

I assent.

(L.S.)

GEORGE VELLA
President

14th March, 2023

ACT No. IX of 2023

AN ACT to amend the Financial Markets Act and to provide for other matters ancillary or consequential thereto, Cap. 345.

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 Financial Markets (Amendment) Act, 2023 and this Act shall be read and construed as one with the Financial Markets Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 345.

2. The "ARRANGEMENT OF ACT" of the principal Act shall be substituted by the following:

Amendment of the Arrangement of Act.

"ARRANGEMENT OF THE ACT"

		Articles
Part I	Preliminary	1-2A
Part II	Trading Venues	3-10B
Part III	Prospectus, Listing and Trading	11-23

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Part IV	Central Securities Depository	24-31A
Part IV <i>bis</i>	Covered Bonds	31B-31I
Part V	Regulatory and Investigatory Powers	32-41B
Part VI	Financial Services Tribunal	42-44
Part VII	Miscellaneous	45-54

SCHEDULE".

Amendment of
article 2 of the
principal Act.**3.** Article 2 of the principal Act shall be amended as follows:

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

"Interpretation and scope.";

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

(i) immediately after the definition "Capital Markets Rules" there shall be added the following new definition:

" "the CBD" means Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(ii) immediately after the definition "certificates" there shall be added the following new definition:

" "collateral assets" means physical assets and assets in the form of exposures that secure cover assets;"

(iii) immediately after the definition "competent authority" there shall be added the following new definitions:

" "cover assets" means assets included in a cover pool;

"cover pool" means a clearly defined set of assets securing the payment obligations attached to

covered bonds that are segregated from other assets held by the credit institution issuing the covered bonds;

"covered bond" means a debt obligation that is issued by a credit institution in accordance with the provisions of this Act, the Financial Markets Act (Covered Bonds) Regulations, regulations 68(7) and 108(1) of the Recovery and Resolution Regulations, and of any Covered Bonds Rules issued under this Act or under the Financial Markets Act (Covered Bonds) Regulations, and that is secured by cover assets to which covered bond investors have direct recourse as preferred creditors;

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"covered bond programme" means the structural features of a covered bonds issue that are determined by the provisions of this Act and any regulations and Covered Bonds Rules issued thereunder, and the provisions of the Recovery and Resolution Regulations transposing the CBD and by contractual terms and conditions, in accordance with the approval granted to the credit institution issuing the covered bonds;

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"covered bond public supervision" means the supervision of covered bond programmes ensuring compliance with, and the enforcement of, the requirements applicable to the issue of covered bonds;

"Covered Bonds Rules" means those Rules issued by the competent authority under Part IV *bis* or under any regulations issued thereunder;;

(iv) immediately after the definition "CRD" there shall be added the following new definitions:

"credit institution" means a credit institution as defined in point (1) of Article 4(1) of the CRR;

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

(v) immediately after the definition "Directive 2003/87/EC" there shall be added the following new definition:

" "Directive 2009/65/EC" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(vi) in the definition "European regulatory authority", for the words "Article 48 of the Directive" there shall be substituted the words "Article 67 of the MIFID" and for the words "the different provisions of the Directive;" there shall be substituted the words "the different provisions of the MIFID;"

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

" "EBA" means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC, as amended from time to time;"

(viii) immediately after the definition "European regulatory authority" there shall be added the following new definition:

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

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(ix) immediately after the definition "exchange-traded fund" there shall be added the following new definition:

" "extendable maturity structure" means a mechanism which provides for the possibility of extending the scheduled maturity of covered bonds for a pre-determined period of time and in the event

that a specific trigger occurs;"

(x) immediately after the definition "organised trading facility" or "OTF" there shall be added the following new definition:

" "overcollateralisation" means the entirety of the statutory, contractual or voluntary level of collateral that exceeds the coverage requirement set out in regulation 12 of the Financial Markets Act (Covered Bonds) Regulations;" L.N. 59 of 2023.

(xi) immediately after the definition "overseas regulatory authority" there shall be added the following new definition:

" "prescribed" means prescribed by regulations made under this Act;"

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

" "resolution" shall have the same meaning as that assigned to it in regulation 2(1) of the Recovery and Resolution Regulations;" S.L. 330.09.

"Resolution Committee" means the Resolution Committee appointed by the Resolution Authority in terms of article 7B(2) of the Malta Financial Services Authority Act;" Cap. 330.

