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L.N. 303 of 2024

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

Recovery and Resolution (Amendment No. 3) Regulations, 2024

IN EXERCISE of the powers conferred by articles 20A and 20D of the Malta Financial Services Authority Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority and of the Resolution Authority, has made the following regulations:-

Citation, scope and commencement. S.L. 330.09.

1. (1) The title of these regulations is the Recovery and Resolution (Amendment No. 3) Regulations, 2024 and these regulations shall be read and construed as one with the Recovery and Resolution Regulations, hereinafter referred to as "the principal regulations".

(2) The scope of these regulations is to transpose the provisions of article 5 of Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector.

(3) These regulations shall come into force on the 17th January 2025:

Provided that regulation 4 shall come into force upon the publication of these regulations in the Gazette.

Amends regulation 2 of the principal regulations.

2. In sub-regulation (1) of regulation 2 of the principal regulations, immediately after the definition "director" there shall be added the following new definition:

" "DORA Regulation" means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;".

Amends regulation 10 of the principal regulations.

3. Sub-regulation (7) of regulation 10 of the principal regulations shall be amended as follows:

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(a) paragraph (c) thereof shall be substituted by the following new paragraph:

"(c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity and digital operational resilience upon the failure of the institution."; and

(b) paragraph (q) thereof shall be substituted by the following new paragraph:

"(q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes, including network and information systems as referred to in the DORA Regulation;".

Amends regulation 44A of the principal regulations.

4. Sub-regulation (1) of regulation 44A of the principal regulations shall be amended as follows:

(a) the words "Where a seller of eligible liabilities meets all the conditions referred to in Article 72a of the CRR with the exception of point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation, the sale of the eligible liabilities mentioned above to a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU, shall be permitted when the following conditions are fulfilled:" shall be substituted by the words "A seller of eligible liabilities which meet all the conditions referred to in Article 72a of the CRR with the exception of point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of the CRR, may sell such liabilities to a retail client as defined in paragraph (11) of Article 4(1) of Directive 2014/65/EU only where all of the following conditions are fulfilled:"; and

(b) in paragraph (b) thereof, the words "retail client;" shall be substituted by the words "retail client; and".

Amends the Schedule to the principal regulations.

5. The Schedule to the principal regulations shall be amended as follows:

(a) item (16) of Section A thereof shall be substituted by the following new item:

"(16) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including network and information systems that are set up and managed in accordance with the

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DORA Regulation;";

(b) Section B thereof shall be amended as follows:

(i) item (14) thereof shall be substituted by the following new item:

"(14) an identification of the owners of the systems identified in item (13), services level agreements related thereto, and any software and systems or licences, including a mapping to their legal entities, critical operations and core business lines, as well as an identification of critical ICT third-party services providers as defined in paragraph (23) of Article 3 of the DORA Regulation;"; and

(ii) immediately after item (14) thereof, as substituted, there shall be added the following new item :

"(14A) the results of institutions' digital operational resilience testing under the DORA Regulation;"; and

(c) Section C thereof shall be amended as follows:

(i) item (4) thereof shall be substituted by the following new item:

"(4) the extent to which the service agreements, including contractual arrangements on the use of ICT services, that the institution maintains are robust and fully enforceable in the event of resolution of the institution;" and

(ii) immediately after item (4) thereof, as substituted, there shall be added the following new item:

"(4A) the digital operational resilience of the network and information systems supporting critical functions and core business lines of the institution, taking into account major ICT-related incident reports and the results of digital operational resilience testing under the DORA Regulation;".

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