

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

28th December, 2021

**ACT No. LXXI of 2021**

*AN ACT to further amend various financial services laws.*

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 the Various Financial Services Laws (Amendment No. 2) Act, 2021. Short title.

**PART I**  
**AMENDMENTS TO THE MALTA FINANCIAL SERVICES**  
**AUTHORITY ACT**

**2.** This Part amends the Malta Financial Services Authority Act and it shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Malta Financial Services Authority Act. Cap. 330.

**3.** In sub-article (1) of article 7A of the principal Act, the words ", and for the monitoring and supervision of local regulated markets and participants thereof falling within the regulatory and supervisory remit of the Authority" shall be deleted. Amendment of article 7A of the principal Act.

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Amendment of the First Schedule annexed to the principal Act.

**4.** The First Schedule annexed to the principal Act shall be amended as follows:

(a) in sub-item (1) of item 1 thereof, in the definition "investment firm", the words "laid down in Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;" shall be substituted by the words "laid down in Article 28(2) of the CRD;"; and

(b) sub-item (1) of item 4 thereof shall be amended as follows:

(i) in paragraph (f) thereof, for the words "cooperate closely with the Authority" there shall be substituted the words "cooperate closely with and consult the Authority" and for the words "application of resolution decisions;" there shall be substituted the words "application of resolution decisions, and in all other instances where any such cooperation or consultation is required by the CRD, by the BRRD or by the CRR;"; and

(ii) paragraph (g) thereof shall be substituted by the following:

"(g) cooperate closely with and consult authorities, both local or overseas, in order to coordinate resolution measures to protect financial stability in all affected Member States and EEA States and, when a cross-border group is failing or likely to fail, to achieve the most effective outcome for the group as a whole, and in all other instances where any such cooperation or consultation is required by the CRD, by the BRRD or by the CRR."

## **PART II**

### **AMENDMENTS TO THE FINANCIAL MARKETS ACT**

Amendments to the Financial Markets Act. Cap. 345.

**5.** This Part amends the Financial Markets Act and it 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.

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

(a) immediately before the definition "'APA" or "approved publication arrangement"' there shall be added the

following new definition:

" "agricultural commodity derivatives" means derivative contracts relating to products listed in Article 1 of Regulation (EU) No. 1308/2013, and Annex I, Parts I to XX and XXIV/1 thereto, as well as to products listed in Annex I to Regulation (EU) No. 1379/2013 of the European Parliament and of the Council;"

(b) the definition ""APA" or "approved publication arrangement"" shall be substituted by the following new definition:

" "APA" or "approved publication arrangement" means the same as the meaning assigned to it in point (52) of Article 2(1) of MiFIR;"

(c) the definition ""ARM" or "approved reporting mechanism"" shall be substituted by the following new definition:

" "ARM" or "approved reporting mechanism" means the same as the meaning assigned to it in point (36) of Article 2(1) of MiFIR;"

(d) the definition ""CTP" or "consolidated tape provider"" shall be substituted by the following new definition:

" "CTP" or "consolidated tape provider" means the same as the meaning assigned to it in point (35) of Article 2(1) of MiFIR;"

(e) the definition "data reporting services provider" shall be substituted by the following new definition:

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

**7.** In sub-article (4) of article 4 of the principal Act, immediately after the words "in relation to activities of regulated markets" there shall be added the words "and any other persons as may be specified therein".

Amendment of article 4 of the principal Act.

**8.** In sub-article (1) of article 9 of the principal Act, for the words, "article 7", there shall be substituted the words, "article 39K".

Amendment of article 9 of the principal Act.

**9.** Immediately after paragraph (v) of sub-article (1) of article 32 of the principal Act there shall be added the following new paragraph:

Amendment of article 32 of the principal Act.

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"(vA) any data reporting services provider;"

Amendment of article 33 of the principal Act.

**10.** In sub-article (5) of article 33 of the principal Act, for the words, "any provision of law, regulation" there shall be substituted the words "any provision of this Act or any other Act administered by the Authority, or of any regulations or Rules issued thereunder,".

Amendment of article 39B of the principal Act.

**11.** In article 39B of the principal Act for the words "of article 19" there shall be substituted the words "of article 39A", wherever they occur.

Amendment of article 39C of the principal Act.

**12.** In article 39C of the principal Act for the words "of article 19" there shall be substituted the words "of article 39A", wherever they occur.

Amendment of article 39F of the principal Act.

**13.** In sub-article (1) of article 39F of the principal Act, for the words "articles 19, 19A or 19B" there shall be substituted the words "any of the provisions of this Act".

Amendment of article 49 of the principal Act.

**14.** Sub-article (1) of article 49 of the principal Act shall be amended by the following:

(a) in paragraph (a) thereof, immediately after the words "central securities depositories," there shall be added the words "data reporting services providers,";

(b) in paragraph (d) thereof, immediately after the words "credit rating agencies," there shall be added the words "data reporting services providers,"; and

(c) in paragraph (e) thereof, immediately after the words "central securities depositories," there shall be added the words "data reporting services providers,".

### **PART III**

#### **AMENDMENTS TO THE INVESTMENT SERVICES ACT**

Amendment to the Investment Services Act. Cap. 370.

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

Addition of article 10D to the principal Act.

**16.** Immediately after article 10C of the principal Act there shall

be added the following new article:

"Intermediate  
European Union  
parent undertaking.

10D. (1) An investment firm established in Malta which is part of a third-country group having as part of the same group one or more credit institution or one or more other investment firm in Malta or in another Member State or in an EEA State, shall have a single intermediate EU parent undertaking that is established in Malta or in another Member State or in an EEA State.

(2) The competent authority may allow an investment firm referred to in sub-article (1) to have two intermediate EU parent undertakings where it determines that the establishment of a single intermediate EU parent undertaking would:

(a) be incompatible with a mandatory requirement for separation of activities imposed by the rules or the overseas regulatory authority of the third country where the ultimate parent undertaking of the third-country group has its head office; or

(b) render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the relevant resolution authority of the intermediate EU parent undertaking.

(3) An intermediate EU parent undertaking shall be a credit institution licensed in terms of article 7 of the Banking Act or authorised in accordance with Article 8 of the CRD, or a financial holding company or mixed financial holding company that has been granted approval in accordance with article 11B of the Banking Act and, or Article 21a of the CRD:

Cap. 371.

Provided that, where the third-country group referred to in sub-article (1) does not have a credit institution within the same group or where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in sub-article (2), the intermediate EU parent undertaking or the second intermediate EU parent undertaking may be an investment firm which holds an investment services licence or an investment firm authorised in accordance with Article 5(1) of the MiFID, that is subject to the BRRD.

(4) Sub-articles (1), (2) and (3) shall not apply where the total value of assets in the European Union of the third-country group is less than forty billion euro (€40,000,000,000).

(5) For the purposes of this article, the total value of assets in the European Union of the third-country group shall be the sum of the following:

(a) the total value of assets of each investment firm and credit institution in the European Union forming part of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where their balance sheet is not consolidated; and

(b) the total value of assets of each branch of the third-country group authorised in the European Union in accordance with the CRD, MiFID or MiFIR.

(6) The competent authority shall notify the EBA with the following information in respect of each third-country group operating in Malta:

(a) the names and the total value of assets of the credit institutions and investment firms belonging to a third-country group;

(b) the names and the total value of assets corresponding to branches authorised in Malta in accordance with the provisions of national law transposing the CRD, MiFID or MiFIR, and the types of activities that they are licensed to carry out;

(c) the name and the type as referred to in sub-article (3) of any intermediate EU parent undertaking set up in Malta and the name of the third-country group of which it is part.

(7) An investment firm established in Malta forming part of a third-country group shall meet at least one of the following conditions:

(a) it has an intermediate EU parent undertaking;

(b) it is an intermediate EU parent undertaking;

(c) it is the only investment firm in the European Union of the third-country group and the third-country group does not have any credit institutions in the European Union; or

(d) it is part of a third-country group with a total value of assets in the European Union of less than forty billion euro (€40,000,000,000).

(8) By way of derogation from sub-article (1), where a third-country group operates through an investment firm established in Malta and through one or more credit institutions or one or more other investment firms in the European Union and with a total value of assets equal to or greater than forty billion euro (€40,000,000,000) on 27 June 2019, the investment firm established in Malta shall ensure that the intermediate EU parent undertaking referred to in sub-article (1) or the two intermediate EU parent undertakings referred to in sub-article (2), as the case may be, shall be established by 30 December 2023.

(9) For the purposes of this article:

(a) the term "branch" means a branch as defined in point (17) of Article 4(1) of the CRR;

(b) the term "group" means a group as defined in point (138) of Article 4(1) of the CRR;

(c) the term "investment firm" means an investment firm as defined in point (2) of Article 4(1) of the CRR;

(d) the term "parent undertaking" means a parent undertaking as defined in point (15) of Article 4(1) of the CRR;

(e) the term "resolution authority" means an authority designated by a Member State or an EEA State in accordance with Article 3 of the BRRD; and

(f) the term "third-country group" means a group of which the parent undertaking is established in a third country."

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**PART IV  
AMENDMENTS TO THE BANKING ACT**

Amendments to  
the Banking  
Act.  
Cap. 371.

**17.** This Part amends the Banking Act and it shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as "the principal Act".

Substitution of  
certain terms in  
the principal  
Act.

**18.** In the Maltese text of the principal Act, for the words "kumpannija holding", "kumpanniji holding" and "kumpanniji finanzjarji holding" wherever they occur in the principal Act, there shall be substituted the words "holding company", "holding companies" and "holding companies finanzjarji" respectively.

Amendment of  
article 2 of the  
principal Act.

