

I assent.

(L.S.)

DOLORES CRISTINA
Acting President

3rd March, 2020

ACT No. V of 2020

AN ACT to amend various financial services laws and to provide for matters ancillary or incidental thereto.

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:-

Short title and commencement.

1. (1) The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2020.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for the regulation of financial services may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

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. Article 16 of the principal Act shall be amended as follows:

Amendment of article 16 of the principal Act.

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

"(3) Without prejudice to any other powers that may be exercised by the Authority in terms of this Act or of any other law, where any person contravenes or fails to comply with any provision of this Act or any other Act administered by the Authority, with any regulations or Rules issued thereunder, with any of the conditions imposed in a licence issued by the Authority or with any directives issued by the Authority, the Authority may by notice in writing and without recourse to a court hearing impose on any such person an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be."; and

(b) in sub-article (4) thereof:

(i) for the words "Where a notice as referred to in sub-article (3) has not been appealed," there shall be substituted the words "Where a notice as referred to in sub-article (3) or as referred to in any other Act administered by the Authority or in any regulations or Rules issued thereunder, has not been appealed,"; and

(ii) for the words "Upon the service of a copy of the notice of the decision," there shall be substituted the words "Upon the service of a copy of the notice or the decision,".

4. In sub-article (3) of article 17 of the principal Act, for the words "confidential information to the European Securities and Markets Authority (ESMA)," there shall be substituted the words "confidential information to the European Central Bank (ECB), the European Securities and Markets Authority (ESMA),".

Amendment of article 17 of the principal Act.

Amendment of article 20A of the principal Act.

5. Article 20A of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "that have been or may be issued thereunder" there shall be substituted the words "that have been or may be issued thereunder and relating to licence holders and others as may be specified therein; regulations made under this paragraph, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, said provisions in any such regulations shall prevail";

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

"(3) Where regulations have been made in terms of this article, the Authority may issue Rules for the better carrying out of, and to better implement, the provisions of the regulations.

(4) 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 offence, not exceeding a fine (*multa*) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment; and

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

Amendment of article 28 of the principal Act.

6. In article 28 of the principal Act, for the words "but not later than four months after the close of each financial year," there shall be substituted the words "but not later than six months after the close of each financial year,".

7. Article 29 of the principal Act shall be substituted by the following: Substitution of article 29 of the principal Act.

"Exemption from liability. 29. (1) The Authority, including the members of the Board of Governors when acting in any function assigned to the Board under any provision of this Act, any body or other organ, including any committee or sub-committee, established under this Act, and any member or officer of that body or organ, and the officers and employees of the Authority, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any such function or otherwise in the exercise of their official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, through wilful misconduct.

(2) For the purposes of this provision, the phrase "this Act" shall include any other Act administered by the Authority and any regulations or Rules made thereunder."

PART II

AMENDMENTS TO THE TRUSTS AND TRUSTEES ACT

8. This Part amends the Trusts and Trustees Act and it shall be read and construed as one with the Trusts and Trustees Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Trusts and Trustees Act. Cap. 331.

9. Immediately after paragraph (s) of sub-article (1) of article 57 of the principal Act there shall be added the following new paragraphs: Amendment of article 57 of the principal Act.

"(sA) regulate the conduct, duties and other obligations of administrators, trustees, directors or similar functionaries exercising control over the assets of a private foundation, as defined in article 43(12), including the returns, statements and other information they are to submit to the Authority, and establish the maximum amount which, notwithstanding any provision of this Act, may be charged as fees by such functionaries;

(sB) regulate the conduct, duties and other obligations of persons acting as administrators of private foundations for persons with disability;"

PART III

AMENDMENTS TO THE FINANCIAL MARKETS ACT

A 144

Amendments to the Financial Markets Act. Cap. 345.

10. 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.

11. In paragraph (i) of the definition "company" of sub-article (1) of article 2 of the principal Act, for the words "a public company formed and registered" there shall be substituted the words "a company formed and registered".

Deletion of article 52 of the principal Act.

12. Article 52 of the principal Act shall be deleted.

PART IV

AMENDMENTS TO THE INVESTMENT SERVICES ACT

Amendments to the Investment Services Act. Cap. 370.

13. 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".

Amendment of article 16A of the principal Act. Cap. 330.