(xiii) immediately after the definition "securities" there shall be added the following new definition:

" "segregation" means the actions performed by a credit institution issuing covered bonds to identify cover assets and put them legally beyond the reach of creditors other than covered bond investors and counterparties of derivative contracts;" and

(xiv) immediately after the definition "Shareholders' Rights Directive" there shall be added the following new definition:

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S.L. 330.09. " "special administrator" means the person or entity appointed to administrate a covered bond programme in the event of the insolvency of a credit institution issuing covered bonds under that programme, or when such credit institution has been determined to be failing or likely to fail pursuant to regulation 32(1) of the Recovery and Resolution Regulations or, in exceptional circumstances, where the competent authority determines that the proper functioning of that credit institution is seriously at risk;"

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

Cap. 371. "(2) The objective of this Act is *inter alia* to regulate trading venues, central securities depositories, central counterparties, covered bonds and the issuance thereof by credit institutions licensed in terms of the Banking Act, and to provide for the orderly trading in transferable securities and for matters ancillary or incidental thereto or connected therewith, and to transpose and, or implement, in part, the relevant provisions of the CBD, CRAR, CSDR, EMIR, MIFID, MiFIR, the Prospectus Regulation, the SSR and the Directives, and consequently this Act and any regulations adopted thereunder shall be interpreted and applied accordingly."; and

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

Cap. 371. "(3) Part IV *bis* shall apply to covered bonds issued by credit institutions licensed in terms of the Banking Act."

Amendment of article 4 of the principal Act. **4.** In sub-article (8) thereof, for the words "the Directive", there shall be substituted the words "the MIFID".

Addition of new Part IV *bis* and new articles to the principal Act. **5.** Immediately after article 31A of the principal Act there shall be added the following new Part and the following new articles:

"PART IV *bis*
COVERED BONDS

Functions and
powers of the
competent
authority.

31B. (1) Without prejudice to any other power or function conferred to it by this Act or any other law, it shall also be the function of the competent authority to act as the designated competent authority in Malta for the purposes of implementing the provisions of the CBD and to carry out covered bond public supervision.

(2) The competent authority shall monitor the issue of covered bonds to assess and ensure compliance with the requirements laid down in this Part and any regulations and Covered Bonds Rules issued thereunder.

(3) Without prejudice to the generality of sub-articles (1) and (2) and to any other power or function conferred on the competent authority by this Act or any other law, the powers of the competent authority shall include the power to:

(a) grant or refuse approval for covered bond programmes pursuant to articles 31D and 31E;

(b) assess compliance with the requirements laid down in this Part and any regulations and Covered Bonds Rules issued thereunder;

(c) regularly review covered bond programmes in order to assess compliance with the provisions of this Part and any regulations and Covered Bonds Rules issued thereunder;

(d) issue Covered Bonds Rules in order to better implement and carry out the provisions of this Act and, or of any regulations issued thereunder and, or in furtherance of its responsibility under any provisions of the CBD, which rules shall be binding on credit institutions and any other persons as may be specified therein;

(e) investigate possible breaches of the requirements of this Part or any regulations or Covered Bonds Rules issued thereunder;

(f) carry out on-site and off-site inspections;

(g) impose administrative penalties and other administrative measures in accordance with article 39CA; and

(h) adopt and implement supervisory guidelines relating to the issue of covered bonds.

(4) The competent authority shall inform the European Commission and the EBA of its functions and duties pursuant to sub-article (1).

(5) The competent authority shall have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to covered bond public supervision.

Covered Bonds Rules.

31C. (1) The competent authority may, from time to time, issue and publish Covered Bonds Rules as may be required for carrying into effect any of the provisions of this Act or any regulations made thereunder, and to transpose, implement and give effect to the provisions and requirements of the CBD.

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

(a) lay down additional requirements and conditions in relation to credit institutions seeking approval for a covered bond programme, credit institutions having issued covered bonds, and any other matters as the competent authority may consider appropriate;

(b) provide for the returns, statements and notices to be made or given for any purposes in regard to which the competent authority exercises supervisory or regulatory functions, and the form and contents thereof;

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

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

(e) regulate any matter that is incidental to or connected with any of the matters mentioned in this article as the competent authority may consider appropriate in the performance of its functions; and

(f) lay down requirements and conditions for the better implementation and purposes of this Part and of any regulations issued thereunder.

(3) Covered Bonds Rules issued in terms of this article shall be binding on credit institutions and on any other persons as may be specified therein.

Requirement of a covered bond programme.

31D. (1) Without prejudice to the provisions of Part III and to article 54, no covered bonds shall be issued in Malta by a credit institution unless and until a covered bond programme is approved by the competent authority.

(2) An application for the approval of a covered bond programme shall be in such form and accompanied by such documents and information and shall conform with such requirements as shall be specified in Covered Bonds Rules.

