to the provisions and requirements of European Union Directives, European Union Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to authorised persons and others as may be specified therein; and, or

(f) regulate any matter that is incidental to or connected with any of the matters mentioned above as the competent authority may consider appropriate in the performance of its functions.

(3) Rules may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may grant to the competent authority such powers of adaptation of the Rules, as may also be so specified.

Powers of the competent authority.

18. (1) Without prejudice to any other powers conferred to it by this Act or any other law, the competent authority shall have the following powers:

(a) to suspend a crowdfunding offer for a maximum of ten (10) consecutive working days on any single occasion where there are reasonable grounds for suspecting that any of the provisions of the ECSP Regulation, this Act and any regulations or Rules issued thereunder have been infringed;

(b) to prohibit or suspend marketing communications, or to require a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to cease or suspend marketing communications, for a maximum of ten (10) consecutive working days on any single occasion where there are reasonable grounds for believing that any of the provisions of the ECSP Regulation, this Act and any regulations or Rules issued thereunder have been infringed;

(c) to prohibit a crowdfunding offer where the competent authority finds that any of the provisions of the ECSP Regulation, this Act and any regulations or Rules issued thereunder have been infringed or where there are reasonable grounds for suspecting that they would be infringed;

(d) to suspend, or to require a crowdfunding service provider to suspend, the provision of crowdfunding services for a maximum of ten (10) consecutive working days on any single occasion where there are reasonable grounds for believing that any of the provisions of the ECSP Regulation, this Act and any regulations or Rules issued thereunder have been infringed;

(e) to prohibit the provision of crowdfunding services where the competent authority finds that any of the provisions of the ECSP Regulation, this Act and any regulations or Rules issued thereunder have been infringed;

(f) to make public the fact that a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services is failing to comply with its obligations;

(g) to disclose, or to require a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to disclose, all material information which may have an effect on the provision of the crowdfunding service in order to ensure investor protection or the smooth operation of the market;

(h) to suspend, or to require a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to suspend, the provision of crowdfunding services where the competent authority considers that the crowdfunding service provider's situation is such that the provision of the crowdfunding service would be detrimental to investors' interests;

(i) to transfer existing contracts to another crowdfunding service provider in cases where a crowdfunding service provider's authorisation is withdrawn in accordance with article 9(1)(c), subject to the agreement of the clients and the receiving crowdfunding service provider:

Provided that the crowdfunding service provider to which the existing contracts are transferred in accordance with this paragraph shall be authorised by the competent authority to

provide crowdfunding services; and, or

(j) to make an application to the court for the dissolution and winding up by the court of a crowdfunding service provider where it appears to the competent authority that a crowdfunding service provider should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

Cap. 386.

(2) Any measures adopted in exercise of the powers of the competent authority under this article shall be proportionate, duly justified and taken in accordance with article 24.

Power to require information.

19. (1) The competent authority may, by notice in writing, require:

(i) any person who is or was providing, or who appears to be or to have been providing crowdfunding services, and third parties designated to perform functions in relation to the provision of crowdfunding services, and the natural or legal persons that control them or are controlled by them;

(ii) the auditors and managers of crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding services; and, or

(iii) any other person who appears to be in possession of relevant information,

to do all or any of the following:

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require, including the power to require existing telephone and existing data traffic records;

(b) to furnish to the competent authority any information or documentation as it may require verified in such manner as it may specify;

(c) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide such information and documentation as it may require;

(d) to give the competent authority any assistance which it may require and which that person is reasonably able to give.

(2) A natural or legal person making the information available to the competent authority in accordance with this article shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to the provision of such information.

(3) The competent authority may take copies of any documents furnished, provided or to which it has access under this article.

(4) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is found, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(5) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(6) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642(1) of the Criminal Code. Cap. 9.

(7) Where the competent authority has appointed a person under sub-article (1)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement imposed by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

Power to appoint inspectors.

20. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector to investigate and report on the affairs of any persons referred to in article 19(1)(i) to (iii).

(2) An inspector appointed under sub-article (1):

(a) may, if he thinks it necessary or expedient for the purposes of an investigation, investigate the affairs of any person mentioned in sub-article (1);

(b) shall have and may exercise all the powers conferred on the competent authority by article 18, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;

(c) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the competent authority.

(3) In appointing an inspector under sub-article (1), the competent authority may direct that the investigation shall be carried out within such time and shall be confined to such specific or general matters as the competent authority may deem fit.