14. In sub-article (1) of article 16A of the principal Act, for the words "as the case may be." there shall be substituted the words "as the case may be. The provisions of article 16 (4) of the Malta Financial Services Authority Act shall apply *mutatis mutandis*".

Amendment of article 17F of the principal Act.

15. In sub-article (4) of article 17F of the principal Act, for the words "article 17(11)" there shall be substituted the words "article 17(13)".

Amendment of article 26 of the principal Act.

16. Paragraph (b) of sub-article (1) of article 26 of the principal Act shall be substituted by the following:

"(b) where the information is disclosed by the competent authority with a view to the institution of, or otherwise for the purposes of any proceedings before any court or tribunal;"

Deletion of article 27 of the principal Act.

17. Article 27 of the principal Act shall be deleted.

PART V

AMENDMENTS TO THE COMPANIES ACT

Amendments to the Companies Act. Cap. 386.

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

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 before the definition "annual accounts" there shall be added the following new

definition:

" "Agency" means the agency established by the Malta Business Registry (Establishment as an Agency) S.L. 595.27. Order;"

(ii) the definition "approval" shall be substituted by the following:

" "approval", in relation to a prospectus, means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the Malta Financial Services Authority or the regulatory authority;"

(iii) the definition "court" shall be substituted by the following:

" "court" means the Civil Court (Commercial Section);"

(iv) in the definition "equity securities" the words ", and the term 'non-equity securities' shall be construed as referring to all securities that are not equity securities" shall be deleted;

(v) the definition "home Member State" shall be deleted;

(vi) the definition "host Member State" shall be deleted;

(vii) the definition "offering programme" shall be deleted;

(viii) the definition "person making an offer" shall be deleted;

(ix) the definition "the Prospectus Directive" shall be deleted; and

(x) the definition "securities issued in a continuous or repeated manner" shall be deleted;

(xi) immediately after the definition "system of interconnection of registers" there shall be added the following new definition:

" "third country" means a country that is not a Member State or an EEA State;"; and

(b) sub-article (3) thereof shall be amended as follows:

(i) paragraph (a) of sub-article (3) of article 2 of the principal Act shall be deleted;

(ii) in paragraph (b) thereof, for the words "offers made to the public:" there shall be substituted the words "offers of securities made to the public:"; and

(iii) paragraph (e) thereof, including sub-paragraphs (i) to (iii) and the paragraph following sub-paragraph (iii), shall be deleted.

Amendment of article 66A of the principal Act.

20. Article 66A of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words "the provisions of this Part of this Act, other than this article, shall not apply to any such partnership" there shall be substituted the words "the provisions of this Part of this Act, other than this article, and articles 13 to 18, article 21 and Part III of the Commercial Code, shall not apply to any such partnership"; and

(b) in paragraph (e) of sub-article (3) thereof, for the words "or of this Act which may otherwise be applicable thereto," there shall be substituted the words "or of this Act or of any other law which may otherwise be applicable thereto,".

Cap. 13.

Amendment of article 84A of the principal Act.

21. Article 84A of the principal Act shall be amended as follows:

(a) in paragraph (b) of sub-article (1) thereof, for the words "as may be specified;" there shall be substituted the words "as may be specified; and that in so far as any of the provisions of such regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;"; and

(b) immediately after paragraph (f) of sub-article (1)

thereof there shall be added the following new sub-article:

Cap. 403. "(1A)Where any such regulations have been issued, the competent authority as defined in the Insurance Business Act may issue rules in terms of article 4 of the Insurance Business Act as may be required for the better carrying out and to better implement the provisions of any such regulations."

22. Article 84C of the principal Act shall be amended as follows: Amendment of article 84C of the principal Act.

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

"(bA) provide for the applicability or inapplicability of any provision of this Act or of any other law to matters falling under such regulations, subject to such modifications, variations and conditions as may be specified, and that in so far as any of the provisions of such regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;"; and

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

Cap. 484. "(2A)Where any such regulations have been issued in terms of this article, the competent authority as defined in the Securitisation Act may issue rules in terms of article 20 of the Securitisation Act as may be required for the better carrying out and to better implement the provisions of any such regulations."

23. Immediately after article 84D of the principal Act there shall be added the following new article: Addition of article 84E to the principal Act.