(3) The competent authority shall not approve a covered bond programme unless it is satisfied that –

(a) the credit institution has an adequate programme of operations setting out the issue of covered bonds;

(b) the credit institution has adequate policies, processes and methodologies aimed at investor protection for the approval, amendment, renewal and refinancing of loans included in the cover pool;

(c) the credit institution has management and staff dedicated to the covered bond programme which have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond programme;

(d) the administrative set-up of the credit institution's cover pool and the monitoring thereof meets the applicable requirements laid down in this Act and any regulations and Covered Bonds Rules issued thereunder;

(e) the credit institution satisfies the requirements of this Act, and any regulations and Covered Bonds Rules issued thereunder; and

(f) the credit institution satisfies any other requirements that may be imposed by the competent authority.

(4) For the purposes of sub-regulation (3), a credit institution shall provide the competent authority with all the information necessary to enable the competent authority to satisfy itself of the credit institution's compliance with the requirements of this Act and any regulations and Covered Bonds Rules issued thereunder.

(5) Information which the competent authority may require in connection with an application shall be provided in such form, and shall be verified in such manner, as the competent authority may direct.

(6) In determining an application, the competent authority may consider any information which it deems relevant to the application.

(7) The competent authority shall issue and publish Covered Bonds Rules as may be required in order to better implement the provisions of this article.

Approval of the covered bond programme.

31E. (1) Where the competent authority finds that an application for the approval of a covered bond programme does not comply with article 31D(2) or that the covered bond programme does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or that changes to the application or the covered bond programme are required or additional information is required:

(a) it shall inform the applicant of that fact; and

(b) it shall clearly specify the changes or additional information that are necessary.

(2) Where the applicant is unable or unwilling to make the necessary changes or to provide the additional information requested in accordance with sub-article (1), the competent authority shall be entitled to refuse the approval of the application and terminate the review process. In such cases, the competent authority shall notify the applicant of its decision in writing and specify the reasons for such refusal.

(3) Without prejudice to the provisions of sub-article (2), the competent authority shall determine an application for the approval of a covered bond programme by acting in any of the following ways:

- (a) granting an approval without conditions;
- (b) granting an approval subject to such conditions as it may deem appropriate;
- (c) refusing to grant an approval:

Provided that the competent authority may, at any time, vary or revoke any condition imposed in terms of paragraph (b).

(4) If the competent authority decides to approve a covered bond programme, it shall give the applicant written notice accordingly.

(5) If the competent authority decides to refuse a covered bond programme, it must give the applicant notice of its decision in writing stating the reasons for its refusal.

Changes in information.

31F. A credit institution shall provide the competent authority with details of any changes in the information provided under this Act or any regulations or Rules issued thereunder as soon as such credit institution becomes aware of such changes.

Registration of transactions in relation to the covered bond programme.

31G. Credit institutions issuing covered bonds shall register all their transactions in relation to the covered bond programme and shall have in place adequate and appropriate documentation systems and processes.

Power to make regulations.

31H. (1) The Minister, acting on the advice of the competent authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

(a) regulate covered bonds and the issuance thereof, including in the case of the insolvency or resolution of a credit institution issuing covered bonds; and establish and provide for the structural features of covered bonds, including requirements for cover assets, collateral assets and other assets securing covered bonds as well as the methodology and process for the valuation thereof; requirements for a cover pool, its composition and for risk diversification therein; requirements for the segregation of cover assets including the segregation thereof in the case of the insolvency or resolution of a credit institution issuing covered bonds; requirements on the information to be provided to investors including on the frequency and publication thereof; coverage requirements including on the valuation of derivative contracts and on any interest payable in respect of outstanding covered bonds and interest receivable in respect of cover assets; and requirements for a liquidity buffer;

(b) regulate the drawing-up, approval, publication and distribution in Malta of covered bond programmes, including those relating to covered bonds issued by credit institutions authorised in a country outside Malta and in such case, make provision for the approval of such covered bond programmes taking into account Malta's international commitments;

(c) provide for reporting requirements and the form and frequency thereof, including in the event of the insolvency or resolution of a credit institution issuing covered bonds, and for other requirements and conditions which a credit institution issuing covered bonds must satisfy on a continuing and ongoing basis and establish the circumstances and the manner in which requirements and conditions may be varied, suspended or revoked;

(d) provide for the exercise of powers by the competent authority on credit institutions and others as may be specified therein;

(e) provide for the establishment and imposition of administrative penalties or other administrative measures for breaches of this Act or any regulations or Covered Bonds Rules issued thereunder, and for appeals therefrom to the Financial Services Tribunal, as well as for the establishment and imposition of fines and other penalties;

(f) provide for the establishment and imposition of fines, other punishments and terms of imprisonment for contraventions of, or failure to comply with, this Act or any regulations or Covered Bonds Rules issued thereunder, and for appeals therefrom;