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

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

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

" "binding legal instrument" means any directly applicable measures, including, but not limited to, any implementing technical standards, regulatory technical standards or similar measures, issued under European Union legislation;"

(ii) in the definition "the BRRD", for the words "and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(iii) immediately after the definition "connected person", there shall be added the following new definitions:

" "consolidated basis" shall have the same meaning as that assigned to it in point (48) of Article 4(1) of the CRR;

"consolidating supervisor" shall have the same meaning as that assigned to it in point (41) of Article 4(1) of the CRR;"

(iv) the definition "court" shall be deleted;

(v) the definition "the CRD" shall be substituted by



the following new definition:

"the CRD" means 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(vi) the definition "the CRR" shall be substituted by the following new definition:

"the CRR" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and amending Regulation (EU) No. 648/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(vii) the definition "Directive 2004/39/EC" shall be deleted;

(viii) immediately after the definition "deposit", there shall be added the following new definition:

"Directive 2002/87/EC" means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(ix) in the definition "Directive 2004/109/EC", for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding

legal instruments, guidelines and other measures";

(x) immediately after the definition "Directive 2004/109/EC", as amended, there shall be added the following new definitions:

" "Directive 2009/138/EC" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Directive (EU) 2015/849" means 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 amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;";

(xi) in the definition "director", the words "a member of a local board or agent or representative of that company;" shall be substituted by the words "a member of a local board or agent or a local representative of that company:" and immediately thereafter there shall be added the following new proviso:

"Provided that in respect of a financial holding company or a mixed financial company established outside Malta, "director" shall also include a member of the management body of the financial holding company or mixed financial holding company;";

(xii) immediately after the definition "ESRB" there shall be added the following new definitions:

" "EU parent financial holding company" shall have the same meaning as that assigned to it in point

(31) of Article 4(1) of the CRR;

"EU parent institution" shall have the same meaning as that assigned to it in point (29) of Article 4(1) of the CRR;

"EU parent mixed financial holding company" shall have the same meaning as that assigned to it in point (33) of Article 4(1) of the CRR;"

(xiii) immediately after the definition "financial holding company" there shall be added the following new definition:

" "financial institution" shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR;"

(xiv) immediately after the definition "Financial Services Tribunal" there shall be added the following new definitions:

" "GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"group" shall have the same meaning as that assigned to it in point (138) of Article 4(1) of the CRR;"

(xv) immediately after the definition "Malta's international commitments" there shall be added the following new definition:

"management body" means the body or bodies of a financial holding company or mixed financial holding company established outside Malta, which are appointed in accordance with the law of the jurisdiction in which such a company is established, which are empowered to set the company's strategy, objectives and overall direction, and which oversee

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and monitor management decision-making, and include the persons who effectively direct the business of the company;";

(xvi) the definition "material activities" shall be deleted;

(xvii) immediately after the definition "Member State", there shall be added the following new definitions:

" "MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"MiFIR" means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;";

(xviii) immediately after the definition "Minister" there shall be added the following new definition:

" "mixed activity holding company" shall have the same meaning as that assigned to it in point (22) of Article 4(1) of the CRR;";

(xix) the definition "outsourcing" shall be substituted by the following:

" "outsourcing" means an arrangement of any form between a credit institution and an outsourcing service provider by means of which that outsourcing service provider performs a process, a service or an activity that would otherwise be undertaken by the credit institution;";

(xx) the definition "outsourcing service provider" shall be substituted by the following:

" "outsourcing service provider" means a third-party entity that is undertaking an outsourced

process, service or activity, or parts thereof, under an outsourcing arrangement;"

(xxi) in the definition "PAD", for the words "and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(xxii) immediately after the definition "PAD", as amended, there shall be added the following new definitions:

" "parent financial holding company" shall have the same meaning as that assigned to the term "parent financial holding company in a Member State" in point (30) of Article 4(1) of the CRR;

"parent institution" shall have the same meaning as that assigned to the term "parent institution in a Member State" in point (28) of Article 4(1) of the CRR;

"parent mixed financial holding company" shall have the same meaning as that assigned to the term "parent mixed financial holding company in a Member State" in point (32) of Article 4(1) of the CRR;"

(xxiii) in the definition "Payment Services Directive", for the words "and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(xxiv) in the definition "Regulation (EU) No. 1092/2010", for the words "and includes any implementing measures", there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(xxv) in the definition "Regulation (EU) No. 1093/2010", for the words "and includes any implementing measures", there shall be substituted the words "and includes any binding legal instruments, guidelines and

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other measures";

(xxvi) in the definition "Regulation (EU) No. 1094/2010", for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(xxvii) in the definition "Regulation (EU) No. 1095/2010", for the words "and includes any implementing measures" there shall be substituted the words "and includes any binding legal instruments, guidelines and other measures";

(xxviii) immediately after the definition "representative office" there shall be added the following new definitions:

"resolution authority" means an authority designated by a Member State in accordance with Article 3 of the BRRD;

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"resolution entity" shall have the same meaning as that assigned to it in regulation 2(1) of the Recovery and Resolution Regulations;";

(xxix) immediately after the definition "Resolution Fund" there shall be added the following new definition:

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"resolution group" shall have the same meaning as that assigned to it in regulation 2(1) of the Recovery and Resolution Regulations;";

(xxx) immediately after the definition "senior management" there shall be added the following new definition:

"sub-consolidated basis" shall have the same meaning as that assigned to it in point (49) of Article 4(1) of the CRR;";

(xxxi) in the definition "third country", the words "or an EEA state" shall be deleted;

(xxxii) immediately after the definition "third country" there shall be added the following new definition:"

"third-country group" means a group of which

the parent undertaking is established in a third country;"

(xxxiii) in the definition "Third Country Resolution Authority", for the words "Third Country Resolution Authority" means" there shall be substituted the words "Third-Country Resolution Authority" means";

(xxxiv) the definition "working days" shall be substituted by the following:

" "working days" means days other than Saturdays, Sundays and the Public Holidays and the National Holidays referred to in the National Holidays and Other Public Holidays Act." Cap. 252.

(xxxv) the definition "kumpannija holding finanzjarja mħallta" in the Maltese text thereof shall be deleted and substituted by the following:

" "holding company finanzjarja mħallta" għandu jkollha l-istess tifsira mogħtija lilha fil-punt (21) tal-Artikolu 4(1) tas-CRR;"

(b) immediately after sub-article (1) thereof, as amended, there shall be added the following new sub-articles:

"(1A) For the purposes of applying the requirements and supervisory powers laid down in this Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, or in the CRR, on a consolidated or sub-consolidated basis in accordance with this Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, any binding legal instruments issued under the CRD, and with the CRR, the terms "institution", "parent institution", "EU parent institution" and "parent undertaking" shall also include:

(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 11B and, or Article 21a of the CRD;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent

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mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 11B(5) and, or Article 21a(4) of the CRD; and

(c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 29AA(1)(f) and, or Article 21a(6)(d) of the CRD.

(1B) For the purposes of applying the requirements and supervisory powers laid down in Articles 4(5), 14(2), 14(2A), 14(5), 17E, 19(1), 19(3), 20(1), 25(7), 25(10), 30A on a consolidated or sub-consolidated basis in accordance with this Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, any binding legal instruments issued under the CRD, and with the CRR, the term "credit institution" shall also include:

(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 11B of this Act and, or Article 21a of the CRD;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 11B(5) and, or Article 21a(4) of the CRD; and

(c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 29AA(1)(f) and, or Article 21a(6)(d) of the CRD.

(1C) Reference to the "approval" of financial holding companies or mixed financial holding companies in this Act and any regulations and, or Banking Rules issued thereunder, shall mean an approval granted by the competent authority in terms of article 11B or an approval granted through the joint decision of the competent authority and an overseas regulatory authority in terms of article 11B of this Act and Article 21a of the CRD, as the case may be.



(1D) Reference to the "exemption" of financial holding companies or mixed financial holding companies in this Act and any regulations and, or Banking Rules issued thereunder, shall mean an exemption granted by the competent authority in terms of article 11B or an exemption granted through the joint decision of the competent authority and an overseas regulatory authority in terms of article 11B of this Act and Article 21a of the CRD, as the case may be."; and

(c) in sub-article (2) thereof, for the words "listed in the Schedule as may be determined by the competent authority." there shall be substituted the words "listed in the First Schedule as may be determined by the competent authority."

**20.** In the second proviso to article 2A of the principal Act, for the words "any regulations made or Banking Rules issued thereunder." there shall be substituted the words "any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder."

Amendment of article 2A of the principal Act.

**21.** Immediately after paragraph (h) of sub-article (1) of article 3 of the principal Act there shall be added the following new paragraph:

Amendment of article 3 of the principal Act.

"(i) transpose, implement and, or give effect to options and discretions set out in the provisions of Directives, Regulations and any other legislative measures or binding legal instruments of the European Union, as may be amended from time to time, and to implement options and discretions set out in any guidelines, recommendations, decisions, opinions or any other instrument issued by the ECB."

**22.** Article 4 of the principal Act shall be amended as follows:

Amendment of article 4 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) It shall be the duty of the competent authority to carry out the functions and duties prescribed by this Act and any regulations made and Banking Rules and Conduct of Business Rules issued thereunder, by any binding legal instruments issued under the CRD, and by the CRR, and to ensure that credit institutions licensed under this Act or carrying out their activities in Malta and financial holding companies and mixed financial holding companies of credit institutions comply with this Act and any regulations, directives, Banking Rules and Conduct of Business Rules made or issued thereunder, with any

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binding legal instruments issued under the CRD, with the CRR and with the conditions of their licence or approval, as applicable. In pursuance of that duty the competent authority shall at all times afford such co-operation to the Central Bank as the Central Bank may require in the discharge of its duties.";

(b) in sub-article (2) thereof, for the words "of Article 131(1) of the CRD and shall act jointly with the designated authority" there shall be substituted the words "of Article 131(1) of the CRD and Articles 124 and 164 of the CRR and shall act jointly with the designated authority";

(c) in sub-article (5) thereof, for the words "compliance with the requirements of the CRR and this Act and any regulations made or Banking Rules issued thereunder.", there shall be substituted the words "compliance with the requirements of the CRR, any binding legal instruments issued under the CRD, this Act and any regulations made and Banking Rules and Conduct of Business Rules issued thereunder.";

(d) in sub-article (7) thereof, for the words "Banking Rules for the purpose of implementing any guidelines,", there shall be substituted the words "Banking Rules and, or Conduct of Business Rules for the purpose of implementing any guidelines,";

(e) in sub-article (9) thereof, for the words "and others as may be specified therein.", there shall be substituted the words "and other persons as may be specified therein."; and

(f) in sub-article (10) thereof, for the words "communicated to credit institutions and the competent authority", there shall be substituted the words "communicated to credit institutions and to financial holding companies and mixed financial holding companies and the competent authority".

Amendment of article 4A of the principal Act.

**23.** In sub-article (1) of article 4A of the principal Act, for the words "Banking Rules issued thereunder transposing the CRD, and the CRR." there shall be substituted the words "Banking Rules issued thereunder transposing the CRD, of any binding legal instruments issued under the CRD, and of the CRR.".

Amendment of article 4B of the principal Act.

**24.** Article 4B of the principal Act shall be amended as follows:

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

(i) for the words "powers conferred in this Act," there shall be substituted the words "powers conferred on it in this Act," and for the words "by the Malta Financial Services Authority Act and by this Act and any regulations made or Banking Rules issued thereunder, and by the CRR." there shall be substituted the words "by the Malta Financial Services Authority Act, by this Act and any made and Banking Rules and Conduct of regulations Business Rules issued thereunder, by the CRR and by any binding legal instruments issued under the CRD:"; Cap. 330.