"Power to make regulations regarding cell companies carrying on or engaged in shipping or aviation business.

84E. (1) (a) The Minister may make regulations in order to:

(i) provide for the formation, constitution, authorisation and regulation of cell companies carrying on or engaged in shipping or aviation business;

(ii) make it possible for a company carrying on or engaged in shipping or aviation business to convert into a cell company;

(iii) provide for all other matters that may arise in connection therewith; and

(iv) provide for the better carrying out of the provisions of this sub-article,

and, without prejudice to the generality of the foregoing, may, by such regulations, in particular regulate the matters referred to in article 84A(1)(a) to (f), which shall apply also to this article.

(b) For the purposes of this article, the term "shipping or aviation business" shall mean all or any of the following:

(i) the ownership, operation (under charter, lease or otherwise), administration and management (including personnel engagement, employment or management whether on board or otherwise) of any ship or of any aircraft or aircraft engine and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(ii) the holding of shares or other equity interests in any undertaking, whether Maltese or otherwise, established solely or mainly for the carrying on or carrying out of any one or more of the activities referred to in this definition and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(iii) the activities of a parent company which holds shares or other equity interests in undertakings, whether Maltese or otherwise, where any one or some of these undertakings is established solely or mainly for the carrying on or carrying out of any one or more of the activities referred to in this definition and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(iv) the raising of capital through loans, the issue of guarantees or the issue of securities by an undertaking when the purpose of such activity is to achieve the objects or activities stated in the preceding sub-paragraphs for the undertaking itself or for any other undertaking within the same group; or

(v) the carrying on of such other objects or activities within the maritime or the aviation sector and related or connected matters which the Minister may, on the advice of the Authority, from time to time prescribe by regulations.

For the purposes of this paragraph the terms "group", "parent company" and "undertaking" shall have the same meaning as is given to them in article 2.

(c) For the purposes of this article the terms "cell", "cellular assets" and "cell company" shall have the same meaning, *mutatis mutandis*, as is given to them in terms of article 84A(2):

Provided that for the purposes of this article references to a "company" shall also include references to a partnership *en commandite* or similar or equivalent body corporate, the capital of which is divided into shares.

(2) The Minister may furthermore make regulations which provide for the formation, constitution, authorisation and regulation of incorporated cell companies and incorporated cells as limited liability companies with separate legal personality under this Act, and which make it possible for such companies to carry on or be engaged in shipping or aviation business, and for all other matters related, connected or ancillary thereto or that may arise in connection therewith.

(3) Regulations made in terms of this article may also provide for the applicability or inapplicability of, or the total or partial exemption from, any of the provisions of this Act or of any other law in force to incorporated cell companies and incorporated cells subject to any modifications, variations or conditions as may be specified."

24. In article 89 of the principal Act, for the words "It shall not be lawful for a public company to issue any form of application for its

Amendment of article 89 of the principal Act.

shares or debentures unless the company is registered and the form is issued with a prospectus which complies with the requirements of article 90:" there shall be substituted the words

"It shall not be lawful for a company to make an offer of securities to the public in a Member State or EEA State unless the company is a public company and the offer is made in the form of a prospectus which complies with the requirements of the Financial Markets Act and any applicable regulations made thereunder, and the provisions of articles 91 to 96 shall apply to such offers:".

Cap. 345.

Deletion of article 90 of the principal Act.

25. Article 90 of the principal Act shall be deleted.

Amendment of article 91 of the principal Act.

26. In article 91 of the principal Act, for the words "in contravention of any of the provisions of article 89 or of article 90(1) shall be liable to a penalty:" there shall be substituted the words "in contravention of article 89 shall be liable to a penalty:".

Deletion of article 92 of the principal Act.

27. Article 92 of the principal Act shall be deleted.

Substitution of article 93 of the principal Act.

28. Article 93 of the principal Act shall be substituted by the following:

"93. (1) A copy of the prospectus signed in accordance with the provisions of the Financial Markets Act shall be delivered to the Registrar for registration within five days from the date of its publication.

Cap. 345.

(2) If default is made in complying with the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.".

Addition of article 96A to the principal Act.

29. Immediately after article 96 of the principal Act there shall be added the following new article:

"Offer of securities to the public in third countries.