(g) provide for any matter that the Minister may deem expedient, including the creation and exercise of rights by, or for the benefit of, the public, the imposition of duties and obligations on credit institutions issuing covered bonds or persons responsible for the management or administration thereof and the regulation of any fees and, or any other charges imposed directly or indirectly on investors;

(h) provide for the keeping of records and for disclosure requirements;

(i) regulate the promotion or sale of covered bonds;

(j) provide for and regulate the payment by a credit institution issuing covered bonds or any other person, as the case may be, of application, approval or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(k) exempt any covered bonds or any categories thereof or any covered bonds issued before 8 July 2022 that comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, from any one or more of the provisions of this Act or any regulations made under this article subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(l) transpose, implement and give effect to the provisions and requirements of the CBD and of any other Directives, Regulations or any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder; regulations made under this paragraph, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

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

(n) provide for anything that is incidental to or connected with the matters referred to in paragraphs (a) to (m).

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

(3) Regulations made under this article may impose:

(a) administrative penalties which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;

(b) punishments or other penalties in respect of any contravention or failure to comply not exceeding a fine (*multa*) of four hundred and sixty-six thousand euro (€466,000) or imprisonment for a term not exceeding four years, or both such fine and imprisonment;

(c) administrative penalties higher than one hundred and fifty thousand euro (€150,000), and fines higher than four hundred and sixty-six thousand euro (€466,000), where deemed necessary or appropriate for any contravention of, or failure of compliance with, any EU Directive or EU Regulation or any regulations made under this article to transpose or to give effect to any EU Directive or Regulation;

(d) administrative penalties in the form of a fixed penalty, a daily penalty, or both.

(4) Regulations made under this article may prescribe administrative penalties and fines as provided for in sub-article (3)(c), for any breach of any provision of the Act or of any regulations issued under this article or for any breach of any Covered Bonds Rules, transposing and, or implementing any EU Directive or Regulation.

(5) Where regulations have been issued in terms of this article, the competent authority may issue Covered Bonds Rules for the better carrying out, and to better implement, the provisions of the regulations.

Claims and
privileged claims.

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31I. (1) Covered bond investors and counterparties of derivative contracts that comply with regulation 8 of the Financial Markets Act (Covered Bonds) Regulations shall be entitled to the following:

(a) a claim against the credit institution issuing the covered bonds;

(b) in the case of the insolvency or resolution of the credit institution issuing the covered bonds, a privileged claim against the principal and any accrued and future interest on cover assets;

(c) in the case of the insolvency of the credit institution issuing the covered bonds and in the event that the privileged claim referred to in paragraph (b) cannot be fully satisfied, a claim against the insolvency estate of that credit institution, which ranks *pari passu* with the claims of the credit institution's ordinary unsecured creditors determined in accordance with the applicable laws in force in Malta at the time governing the ranking in normal insolvency proceedings:

Provided that the claims referred to in this sub-article shall be limited to the full payment obligations attached to the covered bonds.

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(2) Credit institutions issuing covered bonds shall ensure that covered bond investors and counterparties of derivative contracts that comply with regulation 8 of the Financial Markets Act (Covered Bonds) Regulations, are entitled to the claims referred to in sub-article (1), subject to the conditions laid down in regulation 68(7) of the Recovery and Resolution Regulations.

(3) Without prejudice to sub-article (4), the Minister, acting on the advice of the competent authority, may make, amend or revoke regulations to give effect to the provisions of sub-articles (1) and (2).

(4) The competent authority may issue Covered Bonds Rules for the better implementation of sub-articles (1) and (2)."

Amendment of article 32 of the principal Act.

6. Sub-article (1) of article 32 of the principal Act shall be amended as follows:

(a) in paragraph (ii) thereof, for the words "thereunder; or" there shall be substituted the words "thereunder;";

(b) in paragraph (vi) thereof, for the words "controlled by them; and, or" there shall be substituted the words "controlled by them;"; and

(c) immediately after paragraph (vi) there shall be added the following new paragraph:

"(via) any credit institution issuing covered bonds, which is licensed in terms of the Banking Act, or any person who is or was an officer, employee or agent of such a credit institution or any person that controls such a credit institution; and, or".

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7. In article 34A of the principal Act, for the words "or Capital Markets Rules issued thereunder," there shall be substituted the words "or Financial Market Rules, Capital Markets Rules or Covered Bonds Rules issued thereunder,".

Amendment of article 34A of the principal Act.

8. In article 35 of the principal Act, for the words "regulated market", wherever they occur in this article, there shall be substituted the words "trading venue", for the words "the competent authority, the competent authority," there shall be substituted the words "the competent authority," and for the words "or Capital Markets Rules made thereunder," there shall be substituted the words "or Financial Market Rules, Capital Markets Rules or Covered Bonds Rules made thereunder,".