(ii) the first proviso thereof shall be substituted by the following:

"Provided that, without prejudice to the generality of the foregoing, the competent authority may give any such directive even:

(i) to financial holding companies and mixed financial holding companies exempted in terms of article 11B(5); and

(ii) where a credit institution, financial holding company or mixed financial holding company ceases to hold a licence or approval, as the case may be, for whatever reason, or such licence or approval, as the case may be, ceases to have effect:";

(iii) the second proviso thereof shall be substituted by the following:

"Provided further that any directive given in terms of this Act and any regulations made thereunder shall, unless the competent authority otherwise directs, continue to apply even when a credit institution, financial holding company or mixed financial holding company ceases to hold a licence or approval, as the case may be, for whatever reason, or such licence or approval, as the case may be, ceases to have effect.";

(b) in sub-article (3) thereof, for the words "directives under this article shall include" there shall be substituted the words "directives under this Act and any regulations made thereunder shall include"; and

(c) in sub-article (4) thereof, for the words "given under

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any of the provisions of this article." there shall be substituted the words "given under any of the provisions of this Act and any regulations made thereunder."

Amendment of  
article 6 of the  
principal Act.

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

(a) in sub-article (1) thereof, for the words "licence under this Act." there shall be substituted the words "licence under this Act:" and immediately thereafter there shall be added the following new proviso:

"Provided that the entities listed in the Second Schedule shall not be required to apply to the competent authority for a licence under this Act, and the provisions of this Act and of any regulations made and, or any Banking Rules and, or Conduct of Business Rules issued thereunder, and the CRR shall accordingly not apply thereto, unless otherwise specifically provided for in this Act, or in any regulations made or Banking Rules or Conduct of Business Rules issued thereunder."; and

(b) in sub-article (2) thereof:

(i) for the words "organisation of the credit institution, and shall conform with such requirements" there shall be substituted the words "organisation of the credit institution, an indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group and a description of the arrangements, processes and mechanisms referred to in article 17B, and shall conform with such requirements"; and

(ii) in the proviso thereof, for the words "before authorisation is granted or refused," there shall be substituted the words "before a licence is granted or refused,".

Amendment of  
article 7 of the  
principal Act.

**26.** Article 7 of the principal Act shall be amended as follows:

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

(i) in paragraph (c) thereof:

(aa) in the first proviso thereof, for the words "Articles 9 and 10 of Directive 2004/109/E and the conditions", there shall be substituted the words "Articles 9 and 10 of Directive 2004/109/EC and the

conditions";

(bb) in the second proviso thereof, for the words "shares which institutions hold" there shall be substituted the words "shares which credit institutions hold" and for the words "Annex I to Directive 2004/39/EC" there shall be substituted the words "Annex I to MiFID";

(ii) in paragraph (d) thereof, for the words "requirements referred to in article 14(2) are met." there shall be substituted the words "requirements referred to in article 14(2) and (2A) are met.", and for the words "in paragraph (c), in particular, where the criteria set out in article 13A(9) are met." there shall be substituted the words "in paragraph (c), in accordance with the criteria set out in article 13A(9).";

(iii) in paragraph (e) thereof:

(aa) for the words "regulations made or Banking Rules issued thereunder:" there shall be substituted the words "regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder:";

(bb) in the first proviso thereof, for the words "shall not grant authorisation where the laws," there shall be substituted the words "shall not grant a licence where the laws,";

(cc) in the second proviso thereof, for the words "on a continuous basis." there shall be substituted the words "on a continuous basis;";

(iv) immediately after paragraph (e) thereof, as amended, there shall be added the following new paragraph:

"(f) the competent authority is satisfied that the arrangements, processes and mechanisms referred to in article 17B enable sound and effective risk management by that credit institution."; and

(b) in sub-article (7) thereof, for the words "licensed in terms of this Act shall have its head office" there shall be substituted the words "licensed in terms of this article shall have

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its head office".

Amendment of  
article 7B of the  
principal Act.

**27.** Article 7B of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words "consult the overseas regulatory authority that is responsible" there shall be substituted the words "consult the overseas authority that is responsible";

(b) in sub-article (3) thereof, for the words "consult with the relevant overseas regulatory authorities referred to" there shall be substituted the words "consult with the relevant overseas authorities referred to"; and

(c) in sub-article (4) thereof, for the words "compliance with the relevant overseas regulatory authorities referred to" there shall be substituted the words "compliance with the relevant overseas authorities referred to".

Amendment of  
article 8 of the  
principal Act.

**28.** In paragraph (b) of sub-article (2) of article 8 of the principal Act, for the words "change in its licence to conduct the business" there shall be substituted the words "change in its authorisation to conduct the business".

Amendment of  
article 9 of the  
principal Act.

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

(a) in paragraph (b) of sub-article (1) thereof, for the words "makes a composition with its creditors" there shall be substituted the words "makes an arrangement or composition with its creditors";

(b) in sub-article (2) thereof:

(i) in paragraph (d) thereof, for the words "Six of the CRR or imposed under regulations" there shall be substituted the words "Six of the CRR, except for the requirements laid down in Articles 92a and 92b of the CRR, or imposed under regulations";

(ii) in paragraph (f) thereof, for the words "any regulations or Banking Rules issued thereunder;" there shall be substituted the words "any regulations made or any Banking Rules or Conduct of Business Rules issued thereunder;";

(iii) in paragraph (g) thereof, for the words "any regulations made or Banking Rules issued thereunder" there shall be substituted the words "any regulations made

or any Banking Rules or Conduct of Business Rules issued thereunder"; and

(c) in sub-article (3) thereof, for the words "any regulations or Banking Rules made thereunder" there shall be substituted the words "any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder".

**30.** Article 10 of the principal Act shall be substituted by the following:

Substitution of article 10 of the principal Act.

"Appeals.

10. Any person who is aggrieved by a decision and, or measure taken by the competent authority pursuant to this Act, or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder, or the CRR, or any binding legal instruments issued under the CRD, may appeal against the decision and, or measure to the Financial Services Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act."

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**31.** Article 11A of the principal Act shall be amended as follows:

Amendment of article 11A of the principal Act.

(a) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) Branches of credit institutions which have their head office in a third country and which are licensed in Malta to open such branches, shall report to the competent authority, at least annually, the following information:

(a) the total assets corresponding to the activities of the branch in Malta;

(b) information on the liquid assets available to the branch, in particular availability of liquid assets in Member State currencies;

(c) the own funds that are at the disposal of the branch;

(d) the deposit protection arrangements available to depositors in the branch;

(e) the risk management arrangements;

(f) the governance arrangements, including

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the key function holders for the activities of the branch as may be set out in a Banking Rule;

(g) the recovery plans covering the branch;  
and

(h) any other information that may be requested by the competent authority, as it may consider necessary to enable comprehensive monitoring of the activities of the branch.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The competent authority shall notify the EBA of the following:

(a) all the licences granted to credit institutions, having their head office in a third country, to open a branch in Malta and any subsequent changes to such licences;

(b) total assets and liabilities of the branches in Malta of credit institutions having their head office in a third country which are licensed to open such branches, as periodically reported;

(c) the name of the third-country group to which a branch of a credit institution having its head office in a third country which has been granted a licence to open such a branch belongs."; and

(c) immediately after sub-article (2) thereof, as substituted, there shall be added the following new sub-article:

"(3) Where:

(a) credit institutions having their head office in a third country are licensed to open branches in Malta; or

(b) credit institutions licensed in terms of this Act are part of a third-country group,

the competent authority shall cooperate closely with overseas regulatory authorities which supervise credit institutions in other Member States that are part of the same third-country group and, or with



authorities in other Member States which supervise investment firms that are part of the same third-country group and, or with overseas regulatory authorities which supervise branches in other Member States of credit institutions having their head office in a third country that are part of the same third-country group, as applicable, to ensure that all activities of that third-country group in the European Union are subject to comprehensive supervision, so as to prevent the circumvention of the requirements applicable to third-country groups pursuant to this Act and, or any regulations made and, or any Banking Rules issued thereunder, and, or the CRD, and, or the CRR, and to prevent any detrimental impact on the financial stability of the European Union."

**32.** Immediately after article 11A of the principal Act there shall be added the following new articles:

Addition of articles 11B and 11C to the principal Act.

"Approval of financial holding companies and mixed financial holding companies.

11B. (1) Parent financial holding companies, parent mixed financial holding companies, EU parent financial holding companies and EU parent mixed financial holding companies, which are established in Malta or in another Member State and which have a credit institution as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority, acting as the consolidating supervisor, in accordance with this article. Other financial holding companies and mixed financial holding companies established in Malta or in another Member State and which have a credit institution as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority, acting as the consolidating supervisor, in accordance with this article where they are required to comply with the CRD, or the CRR, on a sub-consolidated basis:

Provided that in accordance with Article 21a of the CRD, where the competent authority is not the consolidating supervisor, financial holding companies and mixed financial holding companies established in Malta and which have a credit institution as a subsidiary, shall seek the approval or exemption, as the case may be, of the consolidating supervisor determined in accordance with Article 111 of the CRD.

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(2) For the purposes of seeking an approval or exemption, as the case may be, in terms of sub-article (1), financial holding companies and mixed financial holding companies referred to therein shall, where:

(i) the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company is established in Malta; or

(ii) the financial holding company or the mixed financial holding company is established in a Member State other than Malta and the competent authority is the consolidating supervisor,

provide the competent authority with the following information:

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company, as the case may be, forms part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

(b) information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company, as the case may be, and compliance with the requirements set out in article 14(7) on the qualification of directors;

(c) information regarding compliance with the criteria set out in article 7 concerning shareholders and members;

(d) the internal organisation and distribution of tasks within the group;

(e) any other information that may be necessary to carry out the assessments referred to in sub-articles (4) and (5) as may be requested by the competent authority.

(3) All applications for an approval or exemption, as the case may be, in terms of this article shall be in such form and accompanied by such information and shall conform with such requirements as may be prescribed, from time to time, by a Banking Rule.