96A. (1) Where a public company makes an offer of securities to the public in a third country, its directors shall, within one month of the registration of the issued securities with the company, deliver to the Registrar for registration a notice specifying the following information, together with a copy of the offering document, if any:

- (a) the country or countries where the offer is made;
- (b) the purpose of the offer;
- (c) the amount of the offer;
- (d) the type of securities offered;
- (e) the name of the authority or other body in the third country which was responsible for the approval of the offering document, if any.

(2) In default of complying with the provisions of sub-article (1), every officer of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(3) It shall be the responsibility of the issuer and the directors of the company to comply with the laws and regulations of the third country in which the securities are offered to the public.

(4) For the purpose of this article:

(a) "an offer of securities to the public in a third country" shall mean an offer of securities in such third country:

(i) to more than one hundred and fifty persons; or

(ii) where the total consideration of the offer exceeds one hundred thousand euro (€100,000), calculated over a period of twelve months;

(b) "offering document" includes a prospectus or other invitation to acquire securities."

30. Article 99 of the principal Act shall be deleted.

Deletion of article 99 of the principal Act.

31. Articles 100 to 102, both inclusive, of the principal Act shall be deleted.

Deletion of articles 100 to 102 of the principal Act.

32. Sub-article (12) of article 122 of the principal Act shall be amended as follows:

Amendment of article 122 of the principal Act.

(a) in paragraph (a) thereof:

(i) for the words "in a public company which are quoted on a Maltese regulated market" there shall be substituted the words "in a company which are listed on a Maltese regulated market"; and

(ii) in sub-paragraph (ii) thereof, for the words "the company whose quoted securities" there shall be substituted the words "the company whose listed securities"; and

(b) in paragraph (b) thereof, for the words "in a public company which are quoted on a regulated market" there shall be substituted the words "in a public company which are listed on a regulated market".

Amendment of article 225 of the principal Act.

33. In sub-article (1) of article 225 of the principal Act, for the words "The Minister, acting on the advice of the Malta Financial Services Authority, shall appoint a senior official of the said Authority" there shall be substituted the words "The Minister shall appoint a senior official of the Agency".

Deletion of article 388 of the principal Act.

34. Article 388 of the principal Act shall be deleted.

Deletion of articles 390 to 398 of the principal Act.

35. Articles 390 to 398, both inclusive, of the principal Act shall be deleted.

Amendment of article 400 of the principal Act.

36. In sub-article (1) of article 400 of the principal Act, for the words "The Minister, acting on the advice of the Malta Financial Services Authority, shall appoint a senior official of the said Authority" there shall be substituted the words "The Minister shall appoint a senior official of the Agency".

Amendment of article 425 of the principal Act.

37. Paragraph (1) of sub-article (1) of article 425 of the principal Act shall be deleted.

Deletion of the Second Schedule to the principal Act.

38. The Second Schedule to the principal Act shall be deleted.

Amendment of the Eleventh Schedule to the principal Act.

39. The Eleventh Schedule to the principal Act shall be amended as follows:

(a) the item:

"91	Contravention of articles 89 or 90(1) in respect of the obligation to issue a prospectus	€2,329.37	None"
-----	--	-----------	-------

shall be substituted by the following:

"91	Contravention of article 89 in respect of the obligation to issue a prospectus	€2,329.37	None";
-----	--	-----------	--------

(b) the item:

"92(2)	Issue of prospectus in contravention of article 92(1)	€2,329.37	None"
--------	---	-----------	-------

shall be deleted;

(c) immediately after the item:

"93(2)	Issue of a prospectus before registration thereof	€2,329.37	€46.59"
--------	---	-----------	---------

there shall be added the following new item:

"96A(2)	Failure of officers to provide Registrar with notice that the company issued an offer of securities to the public in a third country	€500	€25"
---------	--	------	------

; and

(d) the item:

"397(1)	Person responsible for issuing, circulating or distributing a prospectus, etc., for an oversea company in contravention of articles 391 to 396	€2,329.37	None"
---------	--	-----------	-------

shall be deleted.

**PART VI
AMENDMENTS TO THE INSURANCE BUSINESS ACT**

Amendments to the Insurance Business Act. Cap. 403.