(4) For the purposes of this article, inspectors may include an advocate, a person authorised to carry on the profession of accountant or auditor in terms of the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function.

Cap. 281.

(5) The competent authority shall have the power to order that all expenses of, and incidental to, an investigation carried out pursuant to this article be paid by the person referred to in sub-article (1).

Right of entry.

21. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, shall have the power to enter any premises occupied by a person on whom a notice has been served in terms of article 19 or whose affairs are being investigated in terms of article 20, for the purpose of obtaining therefrom the information or documents required by that notice, or otherwise for the purpose of carrying out on-site inspections or investigations, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority has cause to believe that if such notice as is referred to in sub-article (1) were served, it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such officer, employee or agent shall have the power, on producing, if required, evidence of his authority, to enter any premises referred to in sub-article (1) for the purpose of obtaining therefrom any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions

of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him by law.

Power to issue directives.

22. (1) Without prejudice to any other powers conferred to it by this Act or any other law, the competent authority may, whenever it deems it necessary, give by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom, or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or subsequent directives:

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

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

(2) The power to issue directives under this article shall also include the power to vary, alter, add to or withdraw any directive, as well as the power to issue subsequent new directives.

(3) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given in accordance with this article.

Administrative penalties and other measures.

23. (1) The competent authority may impose administrative penalties and other administrative measures as mentioned in sub-article (2), where it considers that:

(a) a person's conduct amounts to an infringement of any of the provisions of the ECSP Regulation, this Act or any regulations or Rules issued thereunder; or

(b) a person has contravened or failed to comply with any condition, obligation, requirement or directives made or given by the competent authority under any of the provisions of the ECSP Regulation, this Act or any regulations or Rules issued thereunder, including failure to co-operate with an investigation or an inspection or any request made by the competent authority under article 19.

(2) The competent authority shall have the power to impose the following administrative penalties and other administrative measures for the infringements indicated in sub-article (1):

(a) a public statement indicating the natural or legal person responsible for the infringement, and the nature of such infringement;

(b) an order requiring the natural or legal person to cease the conduct constituting the infringement and to desist from a repetition of that conduct;

(c) a ban preventing any member of the management body of the legal person responsible for the infringement, or any other natural person held responsible for the infringement, from exercising management functions in crowdfunding service providers;

(d) administrative penalties which shall not exceed twice the amount of the benefit derived from the infringement where that benefit can be determined, even if it exceeds the maximum amounts set out in paragraph (e);

(e) in the case of a legal person, administrative penalties which shall not exceed five hundred thousand euro (€500,000), or of up to five *per centum* (5%) of the total annual turnover of that legal person according to the last available financial statements approved by the management body:

Provided that where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated financial statements approved by the management body of the ultimate parent undertaking;

(f) in the case of a natural person, administrative penalties which shall not exceed five hundred thousand euro (€500,000).

(3) Administrative penalties that may be imposed by the competent authority in accordance with this article, may be imposed

in the form of a fixed penalty, a daily penalty, or both.

(4) Administrative penalties and other administrative measures taken by the competent authority in terms of this article shall be effective, proportionate, dissuasive and duly justified.

(5) The provisions of article 16(4) of the Malta Financial Services Authority Act shall apply *mutatis mutandis* with respect to any administrative penalty imposed by the competent authority under this article. Cap. 330.

(6) Without prejudice to the provisions of this article, where obligations imposed in terms of the ECSP Regulation, this Act or any regulations or Rules issued thereunder, apply to a legal person, in the event of an infringement of any provision thereof, administrative penalties and other measures may also be imposed, subject to the conditions laid down in national law, on the members of the administrative, management or supervisory bodies of the legal entity concerned, and on other individuals who are responsible for the infringement under national law.

(7) The imposition by the competent authority of an administrative penalty or any other administrative measure in terms of this article shall be without prejudice to any other consequence emanating from the act or omission of the offender in terms of civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person, and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

24. In the case of administrative penalties or other measures imposed by the competent authority in accordance with the provisions of this Act, the competent authority shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances, including, where appropriate: Relevant circumstances.

(a) the gravity and the duration of the infringement;

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

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

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

(e) the losses for third parties caused by the infringement, insofar as these can be determined;

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

(g) previous infringements by the natural or legal person responsible for the infringement; and

(h) the impact of the infringement on investors' interests.

Notice of administrative penalties and other measures.