Amendment of article 35 of the principal Act.

9. In article 36 of the principal Act, for the words "regulated market" there shall be substituted the words "trading venue".

Amendment of article 36 of the principal Act.

10. Immediately after article 37D of the principal Act there shall be added the following new article:

Addition of article 37E to the principal Act.

"Co-operation obligations in relation to covered bond public supervision.

37E. (1) The competent authority shall cooperate closely with the authorities performing the general supervision of credit institutions in accordance with relevant European Union law applicable to those institutions and, in the event of the resolution of a credit institution issuing covered bonds, with the Resolution Committee or the relevant European resolution authority, as applicable.

(2) The competent authority shall cooperate closely with authorities in other Member States responsible for covered bond public supervision in terms of Article 18(2) of the CBD, including by providing the said authorities with any information which is relevant for the exercise of their supervisory tasks under the provisions of their national law transposing the CBD.

(3) For the purposes of sub-article (2), the competent authority shall communicate:

(a) all relevant information at the request of an authority in another Member State responsible for covered bond public supervision in terms of Article 18(2) of the CBD; and

(b) on its own initiative, any essential information to authorities in other Member States responsible for covered bond public supervision in terms of Article 18(2) of the CBD.

(4) The competent authority shall cooperate with the EBA or, where relevant, the ESMA, for the purposes of the CBD.

(5) In the event of the resolution of a credit institution issuing covered bonds, the competent authority shall cooperate with the Resolution Committee or the relevant European resolution authority, as applicable, in order to ensure that the rights and interests of the covered bonds investors are preserved, including at least by verifying the continuous and sound management of the covered bond programme during the period of the resolution process.

(6) By 8th July 2024, the competent authority shall transmit to the European Commission information on the following:

(a) developments regarding the number of approvals to issue covered bonds;

(b) developments regarding the number of covered bonds issued in compliance with Part IV *bis* and any regulations and Covered Bonds Rules issued thereunder and in accordance with Article 129 of the CRR;

(c) developments regarding the assets collateralising the issue of covered bonds;

(d) developments regarding the level of overcollateralisation;

(e) cross-border investments in covered bonds, including inward investment from, and outward investment to, third-countries;

(f) developments regarding the issue of covered bonds with extendable maturity structures;

(g) developments regarding the risks and benefits of the use of exposures as referred to in Article 129(1) of the CRR;

(h) the functioning of covered bond markets.

(7) For the purposes of this article, information shall be regarded as essential if it could materially influence the assessment of the issue of covered bonds in another Member State."

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

Amendment of article 38 of the principal Act.

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

(i) for the words "Regulated markets, central securities depositories," there shall be substituted the words "Trading venues, central securities depositories, credit institutions issuing covered bonds,"; and

(ii) in paragraph (a) thereof, for the words "regulated market or to dealings therewith or therein," there shall be substituted the words "trading venue or to dealings therewith or therein, or to the issue of covered bonds or to dealings thereof,"; and

(b) in sub-article (2) thereof, for the words "regulated markets," there shall be substituted the words "trading venues, credit institutions issuing covered bonds,".

12. Article 39 of the principal Act shall be amended as follows:

Amendment of article 39 of the principal Act.

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

(i) in paragraph (a) thereof, for the words "Listing Rule," there shall be substituted the words "Capital Markets Rule, Covered Bonds Rule,"; and

(ii) in paragraph (b) thereof, for the words "Listing Rule" there shall be substituted the words "Capital Markets Rule, Covered Bonds Rule";

(b) in paragraph (a) of sub-article (2) thereof, for the words "Listing Rule," there shall be substituted the words

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"Capital Markets Rule, Covered Bonds Rule,"; and

(c) in paragraph (a) of sub-article (3) thereof, for the words "Listing Rule," there shall be substituted the words "Capital Markets Rule, Covered Bonds Rule,".

Addition of article 39CA to the principal Act.

13. Immediately after article 39C of the principal Act there shall be added the following new article:

"Administrative penalties and other administrative measures in relation to covered bonds.

39CA. (1) Without prejudice to the powers of the competent authority under this Act or any other law, where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of Part IV *bis* or any regulations or Covered Bonds Rules issued thereunder, or that a person has contravened or failed to comply with any condition, obligation, requirement or directives made or given by the competent authority under any of the provisions of this Act or any regulations or Covered Bonds Rules issued thereunder, including failure to co-operate in an investigation, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each breach or failure to comply, as the case may be and, or any other administrative measure, as it may deem necessary.