40. This Part amends the Insurance Business Act and it shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

41. In sub-article (1) of article 2 of the principal Act, the definition "reinsurance" shall be substituted by the following:

" "reinsurance" means one of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or

(b) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council;"

Amendment of article 27 of the principal Act.

42. In sub-article (6) of article 27 of the principal Act, for the words "shall notify EIOPA of any revocation of authorisation in terms of articles 25 and 26." there shall be substituted the words "shall notify EIOPA of any revocation of authorisation in terms of the Act."

Amendment of article 28 of the principal Act.

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

(a) in paragraph (e) of sub-article (1) thereof, for the words "or part thereof, as the competent authority may direct;" there shall be substituted the words "or part thereof, including to take the necessary action for the undertaking to be dissolved and wound up, as the competent authority may direct;"

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (c) thereof, for the words "or by any other person, including the legal and judicial representation of the undertaking" there shall be substituted the words "or by any other person, including for the purposes of the dissolution and winding up of the undertaking as well as the legal and judicial representation of the undertaking";

(ii) in paragraph (d) thereof, for the words "to the exclusion of any other person." there shall be substituted

the words "to the exclusion of any other person:" and immediately thereafter there shall be added the following new proviso:

"Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the undertaking, unless the competent authority issues a directive to that effect in terms of article 31A of the Act, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.";

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

Cap. 386. "(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also submit an application to the court for the dissolution and winding up by the court of an undertaking, where it appears to the competent authority that an undertaking should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application, the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply."; and

(d) immediately after sub-article (5) thereof there shall be added the following new sub-article:

"(6) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that an undertaking ceases to hold an authorisation licence for whatever reason, unless the competent authority otherwise directs.".

44. In sub-article (2) of article 31 of the principal Act, for the words "any information or documents specified in the authority, being information or documents" there shall be substituted the words "any information or documents specified in the notice, being information or documents".

Amendment of article 31 of the principal Act.

A 156

Amendment of article 31A of the principal Act.

45. In sub-article (1) of article 31A of the principal Act, for the words "or any further directive." there shall be substituted the words "or any further directive:" and immediately thereafter there shall be added the following new provisos:

"Provided that the competent authority may give any such directive even where an undertaking, for whatever reason, ceases to hold an authorisation granted in terms of this Act:

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

Deletion of article 66 of the principal Act.

46. Article 66 of the principal Act shall be deleted.

Amendment of article 67 of the principal Act.

47. In sub-article (6) of article 67 of the principal Act the second proviso shall be deleted.

PART VII AMENDMENTS TO THE PREVENTION OF FINANCIAL MARKETS ABUSE ACT

Amendments to the Prevention of Financial Markets Abuse Act. Cap. 476.

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

Amendment of article 2 of the principal Act.

49. In sub-article (1) of article 2 of the principal Act, the definition "the Minister" shall be substituted as follows:

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

PART VIII AMENDMENTS TO THE SECURITISATION ACT

Amendments to the Securitisation Act. Cap. 484.

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

Amendment of article 2 of the principal Act.

51. In article 2 of the principal Act, the definition "the Minister" shall be substituted as follows:

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

52. Sub-article (1) of article 20 of the principal Act shall be substituted by the following: Amendment of article 20 of the principal Act.

"(1) For the better carrying out of the provisions of this Act or of the provisions of any regulations relating to securitisation vehicles or securitisation transactions, the competent authority may, from time to time, issue and publish rules as may be necessary or appropriate in connection therewith. The rules shall be binding on securitisation vehicles and securitisation creditors and other persons as may be specified therein."

53. Immediately after sub-article (1) of article 23 of the principal Act there shall be added the following new sub-article: Amendment of article 23 of the principal Act.

"(1A) Without prejudice to the generality of the foregoing, the Minister, acting on the advice of the competent authority, may make regulations to provide for and regulate the payment by any person, body, company or securitisation vehicle, as the case may be, of fees and such other charges in respect of any request, application or other matter that may be submitted to the competent authority under this Act including the fees and charges in respect of any permission, licence, authorisation, registration, recognition, exemption or other benefit, as well as fees and charges in respect of the competent authority's regulatory, supervisory or investigative functions, 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."

PART IX

AMENDMENTS TO THE INSURANCE DISTRIBUTION ACT

54. This Part amends the Insurance Distribution Act and it shall be read and construed as one with the Insurance Distribution Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Insurance Distribution Act. Cap. 487.