(4) Approval may be granted to a financial holding company or mixed financial holding company, as the case may be, pursuant to this article only where all of the following conditions are fulfilled:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by this Act and any regulations made and Banking Rules issued thereunder transposing the CRD, by any binding legal instruments issued under the CRD and by the CRR, on a consolidated or sub-consolidated basis and, in particular, are effective to:

(i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company, as the case may be, including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the financial holding company or mixed financial holding company, as the case may be, is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions in accordance with the individual, the consolidated and, where appropriate, the sub-consolidated obligations to which they are subject:

Provided that the assessment of this criterion shall take into account, in particular:

(i) the position of the financial holding company or mixed financial holding company, as the case may be, in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the financial holding company or mixed financial holding company, as the case may be, within the group;

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(c) the criteria set out in article 7(1)(c), (d) and (e), and the requirements laid down in article 14(7) are complied with.

(5) An exemption may be granted to a financial holding company or mixed financial holding company, as the case may be, pursuant to this article only where all of the following conditions are met:

(a) the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holding in subsidiaries;

(b) the financial holding company or mixed financial holding company, as the case may be, has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to the BRRD;

(c) a subsidiary credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

(d) the financial holding company or mixed financial holding company, as the case may be, does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

(e) there is no impediment to the effective supervision of the group on a consolidated basis:

Provided that where financial holding companies or mixed financial holding companies are exempted from approval in accordance with this sub-article, they shall not be excluded from the perimeter of consolidation as laid down in this Act and any regulations made and Banking Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, and in the CRR.

(6) Where the competent authority is the consolidating supervisor, it shall monitor compliance with the conditions referred to in sub-article (4) or, where applicable, in sub-article (5), on an ongoing basis.

(7) (a) Financial holding companies and mixed financial holding companies shall provide the competent authority, where it is acting as the consolidating supervisor, with the information required to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in sub-article (4);

(b) Financial holding companies and mixed financial holding companies exempted in terms of sub-article (5) shall provide the competent authority, where it is acting as the consolidating supervisor, with the information required to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in sub-article (5).

(c) The competent authority shall share the information received in terms of this sub-article with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company, as the case may be, is established.

(8) Where the competent authority is the consolidating supervisor and has established that the conditions set out in sub-article (5) are no longer met, the financial holding company or mixed financial holding company, as the case may be, shall seek approval in accordance with this article.

(9) For the purpose of taking decisions on the approval or the exemption from approval, as the case may be, referred to in sub-articles (4), (5) and (8) and, or in sub-articles (3), (4) or (7) of Article 21a of the CRD, where:

(i) the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company, as the case may be, is established in Malta; or

(ii) the financial holding company or the mixed financial holding company, as the case may be, is established in a Member State other than Malta and the competent authority is the consolidating supervisor,

the competent authority shall work together with the overseas regulatory authority acting as the consolidating supervisor or with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, in full consultation.

(10) Where the competent authority is the consolidating supervisor, it shall prepare an assessment on the matters referred to in sub-articles (4), (5) and (8) as applicable, and shall forward that assessment to the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be.

(11) The competent authority, whether acting as the consolidating supervisor or whether it is in receipt of an assessment referred to in Article 21a(8) of the CRD from the overseas regulatory authority acting as the consolidating supervisor, shall do everything within its power to reach a joint decision on the approval or the exemption from approval, as the case may be, referred to in sub-articles (4), (5) and (8) and, or in sub-articles (3), (4) and (7) of Article 21a of the CRD, with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established or with the overseas regulatory authority acting as the consolidating supervisor, as the case may be, within two months of receipt of that assessment:

Provided that the joint decision shall be duly documented and reasoned and where the competent authority is the consolidating supervisor, it shall communicate the joint decision to the financial holding company or the mixed financial holding company, as the case may be.

(12) In the event of a disagreement between the competent authority and the overseas regulatory authority acting as the consolidating supervisor or the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, the competent authority shall refrain from taking the joint decision referred to in sub-article (11) and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No. 1093/2010. In such cases, the competent authority shall adopt a joint decision with the overseas regulatory authority acting as the consolidating supervisor or with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, in conformity with the decision of the EBA:

Provided that the matter shall not be referred to the EBA after the end of the two-month period referred to in sub-article (11) or after a joint decision has been reached.

(13) In the case of mixed financial holding companies, where the coordinator appointed in terms of Article 10 of Directive 2002/87/EC is neither the competent authority, nor the overseas regulatory authority acting as the consolidating supervisor, nor the overseas regulatory authority in the Member State where the mixed financial holding company is established, the agreement of the said coordinator shall be required for the purposes of the decisions or joint decisions referred to in sub-articles (4), (5) and (8) and, or sub-articles (3), (4) and (7) of Article 21a of the CRD, as applicable. Where the agreement of the coordinator is required, the competent authority shall refer any disagreements to the relevant European Supervisory Authority, namely, to the EBA or to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No. 1094/2010, which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this sub-article shall be without prejudice to the obligations under Directive 2002/87/EC or Directive 2009/138/EC.

(14) Where approval of a financial holding company or mixed financial holding company, as the case may be, pursuant to this article is refused and the competent authority is the consolidating supervisor, the competent authority shall notify the applicant of the decision and the reasons thereof within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision. Refusal may be accompanied, where necessary, by any of the measures referred to in article 29AA:

Provided that a decision to grant or refuse approval shall, in any event, be taken within six months of receipt of the application.

Intermediate  
European Union  
parent undertaking.

11C. (1) Without prejudice to the derogation provided for in article 38(5), a credit institution licensed in terms of this Act which is part of a third-country group having as part of the same group one or more other credit institution or one or more investment firm, licensed in Malta or authorised in another Member State, shall have a single intermediate EU parent undertaking that is established either in Malta or in another Member State.

(2) The competent authority may allow a credit institution referred to in sub-article (1) to have two intermediate EU parent undertakings where it determines that the establishment of a single intermediate EU parent undertaking:

(a) would be incompatible with a mandatory requirement for separation of activities imposed by the rules or the overseas regulatory authority of the third country where the ultimate parent undertaking of the third-country group has its head office; or

(b) would render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the relevant resolution authority of the intermediate EU parent undertaking.

(3) An intermediate EU parent undertaking shall be a credit institution licensed in terms of article 7 or authorised in accordance with Article 8 of the CRD, or a financial holding company or mixed financial holding company that has been granted approval in terms of article 11B and, or Article 21a of the CRD:



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Provided that, where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in sub-article (2), the second intermediate EU parent undertaking may be an investment firm holding an investment services licence in terms of article 6 of the Investment Services Act or is authorised in accordance with Article 5(1) of the MiFID, that is subject to the BRRD.

(4) Sub-articles (1), (2) and (3) shall not apply where the total value of assets in the European Union of the third-country group is less than forty billion euro (€40,000,000,000).

(5) For the purposes of this article:

(a) the total value of assets in the European Union of the third-country group shall be the sum of the following:

(i) the total value of assets of each institution in the European Union forming part of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

(ii) the total value of assets of each branch of the third-country group authorised in the European Union in accordance with the CRD, MiFID or MiFIR;

(b) the term "institution" shall also include investment firms.

(6) The competent authority shall notify the EBA with the following information in respect of each third-country group operating in Malta:

(a) the names and the total value of assets of institutions belonging to a third-country group;

(b) the names and the total value of assets corresponding to branches authorised in Malta in accordance with the provisions of national law transposing the CRD, the MiFID or MiFIR, and the types of activities that they are licensed to carry out;

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(c) the name and the type as referred to in sub-article (3) of any intermediate EU parent undertaking set up in Malta and the name of the third-country group of which it is part.

(7) A credit institution forming part of a third-country group shall meet at least one of the following conditions:

(a) it has an intermediate EU parent undertaking;

(b) it is an intermediate EU parent undertaking;

(c) it is the only institution in the European Union of the third-country group; or

(d) it is part of a third-country group with a total value of assets in the European Union of less than forty billion euro (€40,000,000,000)."

Amendment of article 13A of the principal Act.

**33.** Article 13A of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words "Banking Rule issued for this purpose." there shall be substituted the words "Banking Rules issued for this purpose:" and immediately thereafter, there shall be added the following new proviso:

"Provided that where the approval or exemption, as the case may be, of a financial holding company or mixed financial holding company in terms of article 11B and, or Article 21a of the CRD, takes place concurrently with the assessment referred to in this article, the assessment period referred to in this sub-article shall be suspended for a period exceeding twenty working days until the procedure set out in article 11B and, or Article 21a of the CRD, is complete.";

(b) in sub-article (5) thereof, for the words "the assessment period shall be interrupted. The interruption period shall not exceed" there shall be substituted the words "the assessment period shall be suspended. The suspension period shall not exceed", and for the words "shall not result in an interruption of such period." there shall be substituted the words "shall not result in a suspension of such period.";

(c) in sub-article (6) thereof:

(i) for the words "may extend the interruption period referred to", there shall be substituted the words "may extend the suspension period referred to";

(ii) in paragraph (b) thereof:

(aa) for the words "is a person not subject" there shall be substituted the words "a person not subject";

(bb) in sub-paragraph (iii) thereof, the words "of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time" shall be deleted;

(cc) sub-paragraph (iv) thereof shall be substituted by the following:

"(iv) MiFID or MiFIR."; and

(d) in sub-article (9) thereof:

(i) in paragraph (b) thereof, for the words "as set out in article 14(2), of any member of the board of directors and any member of senior management who will direct the business" there shall be substituted the words "as set out in article 14(2) and (2A), of any director who will direct the business";

(ii) in paragraph (d) thereof, for the words "Banking Rules issued thereunder, and the CRR," there shall be substituted the words "Banking Rules issued thereunder, on any binding legal instruments issued under the CRD, and on the CRR,"; and for the words "the competent authority and the overseas regulatory authorities" there shall be substituted the words "the competent authority and the overseas regulatory authorities in other Member States"; and

(iii) in paragraph (e) thereof, for the words "Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing" there shall be substituted the words "Directive (EU) 2015/849".

**34.** Article 13B of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "in full consultation with overseas regulatory authorities when carrying

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article 13B of  
the principal  
Act.

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out the assessment" there shall be substituted the words "in full consultation with overseas regulatory authorities in other Member States when carrying out the assessment"; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) Where the assessment referred to in article 13A takes place concurrently with the approval or exemption, as the case may be, of a financial holding company or mixed financial holding company in terms of article 11B of this Act and, or Article 21a of the CRD, the competent authority shall coordinate, as appropriate, with the overseas regulatory authority acting as the consolidating supervisor and, or with the overseas regulatory authority of the Member State where the financial holding company or mixed financial holding company is established, as the case may be."

Amendment of article 13C of the principal Act.

**35.** Sub-article (1) of article 13C of the principal Act shall be amended as follows:

(a) for the words "without prejudice to article 13(1) and (3), the consent of the competent authority given in writing shall be required" there shall be substituted the words "without prejudice to articles 11B, 13(1) and 13(3) and Article 21a of the CRD, the consent of the competent authority given in writing shall be required";

(b) in paragraph (c) thereof, for the words "any reconstruction or division;" there shall be substituted the words "any reconstruction or division;".