(2) Without prejudice to the generality of sub-article (1), the competent authority may impose administrative penalties and other administrative measures in at least the following circumstances:

(a) a credit institution has acquired an approval for a covered bond programme by means of false statements or other irregular means;

(b) a credit institution no longer fulfils the conditions under which approval for a covered bond programme was granted;

(c) a credit institution issues covered bonds without obtaining the approval of the competent authority in accordance with articles 31D and 31E;

S.L. 330.09. (d) a credit institution issuing covered bonds fails to meet the requirements set out in article 31I and in regulation 108(1) of the Recovery and Resolution Regulations;

S.L. 330.09. (e) a credit institution issues covered bonds that do not comply with article 31I and with regulation 68(7) of the Recovery and Resolution Regulations;

L.N. 59 of 2023. (f) a credit institution issues covered bonds that are not collateralised in accordance with regulation 3 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (g) a credit institution issues covered bonds that are collateralised by assets located outside the European Union in breach of regulation 4 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (h) a credit institution collateralises covered bonds in an intragroup pooled covered bond structure in breach of regulation 5 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (i) a credit institution issuing covered bonds fails to fulfil the conditions for joint funding laid down in regulation 6 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (j) a credit institution issuing covered bonds fails to meet the requirements of composition of the cover pool laid down in regulation 7 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (k) a credit institution issuing covered bonds fails to meet the requirements regarding derivative contracts in the cover pool laid down in regulation 8 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (l) a credit institution issuing covered bonds fails to comply with the requirements of the segregation of cover assets in accordance with regulation 9 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (m) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information in breach of regulation 11 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (n) a credit institution issuing covered bonds repeatedly or persistently fails to maintain a cover pool liquidity buffer in breach of regulation 13 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (o) a credit institution that issues covered bonds with extendable maturity structures fails to fulfil the conditions for extendable maturity structures laid down in regulation 14 of the Financial Markets Act (Covered Bonds) Regulations;

L.N. 59 of 2023. (p) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information on its obligations in breach of the requirements on reporting set out in regulation 15(3) of the Financial Markets Act (Covered Bonds) Regulations;

Cap. 373. (q) where it has been determined that a credit institution issuing covered bonds has committed a serious, repeated or systematic breach, or a combination thereof, of the Prevention of Money Laundering Act, of any regulations made thereunder or of any procedures or guidance issued in terms of any such regulations; and, or

(r) a credit institution issuing covered bonds fails to cooperate with the competent authority.

(3) Without prejudice to the generality of sub-article (1), the administrative measures referred to therein shall include at least the following:

(a) a withdrawal of an approval for a covered bond programme;

(b) a public statement which indicates the identity of the natural or legal person and the nature of the breach in accordance with article 39GA;

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

(d) a directive issued in terms of article 39K.

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

(5) The competent authority shall ensure that any administrative penalties and other administrative measures imposed by it in terms of this article are effectively implemented.

(6) When determining the type of administrative penalties or other administrative measures and the amount of administrative penalties to be imposed, the competent authority shall take into account the following circumstances, where relevant:

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

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

(c) the financial strength of the natural or legal person responsible for the breach, including by reference to the total turnover of the legal person or the annual income of the natural person;

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

(e) the losses caused to third parties by the breach, insofar as those losses can be determined;

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(f) the level of cooperation by the natural or legal person responsible for the breach with the competent authority;

(g) any previous breaches by the natural or legal person responsible for the breach;

(h) any actual or potential systemic consequences of the breach.

(7) Without prejudice to sub-article (1), where the provisions of Part IV *bis*, or any regulations or Covered Bonds Rules issued thereunder, apply to legal persons, the administrative penalties and other administrative measures referred to in this article may also be imposed by the competent authority on members of the board of directors of any such legal person and on other individuals who under national law are responsible for the breach.

(8) Administrative penalties that may be imposed by the competent authority under this article, may be imposed in the form of a fixed penalty, a daily penalty, or both.

(9) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequences of the act or omission of the offender under civil or criminal law:

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

Amendment of article 39D of the principal Act.

14. In article 39D of the principal Act, for the words "under national law." there shall be substituted the words "under national law:", and immediately after there shall be added the following new proviso:

"Provided that this article shall not apply to breaches of any of the provisions of Part IV *bis* or any regulations or Covered Bonds Rules issued thereunder."

15. In paragraph (i) of article 39E of the principal Act, for the words "its repetition." there shall be substituted the words "its repetition:", and immediately after there shall be added the following new proviso:

Amendment of article 39E of the principal Act.

"Provided that this article shall not apply to administrative penalties and administrative measures imposed in terms of article 39CA."

16. Immediately after article 39F of the principal Act, there shall be added the following new article:

Addition of article 39FA to the principal Act.

"Notice of administrative penalties and measures in relation to covered bonds.