55. In paragraph (a) of sub-article (2A) of article 3 of the principal Act, the words "and in such a case, a penalty imposed under this paragraph, whether in the form of a fixed amount, a daily penalty, or both, may in no case, exceed one hundred and fifty thousand euro (€150,000);" shall be deleted. Amendment of article 3 of the principal Act.

56. Article 19 of the principal Act shall be amended as follows: Amendment of article 19 of the principal Act.

(a) in paragraph (d) of sub-article (1) thereof, for the words "or part thereof, as the competent authority may direct;" there shall be substituted the words "or part thereof, including to

take the necessary action for the intermediary to be dissolved and wound up, as the competent authority may direct;"

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (c) thereof, for the words "or by any other person, including the legal and judicial representation of the intermediary" there shall be substituted the words "or by any other person, including for the purposes of the dissolution and winding up of the intermediary as well as the legal and judicial representation of the intermediary";

(ii) in paragraph (d) thereof, for the words "to the exclusion of any other person." there shall be substituted the words "to the exclusion of any other person:" and immediately thereafter there shall be added the following new proviso:

Cap. 403. "Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the intermediary, unless the competent authority issues a directive to that effect in terms of article 31A of the Insurance Business Act, made applicable by article 54 of the Act, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.";

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

Cap. 386. "(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of an intermediary, where it appears to the competent authority that an intermediary should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application, the relevant provisions of the Companies Act in relation to the

dissolution and winding up by the court and any other applicable provisions of any other law shall apply."; and

(d) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that an intermediary ceases to be enrolled for whatever reason, unless the competent authority otherwise directs."

57. Article 51 of the principal Act shall be deleted.

Deletion of article 51 of the principal Act.

**PART X
AMENDMENTS TO THE RETIREMENT PENSIONS ACT**

58. This Part amends the Retirement Pensions Act and it shall be read and construed as one with the Retirement Pensions Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Retirement Pensions Act. Cap. 514.

59. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) in the definition "competent authority", for the words "established by article 3 of the Malta Financial Services Authority Act, which body shall act as the competent authority for the purposes of this Act and also for relevant purposes of the Occupational Pensions Directive;" there shall be substituted the words "established by the Malta Financial Services Authority Act;";

Cap. 330.

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

" "key function" within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function;";

(c) immediately after the definition "licence holder" there shall be added the following new definition:

" "main administration" means the place, located in Malta, where the main strategic decisions of a retirement scheme and a retirement fund are made;";

(d) in the definition "Malta's international

commitments":

(i) for the words "arising out of membership of, or affiliation" there shall be substituted the words "arising out of membership of the European Union and membership of, or affiliation"; and

(ii) for the words "whether bilateral or multilateral, to which Malta is a party;" there shall be substituted the words "whether bilateral or multilateral, including Memoranda of Understanding, to which Malta is a party;"

(e) in the definition "the Minister", for the words "Minister responsible for finance;" there shall be substituted the words "Minister responsible for the regulation of financial services;"

(f) the definition "Occupational Pensions Directive" shall be substituted by the following:

" "Occupational Pensions Directive" means Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast), 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;"

(g) the definition "occupational retirement scheme" shall be substituted by the following:

" "occupational retirement scheme" means a retirement scheme, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade, for the purposes of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(a) individually or collectively between the employer or employers and the employees or their respective representatives; or

(b) with self-employed persons, individually or collectively,

and which carries out activities directly arising therefrom;";

(h) immediately after the definition "occupational retirement scheme" there shall be added the following new definition:

" "officer", in relation to a licence holder, includes a director, manager or company secretary or any person effectively acting in such capacity, whether formally appointed or not;";

(i) the definition "Pension Rule" shall be substituted by the following:

" "Pension Rules" means rules issued by the competent authority, under various articles of this Act and under any regulations made thereunder;";

(j) in the definition "prescribed" for the words "made under this Act in accordance with article 37;" there shall be substituted the words "made under this Act;";

(k) the definition "recognition" shall be deleted;

(l) the definition "recognised person" shall be deleted;

(m) in the definition "service", for the words "provided in relation to an instrument; and, or any back-office administrative activity as established by Pension Rules;" there shall be substituted the words "provided in relation to an instrument;";