Amendment of article 13D of the principal Act.

**36.** Article 13D of the principal Act shall be amended as follows:

(a) for the words "Articles 9, 10 and 11 of Directive 2004/109/E and the conditions", there shall be substituted the words "Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions"; and

(b) in the proviso thereof, for the words "Section A of Annex 1 to Directive 2004/39/EC, provided that" there shall be substituted the words "Section A of Annex 1 to the MiFID, provided that".

Amendment of article 14 of the principal Act.

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

(a) sub-article (2) thereof, shall be substituted by the

following:

"(2) Credit institutions, financial holding companies and mixed financial holding companies shall ensure that directors are at all times of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.";

(b) immediately after sub-article (2) thereof, as substituted, there shall be added the following new sub-article:

"(2A) Directors of credit institutions, financial holding companies and mixed financial holding companies shall, in particular, fulfil the following requirements:

(a) all directors shall commit sufficient time to perform their functions in the credit institution, financial holding company or mixed financial holding company, as the case may be;

(b) the number of directorships which may be held by a director at the same time shall take into account individual circumstances and the nature, scale and complexity of the activities of the credit institution, the financial holding company or the mixed financial holding company, as the case may be:

Provided that a director of a credit institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time -

(i) one directorship having an executive role with two directorships having a non-executive role;

(ii) four directorships having a non-executive role;

(c) for the purposes of paragraph (b), the following shall count as a single directorship -

(i) directorships having an executive or non-executive role held within the same group;

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(ii) directorships having an executive or non-executive role held within –

(aa) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of the CRR are fulfilled; or

(bb) undertakings (including non-financial entities) in which the credit institution, financial holding company or the mixed financial holding company, as the case may be, holds a qualifying holding.";

(c) in sub-article (3) thereof, for the words "for the purposes of sub-article (2)(b):" there shall be substituted the words "for the purposes of sub-article (2A)(b):";

(d) sub-article (5) thereof shall be substituted by the following:

"(5) The board of directors and, where applicable, the management body, of credit institutions, financial holding companies and mixed financial holding companies, shall possess adequate collective knowledge, skills and experience to be able to understand the credit institution's activities, including the main risks. The overall composition of the board of directors and, where applicable, the management body, shall reflect an adequately broad range of experience.";

(e) in sub-article (6) thereof, for the words "Each director shall act with honesty," there shall be substituted the words "Each director of a credit institution, financial holding company and mixed financial holding company shall act with honesty," and for the words "monitor management decision-making." there shall be substituted the words "monitor management decision-making:" and immediately thereafter, there shall be added the following new proviso:

"Provided that, where a director is also a member of an affiliated company or affiliated entity, this shall not in itself constitute an obstacle to acting with independence of mind.";

(f) in sub-article (7) thereof, for the words "referred to in sub-article (2) to perform those duties," there shall be substituted the words "referred to in sub-articles (1) to (6) and any additional requirements as may be specified in a Banking Rule to perform those duties," and for the words "financial holding company or mixed financial holding company." there shall be substituted the words "financial holding company or mixed financial holding company, as the case may be.";

(g) sub-article (8) thereof shall be substituted by the following:

"(8) A credit institution, financial holding company and mixed financial holding company, as the case may be, shall forthwith notify to the competent authority –

(a) full particulars of all persons who are controllers or directors of the credit institution, financial holding company and mixed financial holding company, as the case may be;

(b) full particulars of any person who is proposed to become a controller or director of the credit institution, financial holding company and mixed financial holding company, as the case may be;

(c) full particulars of any person who is proposed to cease to be a controller or director of the credit institution, financial holding company and mixed financial holding company, as the case may be.";

(h) in sub-article (9) thereof, for the words "A credit institution shall furnish the competent authority" there shall be substituted the words "A credit institution, financial holding company and mixed financial holding company shall furnish the competent authority";

(i) sub-article (10) thereof shall be substituted by the following:

"(10) If the competent authority is of the opinion that any person who is or is proposed to become a controller or director of a credit institution, financial holding company or mixed financial holding company, as the case may be, is not a suitable person to be a controller or director, or does

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not fulfil the requirements set out in sub-articles (1) to (6), or any additional requirements as may be specified in a Banking Rule, the competent authority may give an order requiring such a person to cease to be a controller or director or restraining such a person from becoming a controller or director:

Provided that the competent authority shall in particular verify whether the requirements set out in sub-articles (1) to (6) and any additional requirements as may be specified in a Banking Rule are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that credit institution, financial holding company or mixed financial holding company, as the case may be.";

(j) in sub-article (11) thereof, for the words "members of the board of directors or equivalent governing body or the power to cast" there shall be substituted the words "members of the board of directors or, where applicable, the management body, or the power to cast"; and

(k) immediately after sub-article (11) thereof, as amended, there shall be added the following new sub-article:

"(12) The competent authority may issue, amend or revoke Banking Rules as may be required in order to better implement the provisions of this article."

Amendment of article 15 of the principal Act.

**38.** In the proviso to sub-paragraph (i) of paragraph (b) of sub-article (1) of article 15 of the principal Act, for the words "(23,293.73);" there shall be substituted the words "(€23,293.73);".

Amendment of article 17B of the principal Act.

**39.** Article 17B of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "might be exposed to, and adequate internal control mechanisms" there shall be substituted the words "might be exposed to, adequate internal control mechanisms", and for the words "sound and effective risk management." there shall be substituted the words "sound and effective risk management:" and immediately thereafter, there shall be added the following new proviso:

"Provided that such remuneration policies and practices shall be gender neutral.";

(b) in sub-article (2) thereof, for the words "Such



arrangements, processes and mechanisms" there shall be substituted the words "The arrangements, processes and mechanisms" and for the words "scale and complexity of the credit institution's activities." there shall be substituted the words "scale and complexity of the risks inherent in the business model and the credit institution's activities.";

(c) in sub-article (3) thereof, for the words "any regulations made or Banking Rules issued thereunder, and the CRR at all times." there shall be substituted the words "any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder, with any binding legal instruments issued under the CRD, and with the CRR at all times."; and

(d) in sub-article (5) thereof, for the words "with any relevant European resolution authorities or third-country resolution authorities and shall provide" there shall be substituted the words "with any relevant European Resolution Authorities or Third-Country Resolution Authorities and shall provide".

**40.** Immediately after article 17D of the principal Act, there shall be added the following new article:

Addition of article 17DA to the principal Act.

"Transactions with parent mixed activity holding companies and their subsidiaries.  
S.L. 371.16.

17DA. Credit institutions shall have in place adequate risk management processes and internal control mechanisms, in accordance with the Banking Act (Supervisory Review) Regulations and as may be prescribed from time to time in a Banking Rule, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed activity holding company and its subsidiaries appropriately. Credit institutions shall report any significant transaction with those entities other than the one referred to in Article 394 of the CRR:

Provided that those procedures and significant transactions shall be subject to overview by the competent authority."

**41.** Sub-article (1) of article 17E of the principal Act shall be amended as follows:

Amendment of article 17E of the principal Act.

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

"(a) the credit institution does not meet the

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requirements of this Act or any regulations made or Banking Rules issued thereunder, of any binding legal instruments issued under the CRD or of the CRR;"; and

(b) in paragraph (b) thereof, for the words "likely to breach the Act, regulations made or Banking Rules issued thereunder, or the provisions of the CRR," there shall be substituted the words "likely to breach this Act or any regulations made or Banking Rules issued thereunder, any binding legal instruments issued under the CRD or the provisions of the CRR,".

Amendment of article 19 of the principal Act.

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

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

(i) in paragraph (b) thereof, for the words "for prudential and statistical purposes;" there shall be substituted the words "for prudential supervision, conduct supervision and, or statistical purposes;";

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

"(c) all the information necessary for the assessment of its compliance with this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder, with any binding legal instruments issued under the CRD, and with the CRR, as the competent authority may require;";

(b) immediately after sub-article (1) thereof, as amended, there shall be added the following new sub-article:

"(1A) A financial holding company and a mixed financial holding company shall submit to the competent authority all the information necessary for the assessment of its compliance with this Act and any regulations made or Banking Rules issued thereunder, with any binding legal instruments issued under the CRD, and with the CRR, as the competent authority may require.";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) A credit institution shall register all its transactions and document systems and processes, which are

subject to this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder, to any binding legal instruments issued under the CRD, and to the CRR, in such a manner that the competent authority may be able to verify compliance with the requirements of the CRR, of any binding legal instruments issued under the CRD, of this Act and of any regulations made or Banking Rules and, or Conduct of Business Rules issued thereunder at all times.";

(d) in sub-article (4) thereof, for the words "The provisions of this article shall" there shall be substituted the words "Without prejudice to article 11A, the provisions of this article shall";

(e) in sub-article (5) thereof, for the words "periods as shall be prescribed by Banking Rule." there shall be substituted the words "periods as the competent authority may from time to time prescribe by a Banking Rule and, or as may be prescribed in any applicable binding legal instrument."; and

(f) in sub-article (6) thereof, for the words "credit institution under sub-articles (1) and (2) shall be regarded as secret and confidential except as between that credit institution and the competent authority" there shall be substituted the words "credit institution, financial holding company and mixed financial holding company, as the case may be, under sub-articles (1), (1A) and (2) shall, unless otherwise provided in this Act or in any other law, be regarded as secret and confidential except as between that credit institution, financial holding company or mixed financial holding company, as the case may be, and the competent authority".

**43.** In sub-article (2) of article 19A of the principal Act, for the words "Banking Rule laying down the requirements" there shall be substituted the words "Banking Rule laying down what constitutes material services or activities, the requirements".

Amendment of article 19A of the principal Act.

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

Amendment of article 20 of the principal Act.