39FA. (1) If the competent authority proposes to impose an administrative penalty or any other administrative measure on any person in terms of article 39CA, it shall give such person a notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take and specifying a period, being a period of not less than forty-eight (48) hours and not longer than thirty (30) calendar days, in which the recipient of the notice may make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision:

Provided that the competent authority shall not be required to notify its intention to impose an administrative measure which is not an administrative penalty where urgent action is necessary to prevent significant losses to third parties or significant damage to the financial system:

Provided further that, where the competent authority does not notify its intention to impose an administrative measure in terms of this sub-article, the person concerned shall, as soon as possible after the adoption of the administrative measure, be given the opportunity to make representations in writing to the competent authority giving reasons why the decision should not have been taken, and where necessary, that measure shall be revised.

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(2) The competent authority shall as soon as practicable notify its decision in writing to any person on whom an administrative penalty or an administrative measure has been imposed in terms of article 39CA. Any such decision shall be reasoned."

Amendment of article 39G of the principal Act.

17. Immediately after sub-article (6) of article 39G of the principal Act, there shall be added the following new sub-article:

"(7) This article shall not apply to administrative penalties and administrative measures imposed in terms of article 39CA."

Addition of article 39GA to the principal Act.

18. Immediately after article 39G of the principal Act, there shall be added the following new article:

"Publication of administrative penalties and administrative measures in relation to covered bonds.

39GA. (1) The competent authority shall publish any decision imposing an administrative penalty or any other administrative measure in terms of article 39CA on its official website without undue delay after the person on whom the administrative penalty or administrative measure was imposed has been informed of that decision as well as of its publication on the official website of the competent authority.

(2) The information published pursuant to sub-article (1) shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the administrative penalty or administrative measure is imposed.

(3) Notwithstanding the provisions of sub-articles (1) and (2), any decision imposing an administrative penalty or any other administrative measure in terms of article 39CA shall, in any of the following circumstances, be published on an anonymous basis and in accordance with Maltese law:

(a) where the administrative penalty or administrative measure is imposed on a natural person and the publication of personal data is found to be disproportionate;

(b) where the publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the credit institutions or natural persons involved:

Provided that in such cases the publication of the relevant data may be postponed.

(4) Where the decision to impose an administrative penalty or any other administrative measure is subject to appeal before a national judicial, administrative or other authority, the competent authority shall, without undue delay, also publish on its official website information on the status of the appeal and on the outcome thereof. Any decision annulling a decision of the competent authority to impose an administrative penalty or any other administrative measure shall also be published.

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

Provided that personal data contained in any such decision shall only be retained on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection legislation. Such a retention period shall be determined taking into account the limitation periods provided for under Maltese law, but shall in no case be longer than ten (10) years.

(6) The competent authority shall inform the EBA of any administrative penalties and other administrative measures imposed in terms of article 39CA, including, where relevant, any appeal in relation thereto and the outcome thereof.

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(7) The competent authority shall, from time to time, contact the Office of the Attorney General and the Commissioner of Police and seek information about any criminal punishments that may have been imposed for any breaches of any provisions of Part IV *bis* or any regulations or Covered Bonds Rules issued thereunder. The Commissioner of Police and, or, the Office of the Attorney General, as applicable, shall cooperate and shall provide their reply to the competent authority in a timely manner, thereby providing any information and details of the final judgement as necessary and shall, where relevant, send the competent authority a copy of the final judgement in relation to any such criminal punishments imposed. The competent authority shall submit said information and details and, where relevant, any such copies of final judgements, to the EBA.

(8) The provisions of this article shall apply notwithstanding the provisions of article 41A."

Amendment of article 39H of the principal Act.

19. In the second proviso to sub-article (1) of article 39H of the principal Act, for the words "any regulations or Capital Markets Rules issued thereunder" there shall be substituted the words "any regulations or Capital Markets Rules or Covered Bonds Rules issued thereunder".

Amendment of article 39I of the principal Act.

20. In the second proviso to sub-article (1) of article 39I of the principal Act, for the words "any regulation or Capital Markets Rules issued thereunder" there shall be substituted the words "any regulations or Capital Markets Rules or Covered Bonds Rules issued thereunder".

Addition of article 39L to the principal Act.

21. Immediately after article 39K of the principal Act, there shall

be added the following new article:

"Appointment of a special administrator.
Cap. 371.

S.L. 330.09.

39L. (1) In the event of the insolvency or resolution of a credit institution issuing covered bonds, which is licensed in terms of the Banking Act, or when such credit institution has been determined to be failing or likely to fail pursuant to regulation 32(1) of the Recovery and Resolution Regulations or, in exceptional circumstances, where the competent authority determines that the proper functioning of that credit institution is seriously at risk, the competent authority may appoint a special administrator to ensure that the rights and interests of the covered bonds investors are preserved, including at least by verifying the continuous and sound management of the covered bond programme during the period of the resolution process:

Provided that, without prejudice to any other powers conferred on the competent authority under this Act or any other applicable law, the competent authority shall have the power to order the credit institution to pay the remuneration due to the special administrator, including all expenses that may have been incurred by such special administrator.