25. (1) If the competent authority proposes to impose an administrative penalty or any other measure on any person under article 23, it shall give such person a notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall specify that the recipient of the notice may, within such reasonable period after the service thereof, as may be specified in the notice, make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall as soon as practicable, notify its final decision in writing to any person to whom notice is to be given under sub-article (1).

Publication of decisions.

26. (1) The competent authority shall publish any decision imposing an administrative penalty or any other measure, in accordance with the provisions of the ECSP Regulation, this Act or any regulations or Rules issued thereunder, on its website immediately after the person subject to that decision has been informed of that decision.

(2) The information published pursuant to sub-article (1) shall specify the type and nature of the breach, the identity of the person subject to the decision and any other information which the competent authority deems relevant.

(3) The provisions of sub-articles (1) and (2) shall not apply to

decisions of the competent authority imposing measures that are of an investigatory nature.

(4) Where the competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the identity or personal data of a natural person, would be disproportionate, or where such publication may jeopardise an ongoing investigation, the competent authority shall:

(a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non publication cease to exist;

(b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned:

Provided that, in this case, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision to impose a penalty or measure in the event that the options laid down in paragraphs (a) and (b) are considered to be insufficient to ensure the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

(5) Where the decision is subject to an appeal before a national judicial, administrative or other authority, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a decision subject to appeal shall also be published.

(6) Any decision that is published in accordance with this article shall remain accessible on the website of the competent authority for a period of at least five (5) years after its publication:

Provided that personal data contained in any such decision shall be retained on the website of the competent authority only for the period which is necessary, in accordance with the applicable data protection legislation.

PART V
COOPERATION WITH OTHER AUTHORITIES

Cooperation with European regulatory authorities.

27. (1) The competent authority shall act as the contact point in terms of and for the purposes of Article 29(2) of the ECSP Regulation.

(2) The competent authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties and exercising its powers under the ECSP Regulation. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory, supervisory or enforcement activity.

(3) A European regulatory authority may request information from the competent authority, in which case the competent authority shall, without undue delay, provide the requested information required for the purposes of the ECSP Regulation:

Provided that if the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.

(4) A European regulatory authority may request the cooperation of the competent authority in carrying out its supervisory functions or for an on-site verification or in an investigation, in which case the competent authority shall, within the framework of its powers:

(a) carry out the on-site inspection or investigation itself;

(b) allow the European regulatory authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the European regulatory authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) appoint auditors or experts to carry out the on-site inspection or investigation; or

(e) share specific tasks related to supervisory activities with other competent authorities.

(5) Notwithstanding the foregoing provisions, the competent authority may refuse to act on a request for information or a request to

cooperate with an investigation made by a European regulatory authority in any of the following circumstances:

(a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of Malta; or

(c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in Malta.

(6) Where the competent authority finds that any of the requirements under the ECSP Regulation have not been satisfied or has reason to believe that to be the case, it shall inform the European regulatory authority of the entity or entities suspected of such infringement of its findings in a detailed manner.

Precautionary measures.

28. (1) Where a crowdfunding service provider provides crowdfunding services in Malta, the competent authority shall, where it has clear and demonstrable grounds for believing that irregularities have been committed by the crowdfunding service provider or by third parties designated to perform functions in relation to the provision of crowdfunding services or that the crowdfunding service provider or third parties have infringed their obligations under the ECSP Regulation, notify the European regulatory authority which granted authorisation to the crowdfunding service provider and ESMA of such irregularities or infringements.

(2) Where, despite the measures taken by the European regulatory authority referred to in sub-article (1), the crowdfunding service provider or third party designated to perform functions in relation to the provision of crowdfunding services persists in infringing the ECSP Regulation, the competent authority shall, after informing the said European regulatory authority and ESMA, take all appropriate measures in order to protect investors and shall inform the European Commission and ESMA of such measures without undue delay.

Cooperation with ESMA.

29. (1) The competent authority shall cooperate with ESMA for the purposes of the ECSP Regulation in accordance with Regulation (EU) No 1095/2010.

(2) In the case of an on-site inspection or investigation with cross-border effect, the competent authority may request ESMA to

coordinate the inspection or investigation, as the case may be.

(3) The competent authority shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

Cooperation with other authorities.

30. Where a crowdfunding service provider engages in activities other than crowdfunding services, the competent authority shall cooperate with the authorities responsible for overseeing such other activities as provided for in the relevant European Union legislation or national law, as applicable.