(a) in sub-article (1) thereof, for the words "licensed in terms of the Act, and where applicable," there shall be substituted the words "licensed in terms of this Act, and where applicable," and for the words "under this Act and any regulations made or Banking Rules issued thereunder and the CRR, and the competent authority" there shall be substituted the words "under this Act or any regulations made or Banking Rules

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or Conduct of Business Rules issued thereunder, the CRR or any binding legal instruments issued under the CRD, and the competent authority";

(b) in sub-article (3) thereof:

(i) in paragraph (a) thereof, for the words "served on a credit institution, require the credit institution to provide a report" there shall be substituted the words "served on a credit institution, a financial holding company or a mixed financial holding company, require the credit institution, financial holding company or mixed financial holding company, as the case may be, to provide a report", and for the words "could require the credit institution to provide information under sub-article (1);" there shall be substituted the words "could require the credit institution, financial holding company or mixed financial holding company, as the case may be, to provide information under sub-article (1);";

(ii) in paragraph (b) thereof, for the words "served on a credit institution, require it to produce within such time" there shall be substituted the words "served on a credit institution, a financial holding company or a mixed financial holding company, require the credit institution, financial holding company or mixed financial holding company, as the case may be, to produce within such time";

(iii) in paragraph (c) thereof, for the words "to require any credit institution to provide him forthwith" there shall be substituted the words "to require any credit institution, financial holding company or mixed financial holding company, to provide him forthwith" and for the words "under this Act and any regulations or Banking Rules made thereunder." there shall be substituted the words "under this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder.";

(c) in sub-article (4) thereof, for the words "appointed by a credit institution to make any report required" there shall be substituted the words "appointed by a credit institution, a financial holding company or a mixed financial holding company to make any report required";

(d) in sub-article (5) thereof, for the words "any documents from a credit institution, that person shall have the like power" there shall be substituted the words "any documents

from a credit institution, a financial holding company or a mixed financial holding company, that person shall have the same power";

(e) in sub-article (6) thereof:

(i) for the words "require a credit institution or any other person to produce any documents includes power -" there shall be substituted the words "require a credit institution, a financial holding company or a mixed financial holding company, or any other person to produce any documents includes the power -";

(ii) in paragraph (a) thereof, for the words "require that credit institution or person, or any other person" there shall be substituted the words "require the credit institution, financial holding company, mixed financial holding company, or person concerned, or any other person", and for the words "employee of, the credit institution in question," there shall be substituted the words "employee of, the credit institution, financial holding company and mixed financial holding company in question,";

(f) in sub-article (8) thereof, for the words "officer of a credit institution require him to furnish," there shall be substituted the words "officer of a credit institution, financial holding company or mixed financial holding company, as the case may be, require him to furnish,";

(g) in sub-article (9) thereof, for the words "shareholding in a credit institution if it considers" there shall be substituted the words "shareholding in a credit institution, financial holding company or mixed financial holding company, if it considers"; and

(h) in sub-article (11) thereof, for the words "recover from a credit institution reported on" there shall be substituted the words "recover from a credit institution, financial holding company or mixed financial holding company reported on".

**45.** In sub-article (5) of article 22 of the principal Act, for the words "investigation under this Act and any regulations or Banking Rules made thereunder, or any person appointed" there shall be substituted the words "investigation under this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder, or any person appointed" and for the words "in respect of

Amendment of  
article 22 of the  
principal Act.

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that body under this Act and any regulations or Banking Rules made thereunder and anyone who has a qualifying shareholding in, or is a controller of that body -" there shall be substituted the words "in respect of that body under this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder and anyone who has a qualifying shareholding in, or is a controller of, that body -".

Amendment of article 23 of the principal Act.

**46.** In sub-article (1) of article 23 of the principal Act, for the words "provision of this Act and any regulations or Banking Rules issued thereunder," there shall be substituted the words "provision of this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder,".

Amendment of article 25 of the principal Act.

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

(a) the marginal note thereof shall be substituted by the following:

"Co-operation, sharing and transmission of information.";

(b) immediately after sub-article (2) thereof, as amended, there shall be added the following new sub-articles:

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"(2A) Notwithstanding article 17(1) of the Malta Financial Services Authority Act and articles 19(6), 34(2), 34(4) and 34(7), the competent authority may also, subject to the conditions set out in sub-articles (2B) and (4A), transmit or share certain information with the following:

(a) the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;

(b) the Bank for International Settlements, for the purposes of quantitative impact studies;

(c) the Financial Stability Board, for the purposes of its surveillance function:

Provided that where the disclosure of information in terms of this sub-article involves the processing of personal data, any processing of personal data will be in accordance with the requirements laid down in the GDPR.

(2B) The competent authority may only share confidential information with the international bodies referred to in sub-article (2A) following an explicit request and where at least the following conditions are met:

(a) the request is duly justified in light of the specific tasks performed by the requesting body in accordance with its statutory mandate;

(b) the request is sufficiently precise as to the nature, scope and format of the required information, and the means of its disclosure or transmission;

(c) the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond the statutory tasks conferred on the requesting body;

(d) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task;

(e) the persons having access to the information are subject to professional secrecy requirements at least equivalent to those referred to in article 34(4).";

(c) in sub-article (3) thereof:

(i) for the words "The competent authority may also conclude cooperation agreements" there shall be substituted the words "Notwithstanding article 17(1) of the Malta Financial Services Authority Act and articles 19(6) and 34(2), the competent authority may also conclude cooperation agreements", and for the words "referred to in article 34(4) and (5) are complied with:" there shall be substituted the words "referred to in article 34(4) are complied with:";

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(ii) in the second proviso thereof, for the words "agreement of the overseas regulatory authority which has disclosed it," there shall be substituted the words "agreement of the overseas authority which has disclosed it," and for the words "purposes for which the overseas regulatory authority gave its agreement." there shall be substituted the words "purposes for which the overseas authority gave its agreement.";

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(d) in sub-article (4) thereof, for the words "extent that the overseas regulatory authorities receiving" there shall be substituted the words "extent that the authorities receiving";

(e) immediately after sub-article (4) thereof, as amended, there shall be added the following new sub-article:

"(4A) Where a request is made by any of the entities referred to in sub-article (2A), the competent authority may only transmit aggregate or anonymised information and may only share other information at the premises of the competent authority.";

(f) in sub-article (6) thereof:

(i) for the words "Nothing in this Act shall prevent" there shall be substituted the words "Nothing in this Act or in any other law shall prevent";

(ii) in the second proviso thereof, for the words "those referred to in article 34(4) and (5):" there shall be substituted the words "those referred to in article 34(4):";

(g) in sub-article (7) thereof:

(i) for the words "The provisions of article 34(4), (5) and (7) shall not preclude" there shall be substituted the words "The provisions of article 17(1) of the Malta Financial Services Authority Act and of article 34(2), (4) and (7) shall not preclude";

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(ii) in paragraph (e) thereof, for the words "bankruptcy of credit institutions" there shall be substituted the words "bankruptcy of institutions";

(iii) in paragraph (f) thereof, for the words "financial institutions:", there shall be substituted the words "financial institutions:";

(iv) immediately after paragraph (f) thereof, as amended, there shall be added the following new paragraphs:

"(g) authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive, and financial intelligence units in other Member States;



(h) authorities or bodies responsible for the application of rules on structural separation within a banking group;"

(v) in the first proviso thereof, for the words "provisions of article 34(4), (5) and (7)" there shall be substituted the words "provisions of article 34(4) and (7)";

(vi) in the second proviso thereof, for the words "referred to in article 34(4) and (5)." there shall be substituted the words "referred to in article 34(4).";

(h) in sub-article (8) thereof:

(i) for the words "Notwithstanding the provisions of sub-article (3) of this article and article 34(4), (5) and (7), the competent authority may exchange information" there shall be substituted the words "Notwithstanding article 17(1) of the Malta Financial Services Authority Act, the provisions of sub-articles (2) and (3) and of articles 19(6), 34(2), 34(4), 34(5) and 34(7), the competent authority shall exchange information"; Cap. 330.

(ii) in paragraph (ii) of the first proviso thereof, for the words "referred to in article 34(4) and (5);" there shall be substituted the words "referred to in article 34(4)."; and

(iii) in paragraph (ii) of the second proviso thereof, for the words "referred to in article 34(4) and (5);" there shall be substituted the words "referred to in article 34(4).";

(i) in sub-article (9) thereof:

(i) for the words "Notwithstanding the provisions of article 34(4), (5) and (7), the competent authority", there shall be substituted the words "Notwithstanding article 17(1) of the Malta Financial Services Authority Act and the provisions of articles 19(6), 34(4) and 34(7), the competent authority"; Cap. 330.

(ii) in the first proviso thereof, for the words "referred to in article 34(4) and (5):" there shall be substituted the words "referred to in article 34(4).";

(j) in sub-article (10) thereof:

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(i) for the words "The competent authority may disclose certain information" there shall be substituted the words "Notwithstanding article 17(1) of the Malta Financial Services Authority Act, and the provisions of articles 19(6), 34(4) and 34(7), the competent authority may disclose certain information";

(ii) in paragraph (c) thereof, for the words "referred to in article 34(4) and (5);" there shall be substituted the words "referred to in article 34(4);";

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(iii) in the proviso thereof, for the words "shall comply with the Data Protection Act and any regulations made thereunder." there shall be substituted the words "shall comply with any applicable data protection legislation.";

(k) sub-article (12) thereof shall be amended as follows:

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(i) for the words "The competent authority may further communicate information, received inter alia under the provisions of this Act," there shall be substituted the words "Notwithstanding article 17(1) of the Malta Financial Services Authority Act and of articles 19(6) and 34(2), the competent authority may communicate information referred to in sub-articles (2) and (3) and in articles 34(4), 34(5) and 34(7),";

(ii) in the first proviso thereof, for the words "received under this article shall" there shall be substituted the words "received under this sub-article shall", and for the words "referred to in article 34(4) and (5):" there shall be substituted the words "referred to in article 34(4):";

(iii) in the second proviso thereof, for the words "Provided further that the information received under this sub-article may not be disclosed" there shall be substituted the words "Provided further that information received by the competent authority under Article 53(2) of the CRD may not be disclosed" and for the words "consent of the overseas regulatory authority which had disclosed it." there shall be substituted the words "consent of the overseas regulatory authority in another Member State and the authority in another Member State responsible for the supervision of investment firms which had disclosed it.";

and

(l) sub-article (14) thereof shall be deleted.

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

Amendment of article 26 of the principal Act.

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

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

"(a) an auditor of a credit institution, financial holding company or mixed financial holding company, as the case may be; or";

(ii) for the words "board of directors of the credit institution unless there are compelling reasons not to do so." there shall be substituted the words "board of directors or to the management body, as applicable, of the credit institution, financial holding company or mixed financial holding company, as the case may be, unless there are compelling reasons not to do so.";

(b) in paragraph (a) of sub-article (2) thereof, for the words "in relation to which his report is made" there shall be substituted the words "in relation to which a report is made"; and

(c) in sub-article (5) thereof, for the words "auditor of a credit institution, this article shall" there shall be substituted the words "auditor of a credit institution, financial holding company and mixed financial holding company, as the case may be, this article shall".

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

Amendment of article 28 of the principal Act.