(n) in the definition "service provider", for the words "the services listed in the Schedule and, or recognised to provide any one or more of the back-office administrative activities established by Pension Rules;" there shall be substituted the words "the services listed in the Schedule;";

(o) in the definition "Solvency II Directive", for the words "(Solvency II), as may be amended from time to time, and includes any implementing measures that may be issued thereunder;" there shall be substituted the words "(Solvency II) (recast), as may be amended from time to time and includes any delegated acts and any technical standards that have been, or may be issued thereunder;"; and

(p) immediately after the definition "Solvency II Directive" there shall be added the following new definition:

"sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which offers an occupational retirement scheme or pays contributions to an occupational retirement scheme;"

Amendment of Part II of the principal Act.

60. In the heading of Part II of the principal Act, for the words "Licensing and Recognition Requirements" there shall be substituted the words "Licensing Requirements".

Amendment of article 3 of the principal Act.

61. Paragraph (b) of sub-article (2) of article 3 of the principal Act shall be amended as follows:

(a) for the words "age of fifty, or not later than that specified in Pension Rules," there shall be substituted the words "age of fifty, or later than that specified in Pension Rules,"; and

(b) the proviso thereof shall be substituted by the following:

"Provided that a scheme or arrangement described in paragraph (a) may, by written notice to the competent authority, apply to be considered as a scheme for the purposes of this Act, and such a scheme shall comply with the provisions of Articles 32 to 35 of the Occupational Pensions Directive."

Amendment of article 4 of the principal Act.

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

(a) in sub-article (1) thereof, for the words "unless such retirement scheme is situated in Malta and is duly licensed under this Act." there shall be substituted the words "unless the main administration of such retirement scheme is located in Malta and is duly licensed under this Act.";

(b) in sub-article (3) thereof, for the words "unless such retirement scheme is situated in Malta and is duly licensed under this Act." there shall be substituted the words "unless the main administration of such retirement scheme is located in Malta and is duly licensed under this Act."; and

(c) paragraph (a) of sub-article (4) thereof shall be substituted by the following:

"(a) located in Malta; or".

- 63.** Article 5 of the principal Act shall be amended as follows: Amendment of article 5 of the principal Act.
- (a) in sub-article (1) thereof, for the words "an overseas retirement scheme unless such retirement fund is situated in Malta and is duly licensed under this Act." there shall be substituted the words "an overseas retirement scheme unless the main administration of such retirement fund is located in Malta and is duly licensed under this Act."; and
- (b) paragraph (a) of sub-article (3) thereof shall be substituted by the following:
- "(a) located in Malta; or".
- 64.** Article 7 of the principal Act shall be deleted. Deletion of article 7 of the principal Act.
- 65.** In the heading of Part III of the principal Act, for the words "Application, Grant, Cancellation, Suspension, of Licences and Recognitions" there shall be substituted the words "Application, Grant, Cancellation and Suspension of Licences". Amendment of Part III of the principal Act.
- 66.** Article 8 of the principal Act shall be amended as follows: Amendment of article 8 of the principal Act.
- (a) in the marginal note thereto, for the words "Application for a licence and, or recognition." there shall be substituted the words "Application for a licence.";
- (b) for the words "a licence or recognition, as the case may be," there shall be substituted the words "a licence";
- (c) for the words "shall be made in the form and manner" there shall be substituted the words "shall be made in writing in such form and manner";
- (d) in paragraph (a) thereof, for the words "may require or as may be prescribed;" there shall be substituted the words "may require by means of Pension Rules;"; and
- (e) in paragraph (b) thereof, for the words "by the competent authority or as may be prescribed." there shall be substituted the words "by the competent authority as may be established by means of Pension Rules.".
- 67.** Article 9 of the principal Act shall be amended as follows: Amendment of article 9 of the principal Act.
- (a) in the marginal note thereto, for the words "to refuse or grant a licence or recognition." there shall be substituted the words "to refuse or grant a licence.";

(b) in sub-article (1) thereof, for the words "grant a licence or recognition, as the case may be, applied for under" there shall be substituted the words "grant a licence applied for under";

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

(i) for the words "grant a licence or recognition, as the case may be, applied for under" there shall be substituted the words "grant a licence applied for under";