PART VI
APPEALS, SANCTIONS AND CONFIDENTIALITY

Appeals.
Cap. 330.

31. (1) In this article the Financial Services Tribunal means the Tribunal established under article 21 of the Malta Financial Services Authority Act.

(2) Any person who is aggrieved by a decision of the competent authority under the ECSP Regulation or this Act, or any regulations or Rules issued thereunder, may appeal against such decision to the Tribunal within such period and under such conditions as are established under article 21 of the Malta Financial Services Authority Act.

Cap. 330.

(3) Without prejudice to sub-article (2), any person who is aggrieved by the competent authority's failure to take a decision in respect of an application for authorisation to act as a crowdfunding service provider which contains all the information required under the provisions in force within six (6) months of its submission, may appeal against such failure to decide to the Tribunal within such period and under such conditions as are established in terms of article 21 of the Malta Financial Services Authority Act.

Cap. 330.

(4) An appeal against a decision of the competent authority shall not suspend the operation of that decision:

Provided that a decision of the competent authority to withdraw the authorisation of a crowdfunding service provider shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is filed within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or on the date on which the appeal is abandoned.

(5) Subject to the provisions of this article, the provisions of article 21 of the Malta Financial Services Authority Act shall apply

Cap. 330.

mutatis mutandis to appeals that may be brought before the Tribunal under this article.

Offences.

32. (1) Any person who contravenes or fails to comply with any of the provisions of articles 5(1), 5(2), 19(1), 19(4), 22(1) or 34(1), or of article 19(1) or 19(4) as applied by article 20, or contravenes or fails to comply with any condition, obligation, requirement, directive or order made or given under any of the provisions of the ECSP Regulation or this Act, or under any regulations made under this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of the ECSP Regulation, this Act or of any regulations or Rules issued 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.

(3) Any person who is knowingly a party to the provision of any crowdfunding service with a fraudulent intent or for a fraudulent purpose, shall be guilty of an offence.

(4) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(5) Any person who intentionally obstructs a person exercising rights or powers conferred by this Act shall be guilty of an offence.

(6) The provisions of this Act or any regulations issued thereunder shall not affect any criminal proceedings that may be competent under any other law.

Punishments.

33. (1) A natural person guilty of an offence under the provisions of article 32 shall be liable on conviction to a fine (*multa*) not exceeding five hundred thousand euro (€500,000) or to a term of imprisonment not exceeding three (3) years, or to both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed in regulations made under article 16(1)(k).

(2) A legal person guilty of an offence under the provisions of article 31 shall be liable on conviction to a fine (*multa*) not exceeding eight hundred thousand euro (€800,000), unless such fine is otherwise imposed in regulations made under article 16(1)(k).

Confidentiality.

34. (1) Information obtained by the competent authority or by its officers, employees or agents, whether current or former, or by inspectors, auditors and experts formerly or currently engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of the ECSP Regulation, this Act, or of any regulations or Rules issued thereunder, or in the discharge of any functions under any of the said provisions, or by any other person who works or has worked for the competent authority or for any third party to whom the competent authority has delegated any of its functions or powers, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

(a) where the authority, body or person communicating information to the competent authority consents thereto;

(b) where the disclosure of the information is necessary for any legal proceedings;

(c) where the information is provided to such other local or European or overseas regulatory, judicial or enforcement authorities in the pursuance of serious concerns of a regulatory or criminal nature; and, or

(d) where the disclosure of the information is permitted or required by European Union legislation or national law.

(2) The information referred to in sub-article (1) shall include all information exchanged between the competent authority and European regulatory authorities under the ECSP Regulation that concerns business or operational conditions and other economic or personal affairs.

PART VII
AMENDMENTS TO THE FINANCIAL MARKETS ACT

Amendments to the Financial Markets Act. Cap. 345.

35. This Part amends and shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

36. Article 2 of the principal Act shall be amended by the following:

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

(i) immediately after the definition "Directives", there shall be added the following new definition:

" "distributed ledger technology" shall have the same meaning as that assigned to it in point (1) of Article 2 of the DLT Pilot Regime Regulation;";

(ii) immediately after the new definition "distributed ledger technology", there shall be added the following new definition:

" "DLT Pilot Regime Regulation" means Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/ 2014 and Directive 2014/65/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"; and

(iii) the definition "financial instruments" shall be substituted by the following new definition:

" "financial instruments" means those instruments specified in Section C of Annex I of MiFID, including such instruments issued by means of distributed ledger technology;"; and

(iv) in the definition "management body" the words "body or bodies of a market operator which are appointed" shall be substituted by the words "body or bodies of a market operator or data reporting services provider which are appointed"; and

(b) in sub-article (2) thereof, the words "CSDR, EMIR,", shall be substituted by the words "CSDR, DLT Pilot Regime Regulation, EMIR,".

Amendment of article 2A of the principal Act.

37. Article 2A of the principal Act shall amended by the following:

(a) in sub-article (2) thereof, the words "CSDR, EMIR," shall be substituted by the words "CSDR, the DLT Pilot Regime Regulation, EMIR,"; and

(b) in sub-article (3) thereof, the words, "CSDR, EMIR" shall be substituted by the words "CSDR, the DLT Pilot Regime Regulation, EMIR".

PART VIII
AMENDMENTS TO THE INVESTMENT SERVICES ACT

Amendments to the Investment Services Act. Cap. 370.

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

Amendment of article 2 of the principal Act.

39. Sub-article (1) of article 2 of the principal Act shall be amended by the following:

(a) immediately after the definition "ancillary services"thereof there shall be added the following new definition:

" "ancillary services undertaking" means an undertaking, the principal activity of which consists of owning or managing property, managing data processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;";

(b) immediately after the definition "the CRR" thereof there shall be added the following new definition:

" "data reporting services provider" shall have the same meaning as that assigned to it in point (36a) of Article 2(1) of MiFIR;";

(c) immediately after the definition "Directive 2013/34/EU"thereof there shall be added the following new definition:

" "distributed ledger technology" shall have the same meaning as that assigned to it in point (1) of Article 2 of the DLT Pilot Regime Regulation;";

(d) immediately after the new definition "distributed ledger technology"thereof there shall be added the following new definition:

" "DLT Pilot Regime Regulation" means Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;";

(e) immediately after the definition "EU parent institution" thereof there shall be added the following new definition:

" "EU parent investment firm" shall have the same meaning as that assigned to "Union parent investment firm" in point (56) of Article 4(1) of the IFR";

(f) immediately after the new definition "EU parent investment firm" thereof there shall be added the following new definition:

" "EU parent investment holding company" shall have the same meaning as that assigned to "Union parent investment holding company" in point (57) of Article 4(1) of the IFR;";

(g) immediately after the definition "financial institution" thereof there shall be added the following new definition:

" "group supervisor" means the supervisory authority of a Member State or an EEA State, competent and responsible for the supervision of compliance with the group capital test of EU parent investment firms and investment firms controlled by EU parent investment holding companies or EU parent mixed financial holding companies:

Provided that, for the purposes of this definition, "EU parent mixed financial holding companies" shall have the same meaning as that assigned to "Union parent mixed financial holding company" in point (58) of Article 4(1) of the IFR;";

(h) the definition "instrument" thereof shall be substituted by the following new definition:

" "instrument" means any instrument, contract or right falling within the Second Schedule and whether or otherwise issued in Malta, including such instruments issued by means of distributed ledger technology;"; and

(i) in the definition "management body" thereof the words "body or bodies of a licence holder" shall be substituted by the words "body or bodies of a licence holder, including of an investment firm, a market operator or a data reporting

services provider,"; and

(j) immediately after the definition "subsidiary" thereof there shall be added the following new definition:

" "systemic risk" means systemic risk as defined in point (10) of Article 3(1) of the CRD;".

Amendment of article 2A of the principal Act.

40. Article 2A of the principal Act shall be amended by the following:

(a) in sub-article (2) thereof, the words "the CRR, the MIFID" shall be substituted by the words "the CRR, the DLT Pilot Regime Regulation, the MIFID"; and

(b) in sub-article (3) thereof, the words "the AIFM Directive, the MiFID," shall be substituted by the words "the AIFM Directive, the DLT Pilot Regime Regulation, the MIFID".

Amendment of article 8A of the principal Act.

41. Immediately after sub-article (5) of article 8A of the principal Act, there shall be added the following new sub-article:

"(6) The competent authority shall inform the EBA without delay of any decision taken pursuant to sub-articles (1), (3) and (4).".

Passed by the House of Representatives at Sitting No. 148 of the 12th July, 2023.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of 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 FSC — *Printed at the Government Printing Press on FSC certified paper*

Prezz/*Price*
€3.15