(a) in the Maltese text, for the words "Nonostanti", there shall be substituted the words "Minkejja";

(b) for the words "any regulations or Banking Rules made thereunder -" there shall be substituted the words "any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder -";

(c) in paragraph (a) thereof, for the words "a credit institution establishes" there shall be substituted the words "a credit institution, financial holding company or mixed financial holding company establishes";

(d) in paragraph (b) thereof, for the words "a credit institution is likely to become unable" there shall be substituted the words "a credit institution, financial holding company or mixed financial holding company is likely to become unable";

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and

(e) in paragraph (c) thereof, for the words "a credit institution is likely to become unable" there shall be substituted the words "a credit institution, financial holding company or mixed financial holding company is likely to become unable".

Amendment of article 29 of the principal Act.

**50.** In sub-article (10) of article 29 of the principal Act, for the word "court", wherever it occurs in the said sub-article, there shall be substituted the words "Civil Court (Commercial Section)".

Amendment of article 29A of the principal Act.

**51.** In paragraph (b) of sub-article (5) of article 29A of the principal Act, for the words "Article 4(1) of Directive 2014/65/EU;" there shall be substituted the words "Article 4(1) of the MiFID;".

Addition of article 29AA of the principal Act.

**52.** Immediately after article 29A of the principal Act, as amended, there shall be added the following new article:

"Supervisory measures related to financial holding companies and mixed financial holding companies.

29AA. (1) Without prejudice to any other power of the competent authority under this Act or any other law, where the competent authority is the consolidating supervisor and has established that the conditions set out in article 11B(4) are not met or have ceased to be met, the competent authority shall take the appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensure compliance with the requirements laid down in this Act and any regulations made and Banking Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, and in the CRR, on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures applied by the competent authority as the consolidating supervisor shall, in particular, take into account the effects on the financial conglomerate. The supervisory measures referred to in this sub-article shall include:

(a) withdrawing the approval granted to a financial holding company or mixed financial holding company in terms of article 11B;

(b) suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

(c) issuing administrative measures or administrative penalties, in terms of this Act and any regulations made or Banking Rules issued thereunder, against the financial holding company, the mixed financial holding company or the directors and managers, subject to the provisions of national law transposing Articles 65 to 72 of the CRD;

(d) issuing instructions or directions to the financial holding company or mixed financial holding company, to transfer to its shareholders the participations in its subsidiary institutions;

(e) issuing a directive to the financial holding company or mixed financial holding company in terms of Article 4B;

(f) designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in this Act and, or any regulations made and, or Banking Rules issued thereunder transposing the CRD, in the CRD and, or in the CRR on a consolidated basis;

(g) restricting or prohibiting distributions or interest payments to shareholders;

(h) requiring financial holding companies or mixed financial holding companies to divest from, or reduce, holdings in institutions or other financial sector entities;

(i) requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance;

(j) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies from taking, or continuing to take, any action as a result of which the conditions set out in article 11B(4) are not met or have ceased to be met;

(k) requiring any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies to take such steps as may be necessary to restore the position existing immediately before any action, as a result of which the conditions set out in article 11B(4) are not met or have ceased to be met, was taken;

(l) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies from exercising any rights which a lawful action, as a result of which the conditions set out in article 11B(4) are not met or have ceased to be met, would have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(m) any measure under article 29 of this Act:

Provided that in exercising any of its powers under article 29, the provisions of the said article shall apply *mutatis mutandis*, and provided further that any reference to "the credit institution" shall be deemed to be reference to "the financial holding company" and, or "the mixed financial holding company", as applicable.

(2) Where the competent authority intends to withdraw an approval in accordance with sub-article (1)(a), it shall serve written notice of its intention on the financial holding company or mixed financial holding company; such notice shall specify the grounds upon which the competent authority intends to take such action and shall specify a period, being a period not less than forty-eight hours and not more than thirty calendar days, in which the financial holding company or mixed financial holding company shall be entitled to make representations to the competent authority as to why such action should not be taken. Unless the competent authority decides that the matter is urgent, it shall not withdraw an approval before the expiry of such period.

(3) For the purpose of taking decisions on the supervisory measures referred to in sub-article (1), where the financial holding company or the mixed financial holding company is established in a Member State other than Malta and the competent authority is the consolidating supervisor, the competent authority shall work together with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, in full consultation.

(4) Where the competent authority is not the consolidating supervisor but the financial holding company or the mixed financial holding company is established in Malta, the competent authority shall, for the purposes of taking decisions on the supervisory measures referred to in Article 21a(6) of the CRD, work together with the overseas regulatory authority acting as the consolidating supervisor in full consultation.

(5) Where the competent authority is the consolidating supervisor and where the financial holding company or the mixed financial holding company is not established in Malta, the competent authority shall prepare an assessment on the matters referred to in sub-article (1), and shall forward that assessment to the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established.

(6) The competent authority, whether acting as the consolidating supervisor or whether it is in receipt of an assessment referred to in Article 21a(8) of the CRD from the overseas regulatory authority acting as the consolidating supervisor, shall do everything within its powers to reach a joint decision on the measures referred to in sub-article (1) of this article and, or in Article 21a(6) of the CRD, with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established or with the overseas regulatory authority acting as the consolidating supervisor, as the case may be, within two months of receipt of that assessment:

Provided that the joint decision shall be duly documented and reasoned and where the competent authority is the consolidating supervisor, it shall communicate the joint decision to the financial holding company or the mixed financial holding company.

(7) In the event of a disagreement between the competent authority and the overseas regulatory authority acting as the consolidating supervisor or with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, the competent authority shall refrain from taking the joint decision referred to in sub-article (6) and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No. 1093/2010. In such cases, the competent authority shall adopt a joint decision with the overseas regulatory authority acting as the consolidating supervisor or with the overseas regulatory authority in the Member State where the financial holding company or the mixed financial holding company is established, as the case may be, in conformity with the decision of the EBA:

Provided that the matter shall not be referred to the EBA after the end of the two-month period referred to in sub-article (6) or after a joint decision has been reached.

(8) In the case of mixed financial holding companies, where the coordinator appointed in terms of Article 10 of Directive 2002/87/EC is neither the competent authority, nor the overseas regulatory authority acting as the consolidating supervisor, nor the overseas regulatory authority in the Member State where the mixed financial holding company is established, the agreement of the said coordinator shall be required for the purposes of the decisions or joint decisions referred to in sub-article (1) of this article and, or in Article 21a(6) of the CRD, as applicable.



Where the agreement of the coordinator is required, the competent authority shall refer any disagreements to the relevant European Supervisory Authority, namely, to the EBA or to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No. 1094/2010, which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this sub-article shall be without prejudice to the obligations under Directive 2002/87/EC or Directive 2009/138/EC."

**53.** In Article 29B of the principal Act, for the words "Regulations and Banking Rules made under this Act" there shall be substituted the words "Regulations, Banking Rules and Conduct of Business Rules made under this Act".

Amendment of article 29B of the principal Act.

**54.** In article 30 of the principal Act, for the words "Every credit institution and, where applicable, financial holding companies and mixed financial holding companies," there shall be substituted the words "Every credit institution, and, where applicable, financial holding company and mixed financial holding company,".

Amendment of article 30 of the principal Act.

**55.** Article 31 of the principal Act shall be amended as follows:

Amendment of article 31 of the principal Act.

(a) in paragraph (a) of sub-article (9) thereof, for the words "of this Act and any regulations made or Banking Rules issued thereunder" there shall be substituted the words "of this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder"; and

(b) immediately after sub-article (9) thereof, as amended, there shall be added the following new sub-article:

"(9A) The competent authority may require the replacement of an auditor if that auditor acts in breach of his obligations under sub-article (9)."

**56.** Article 33 of the principal Act shall be amended as follows:

Amendment of article 33 of the principal Act.

(a) the marginal note thereof shall be substituted by the following:

"Duties of officers of credit institutions.";

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

"(a) to secure compliance by the credit

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institution with its licence and with the provisions of this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder; and".

Addition of new article 33A to the principal Act.

**57.** Immediately after article 33 of the principal Act, there shall be added the following new article 33A:

"Duties of officers of financial holding companies and mixed financial holding companies. 33A. Every officer of a financial holding company or a mixed financial holding company shall take all reasonable steps –

(a) to secure compliance by the financial holding company or the mixed financial holding company, as the case may be, with its approval and with this Act and any regulations made or Banking Rules issued thereunder; and

(b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence.".

Amendment of article 34 of the principal Act.

**58.** Article 34 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof:

(i) for the words "of a bank, shall disclose" there shall be substituted the words "of a bank, financial holding company or mixed financial holding company, shall disclose", for the words "of a bank which he has acquired" there shall be substituted the words "of a bank, or relating to the affairs of a financial holding company or a mixed financial holding company, which he has acquired", and for the words "under this Act and any regulations or Banking Rules made thereunder except -" there shall be substituted the words "under this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder except -";

(ii) in paragraph (a) thereof, for the words "provisions of this Act and any regulations or Banking Rules made thereunder;" there shall be substituted the words "provisions of this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder;";

(iii) in paragraph (c) thereof, for the words "by any court or under a provision" there shall be substituted the

words "by any court or tribunal or under a provision";

(b) in sub-article (4) thereof, for the words "information obtained from credit institutions in the course" there shall be substituted the words "information obtained in the course", and for the words "in summary or collective form, so as not to enable the identity of the credit institution, to whom such information relates, to be ascertained, without prejudice to the provisions" there shall be substituted the words "in summary or collective form, such that individual credit institutions cannot be identified, without prejudice to the provisions";

(c) in sub-article (6) thereof:

(i) in paragraph (a) thereof, for the words "companies of which that institution forms part," there shall be substituted the words "companies of which that credit institution forms part," and for the words "authorised by an overseas regulatory authority in a recognised jurisdiction as well as" there shall be substituted the words "authorised by an overseas authority in a recognised jurisdiction, as well as";

(ii) in paragraph (c) thereof, for the words "Union law, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation):", there shall be substituted the words "Union law, including the GDPR:";

(d) in sub-article (7) thereof:

(i) for the words "information under this article, it shall use", there shall be substituted the words "information under sub-articles (4) and (5), it shall use";

(ii) in paragraph (c) thereof, for the words "competent authority including court proceedings pursuant to article 10;" there shall be substituted the words "competent authority pursuant to article 10 and in any court proceedings before the Court of Appeal in terms of article 21(14) of the Malta Financial Services Authority Act;"; and

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(e) in sub-article (8) thereof, for the words "for the purposes of the Act and any regulations and, or Banking Rules

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issued thereunder," there shall be substituted the words "for the purposes of this Act and any regulations and, or Banking Rules and, or Conduct of Business Rules issued thereunder,".