(2) The competent authority shall issue Covered Bonds Rules laying down the tasks and responsibilities of the special administrator at least in relation to:

(a) the discharge of the liabilities attached to the covered bonds;

(b) the management and realisation of cover assets, including their transfer together with covered bond liabilities to another credit institution issuing covered bonds;

(c) the legal transactions necessary for the proper administration of the cover pool, for the ongoing monitoring of the coverage of liabilities attached to the covered bonds, for the initiation of proceedings in order to bring assets back into the cover pool and for the transferral of the remaining assets to the insolvency estate of the credit institution which issued the covered bonds after all covered bond liabilities have been discharged:

Provided that for the purposes of paragraph (c), the special administrator shall be allowed to operate, in the case of the insolvency of the credit institution issuing the covered bonds, under the authorisation held by that credit institution, subject to the same operational requirements.

(3) The competent authority, the special administrator appointed in terms of sub-article (1) and the Resolution Committee shall, for the purposes of the insolvency or resolution process of the credit institution issuing covered bonds, coordinate and exchange information among each other."

Amendment of article 40 of the principal Act.

22. In sub-article (1) of article 40 of the principal Act, for the words "Listing Rule or regulation made or given" there shall be substituted the words "Capital Markets Rule or Covered Bonds Rule or regulations made, provided for or given".

Amendment of article 42 of the principal Act.

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

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

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

"(b) to refuse to grant an approval for a covered bond programme;"

(ii) in paragraph (h) thereof, for the words "directive; or" there shall be substituted the words "directive;"

(iii) in paragraph (i) thereof, for the words "administrative measures." there shall be substituted the words "administrative measures; or", and immediately after there shall be added the following new paragraph:

"(j) to withdraw an approval for a covered bond programme,"; and

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

(i) in paragraph (a) thereof, for the words "that application; or" there shall be substituted the words "that application;" and

(ii) in paragraph (b) thereof, for the words "of its

submission." there shall be substituted the words "of its submission; or", and immediately after there shall be added the following new paragraph:

"(c) any application for the approval of a covered bond programme,".

24. In the proviso to article 43 of the principal Act, for the words "on an authorised regulated market" there shall be substituted the words "on an authorised regulated market, or a decision of the competent authority to withdraw an approval for a covered bond programme,". Amendment of article 43 of the principal Act.

25. In article 46A of the principal Act, for the words "or Capital Markets Rules" there shall be substituted the words "or Capital Markets Rules or Covered Bonds Rules", and the words "For the purposes of this article, the "Resolution Committee" shall mean the Resolution Committee appointed by the Resolution Authority in terms of article 7B(2) of the Malta Financial Services Authority Act." shall be deleted. Amendment of article 46A of the principal Act.

26. Article 53 of the principal Act shall be deleted. Deletion of article 53 of the principal Act.

27. Immediately after article 53 of the principal Act, as deleted, there shall be added the following new article: Addition of article 54 to the principal Act.

"Transitional measures.

S.L. 330.09.

54. (1) Covered bonds issued before 8th July 2022 that comply with the requirements laid down in the relevant provisions of the Investment Services Rules, as applicable on the date of their issue, shall not be subject to the requirements set out in article 31D and in article 31I(2) with respect to the conditions laid down in regulation 68(7) of the Recovery and Resolution Regulations, but may continue to be referred to as covered bonds in accordance with this Act until their maturity.

(2) The competent authority shall monitor the compliance of covered bonds issued before 8th July 2022 with the requirements laid down in the relevant provisions of the Investment Services Rules, as applicable on the date of their issue, as well as with the requirements of Part IV *bis* and any regulations and Covered Bonds Rules issued thereunder, insofar as they are applicable in accordance with sub-article (1).

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(3) Sub-articles (1) and (2) shall apply to tap issues of covered bonds for which the opening of the International Security Identification Number (ISIN) is before 8th July 2022 for up to twenty-four (24) months after that date, provided that those issues comply with all the following requirements:

(a) the maturity date of the covered bond is before 8th July 2027;

(b) the total issue size of tap issues made after 8th July 2022 does not exceed twice the total issue size of the covered bonds outstanding on that date;

(c) the total issue size of the covered bond at maturity does not exceed six billion euro (€6,000,000,000);

(d) the collateral assets are located in Malta."

Passed by the House of Representatives at Sitting No. 97 of the 8th March, 2023.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives