

L.N. 492 of 2021

**BANKING ACT
(CAP. 371)**

**European Passport Rights for Credit Institutions
(Amendment) Regulations, 2021**

IN EXERCISE of the powers conferred by article 3 of the Banking Act, the Minister for Finance and Employment, after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. (1) The title of these regulations is the European Passport Rights for Credit Institutions (Amendment) Regulations, 2021, and these regulations shall be read and construed as one with the European Passport Rights for Credit Institutions Regulations, hereinafter referred to as "the principal regulations".

Citation.

S.L. 371.11

(2) These regulations shall come into force on such date as the Minister for Finance and Employment may, by notice in the Gazette establish and a different date or dates may be so established for different provisions of these regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

Amends
regulation 2 of
the principal
regulations.

(a) sub-regulation (1) thereof shall be amended as follows:

(i) in the definition "the CRD", for the words "and the prudential supervision of credit institutions and investment firms" there shall be substituted the words "and the prudential supervision of credit institutions"; and for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(ii) in the definition "the CRR", for the words "on prudential requirements for credit institutions and investment firms" there shall be substituted the words "on prudential requirements for credit institutions"; and for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures"; and

B 4068

(iii) the definition "mixed activity holding company" shall be deleted;

(b) in sub-regulation (2) thereof, for the words "shall have the same meaning as in the Act." there shall be substituted the words "shall have the same meaning as in the Act:", and immediately thereafter there shall be added the following new provisos:

"Provided that, in accordance with article 2(1A) of the Act, for the purposes of applying the requirements and supervisory powers laid down in these regulations on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the term "parent undertaking" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1A) of the Act:

Provided further that, for the purposes of applying the requirements and supervisory powers laid down in regulations 3(6), 4(5), 8(1), (2) and (3), 10(9), 11(6), 12(1) and (3), 16(1) and (2)(a) on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the term "credit institution" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1B) of the Act."

Substitutes regulation 5 of the principal regulations.

3. Regulation 5 of the principal regulations shall be substituted by the following:

"5. A European credit institution which is seeking to appoint tied agents in Malta in exercise of a European passport right and in terms of the MiFID, shall be subject to the requirements of the Investment Services Act (Tied Agents) Regulations."

Amends regulation 14 of the principal regulations.

4. Regulation 14 of the principal regulations shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof, immediately after the words "which transpose the requirements of the CRD," there shall be added the words "with any binding legal instruments issued under the CRD";

(b) in paragraph (b) of sub-regulation (1) thereof, immediately after the words "transposing the requirements of the CRD," there shall be added the words "with any binding legal instruments issued under the CRD"; and

(c) in sub-regulation (8) thereof, immediately after the words "transposing the requirements of the CRD," there shall be added the words "or of any binding legal instruments issued under the CRD".

5. Sub-regulation (1) of regulation 15 of the principal regulations shall be amended as follows:

Amends regulation 15 of the principal regulations.

(a) in paragraph (a) thereof, immediately after the words "transposing the CRD," there shall be added the words "with any binding legal instruments issued under the CRD"; and

(b) in paragraph (b) thereof, immediately after the words "transposing the CRD," there shall be added the words "with any binding legal instruments issued under the CRD".

6. Regulation 17 of the principal regulations shall be amended as follows:

Amends regulation 17 of the principal regulations.

(a) the *chapeau* of sub-regulation (1) shall be substituted by the following:

"A company may exercise a European passport right in accordance with Articles 35, with the exclusion of the second paragraph of sub-article (3) thereof, 36(1), (2) and (3), 39(1) and (2) and 40 to 46 of the CRD provided the following conditions are fulfilled:";

(b) in sub-regulation (7) thereof, for the words "referred to in point (1) and in points (3) to (23) of Article 2(5) of the CRD" there shall be substituted the words "referred to in points (3) to (24) of Article 2(5) of the CRD"; and

(c) immediately after sub-regulation (8) thereof, there shall be added the following new sub-regulation:

"(9) For the purposes of this regulation, the term "company" shall mean an undertaking other than an institution and other than a pure industrial holding company, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to the CRD, including a financial holding company, a mixed financial

B 4070

holding company, a payment institution and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in points (f) and (g) of Article 212(1) of Directive 2009/138/EC."

Amends the Schedule to the principal regulations.

7. Paragraph 4 of the Schedule to the principal regulations shall be substituted by the following:

"4. Payment services as defined in Article 4(3) of Directive (EU) 2015/2366;".