Amendment of article 35 of the principal Act.

**59.** In paragraph (b) of sub-article (1) of article 35 of the principal Act, for the words "under this Act and any regulations made or Banking Rules issued thereunder;" there shall be substituted the words "under this Act or any regulations made or Banking Rules or Conduct of Business Rules issued thereunder;".

Amendment of article 35A of the principal Act.

**60.** Article 35A of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "provisions of articles 35 and 35B and to any regulations made under article 3(1)(e), where any person fails" there shall be substituted the words "provisions of articles 29AA(1)(c), 35 and 35B and to any regulations made under articles 3(1)(a), 3(1)(c) and 3(1)(e), where any person fails", for the words "Banking Rules issued thereunder, or the CRR, or such person has failed to comply" there shall be substituted the words "Banking Rules or Conduct of Business Rules issued thereunder, or the CRR, or any binding legal instruments issued under the CRD, or such person has failed to comply", and for the words "Banking Rules issued thereunder, or the CRR, the competent authority may," there shall be substituted the words "Banking Rules or Conduct of Business Rules issued thereunder, or the CRR, or any binding legal instruments issued under the CRD, the competent authority may,";

(b) in sub-article (3) thereof, for the words "an administrative penalty, it shall notify" there shall be substituted the words "an administrative penalty in terms of this Act or any regulations made thereunder, it shall notify"; and

(c) in sub-article (6) thereof for the words "in terms of this article shall be without prejudice" there shall be substituted the words "in terms of this Act, or any regulations made thereunder, shall be without prejudice".

Amendment of article 35B of the principal Act.

**61.** Article 35B of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "provisions of this Act and of any regulations made or Banking Rules issued thereunder, and the CRR." there shall be substituted the words "provisions of this Act or of any regulations made or Banking Rules or Conduct of Business Rules issued thereunder, of the CRR, or of any binding legal instruments issued under the CRD."; and

(b) in sub-article (2) thereof, for the words "provisions of this Act and of any regulations made or Banking Rules issued thereunder, and of the CRR, on an anonymous basis," there shall be substituted the words "provisions of this Act or of any regulations made or Banking Rules or Conduct of Business Rules issued thereunder, of the CRR, or of any binding legal instruments issued under the CRD, on an anonymous basis,".

**62.** Immediately after article 35B of the principal Act, as amended, there shall be added the following new article:

Addition of article 35C to the principal Act.

"Obligation to give reasons.

35C. In exercising its supervisory powers in accordance with this Act and any regulations made and, or Banking Rules and, or Conduct of Business Rules issued thereunder, with the CRR and with any binding legal instruments issued under the CRD, the competent authority shall, in its decisions, state the grounds on which such decisions have been based."

**63.** Article 38 of the principal Act shall be amended as follows:

Amendment of article 38 of the principal Act.

(a) the marginal note thereof shall be substituted by the following:

"Transitory provisions."; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) By way of derogation from article 11C(1), where a third-country group operates through a credit institution licensed in terms of this Act, and through one or more other institutions in the European Union and with a total value of assets in the European Union equal to or greater than forty billion euro (€40,000,000,000) on 27 June 2019, the credit institution licensed in terms of this Act shall ensure that the intermediate EU parent undertaking referred to in article 11C(1) or the two (2) intermediate EU parent undertakings referred to in article 11C(2), as the case may be, shall be established by 30 December 2023."

**64.** Immediately after article 38 of the principal Act, the title "SCHEDULE" shall be substituted by the following title:

Amendment of the First Schedule annexed to the principal Act.

"FIRST SCHEDULE".

**65.** Immediately after the First Schedule to the principal Act, as amended, there shall be added the following new Second Schedule:

Addition of the Second Schedule to the principal Act.

"SECOND SCHEDULE  
(Article 6(1))

List of entities that are not subject to the requirement to apply to the competent authority for a licence under this Act:

1. The Central Bank and central banks of other Member States;
2. Post office giro institutions;
3. In Denmark, the "Eksport Kredit Fonden", the "Eksport Kredit Fonden A/S", the "Danmarks Skibskredit A/S" and the "KommuneKredit";
4. In Germany, the "Kreditanstalt für Wiederaufbau", "Landwirtschaftliche Rentenbank", "Bremer Aufbau-Bank GmbH", "Hamburgische Investitions- und Förderbank", "Investitionsbank Berlin", "Investitionsbank des Landes Brandenburg", "Investitionsbank Schleswig-Holstein", "Investitions- und Förderbank Niedersachsen – NBank", "Investitions- und Strukturbank Rheinland-Pfalz", "Landeskreditbank Baden-Württemberg – Förderbank", "LfA Förderbank Bayern", "NRW.BANK", "Saarländische Investitionskreditbank AG", "Sächsische Aufbaubank – Förderbank", "Thüringer Aufbaubank", undertakings which are recognised under the "Wohnungsgemeinnützigkeitsgesetz" as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings;
5. In Estonia, the "hoiu-laenuühistud", as cooperative undertakings that are recognised under the "hoiu-laenuühistu seadus";
6. In Ireland, the Strategic Banking Corporation of Ireland, credit unions and friendly societies;
7. In Greece, the "Ταμείο Παρακαταθηκών και Δανείων" (Tamio Parakatathikon kai Danion);
8. In Spain, the "Instituto de Crédito Oficial";
9. In France, the "Caisse des dépôts et consignations";
10. In Croatia, the "kreditne unije" and the "Hrvatska banka za obnovu i razvitak";
11. In Italy, the "Cassa depositi e prestiti";
12. In Latvia, the "krājaizdevu sabiedrības", undertakings that are recognised under the "krājaizdevu sabiedrību likums" as cooperative

undertakings rendering financial services solely to their members;

13. In Lithuania, the "kredito unijos" other than the "centrinės kredito unijos";

14. In Hungary, the "MFB Magyar Fejlesztési Bank Zártkörűen Működő Részvénytársaság" and the "Magyar Export-Import Bank Zártkörűen Működő Részvénytársaság";

15. In Malta, "The Malta Development Bank" established in terms of the Malta Development Bank Act;

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16. In the Netherlands, the "Nederlandse Investeringsbank voor Ontwikkelingslanden NV", the "NV Noordelijke Ontwikkelingsmaatschappij", the "NV Limburgs Instituut voor Ontwikkeling en Financiering", the "Ontwikkelingsmaatschappij Oost-Nederland NV" and kredietunies;

17. In Austria, undertakings recognised as housing associations in the public interest and the "Österreichische Kontrollbank AG";

18. In Poland, the "Spółdzielcze Kasy Oszczędnościowo — Kredytowe" and the "Bank Gospodarstwa Krajowego";

19. In Portugal, the "Caixas Económicas" existing on 1 January 1986 with the exception of those incorporated as limited companies and of the "Caixa Económica Montepio Geral";

20. In Slovenia, the "SID-Slovenska izvozna in razvojna banka, d.d. Ljubljana";

21. In Finland, the "Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB", and the "Finnvera Oyj/Finnvera Abp";

22. In Sweden, the "Svenska Skeppshypotekskassan".

## PART V

### AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

**66.** This Part amends the Financial Institutions Act and it shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Financial Institutions Act. Cap. 376.

**67.** In sub-article (1) of article 2 of the principal Act, immediately after the definition "Regulation (EU) No. 1093/2010", there shall be added the following new definition:

Amendment of article 2 of the principal Act.

" "Regulation (EU) 2015/847" means Regulation (EU) 2015/847 of the European Parliament and of the Council of 20

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May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;"

Amendment of article 3 of the principal Act.

**68.** Paragraphs (f) and (g) of sub-article (2A) of article 3 of the principal Act shall be deleted.

Amendment of article 8A of the principal Act.

**69.** In the proviso to sub-article (2) of article 8A of the principal Act, for the words "distribute and redeem electronic money through agents and, or distributors." there shall be substituted the words "distribute and redeem electronic money through distributors."

Amendment of article 10 of the principal Act.

**70.** In sub-article (1) of article 10 of the principal Act, for the words "Without prejudice to the provisions of paragraph 3(e) of the Second Schedule," there shall be substituted the words "Without prejudice to the provisions of paragraph 3(d) of the Second Schedule,".

Amendment of article 13A of the principal Act.

**71.** In article 13A of the principal Act, for the words "account information service provider concerned." there shall be substituted the words "account information service provider concerned:" and immediately thereafter there shall be added the following new proviso:

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"Provided that article 25(2) and the European Passport Rights for Financial Institutions Regulations shall be without prejudice to the obligations of the Financial Intelligence Analysis Unit established in terms of the Prevention of Money Laundering Act and the obligations of those authorities in other Member States which, under Directive (EU) 2015/849 and Regulation (EU) 2015/847, in particular under Article 48(1) of Directive (EU) 2015/849 and Article 22(1) of Regulation (EU) 2015/847, are responsible for supervising or monitoring compliance with the requirements laid down in those instruments."

Amendment of article 14 of the principal Act.

**72.** In sub-article (4) of article 14 of the principal Act, for the words "which are not incorporated in Malta." there shall be substituted the words "which is not incorporated in Malta."

Amendment of article 18 of the principal Act.

**73.** In the proviso to paragraph (c) of sub-article (6A) of article 18 of the principal Act, for the words "within which he is carrying out that task." there shall be substituted the words "within which he is carrying out that task:" and immediately thereafter there shall be added the following new proviso:

"Provided further that the competent authority may require



the replacement of an auditor if that auditor acts in breach of his obligations under this sub-article."

74. In sub-article (6) of article 25 of the principal Act, for the words "referred to in the Schedule to the Banking Act." there shall be substituted the words "referred to in the First Schedule annexed to the Banking Act." Amendment of article 25 of the principal Act. Cap. 371.

75. In sub-paragraph (d) of paragraph 3 of the Second Schedule to the principal Act, for the words "referred to in paragraph (1)(d) or (e) of this Schedule" there shall be substituted the words "referred to in paragraph (2)(d) or (e) of this Schedule" Amendment of the Second Schedule to the principal Act.

76. In sub-paragraph (b) of paragraph 2 of the Third Schedule to the principal Act, for the words "referred to in paragraph 2(d), (e) and (g) of the Second Schedule," there shall be substituted the words "referred to in paragraph 2(d) or (e) of the Second Schedule," and for the words "conditions laid down in paragraph 3(e) of the Second Schedule" there shall be substituted the words "conditions laid down in paragraph 3(d) of the Second Schedule" Amendment of the Third Schedule to the principal Act.

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Passed by the House of Representatives at Sitting No. 530 of the 14th December, 2021.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