(ii) in paragraph (a) thereof:

(aa) immediately after sub-paragraph (i) thereof, there shall be added the following new sub-paragraph:

"(iA) the activities of the retirement scheme are limited to retirement benefit related operations and activities arising therefrom;";

(bb) in sub-paragraph (ii) thereof, for the words "the retirement scheme and, or Retirement Scheme Administrator, as the case may be, will comply with and observe the provisions" there shall be substituted the words "it submits evidence that it shall be in a position to comply with and observe the provisions;";

(cc) in sub-paragraph (iii) thereof, for the words "fit and proper persons" there shall be substituted the words "fit and proper";

(dd) in sub-paragraph (vi) thereof, for the words "does not raise any regulatory concerns;" there shall be substituted the words "does not raise any regulatory concerns; and";

(iii) immediately after sub-paragraph (vi) of paragraph (a) thereof there shall be added the following new paragraph:

"(aA) in addition to the requirements in paragraph (a), in the case of an occupational retirement scheme:

(i) the Retirement Scheme Administrator shows evidence that it will be in

a position to comply with the system of governance provided for in article 13A;

(ii) the Retirement Scheme Administrator shows evidence that, where the sponsoring undertaking guarantees the payment of the retirement benefits, the employer is committed to regular financing;"

(d) in sub-article (3) thereof, for the words "a licence or recognition granted by the competent authority" there shall be substituted the words "a licence granted by the competent authority";

(e) in sub-article (4) thereof:

(i) for the words "When considering whether to grant or refuse to grant a licence and, or recognition as the case may be, the competent authority shall," there shall be substituted the words "When carrying out its functions under the Act, the competent authority shall,"; and

(ii) in paragraph (c) thereof, for the words "or retirement fund, the persons responsible thereof," there shall be substituted the words "or retirement fund, the Retirement Scheme Administrator and, or the persons responsible thereof,";

(f) sub-article (6) thereof shall be deleted;

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

(i) for the words "the Rules to which the competent authority" there shall be substituted the words "the Pension Rules to which the competent authority";

(ii) for the words "shall subject a licence and, or recognition may be made" there shall be substituted the words "shall subject a licence, may be made"; and

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

"(a) all licences granted;"

(h) in sub-article (8) thereof, for the words "grant a licence or recognition; and in the case of a refusal it shall inform the applicant of the reasons" there shall be substituted the words

"grant a licence; and in the case of a refusal it shall inform the applicant in writing of the reasons";

(i) in paragraph (b) of sub-article (10) thereof, for the words "by means of a Pension Rule issued" there shall be substituted the words "by means of Pension Rules issued"; and

(j) in sub-article (11) thereof, for the words "a register of all holders of a licence and, or recognition. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence and, or recognition was issued." there shall be substituted the words "a register of all holders of a licence. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence was issued."

Amendment of article 10 of the principal Act.

68. Article 10 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words "to cancel or suspend a licence or recognition." there shall be substituted the words "to cancel or suspend a licence.";

(b) in sub-article (1) thereof, for the words "suspend a licence and, or recognition in accordance with" there shall be substituted the words "suspend a licence in accordance with";

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

(i) in paragraph (c) thereof, for the words "false, inaccurate or misleading, or if the Retirement Scheme Administrator" there shall be substituted the words "false, inaccurate or misleading in any material particular, or if the Retirement Scheme Administrator"; and

(ii) in paragraph (d) thereof, for the words "licensed to carry on within the time provided for in the licence or has ceased to" there shall be substituted the words "licensed to carry on within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to";

(d) in paragraph (d) of sub-article (3) thereof, for the words "not commenced the activities it has been licensed to carry on within the time provided for in the licence or has ceased to" there shall be substituted the words "not commenced to provide the activities within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to"; and

(e) in sub-article (4) thereof:

(i) for the words "cancel or suspend a licence and, or recognition as the case may be:" there shall be substituted the words "cancel or suspend a licence:";

(ii) in paragraph (a) thereof, for the words "he is licensed and, or recognised to provide; or" there shall be substituted the words "he is licensed to provide; or";

(iii) in paragraph (d) thereof:

(aa) for the words "has been licensed and, or recognised to provide within the time provided for in the licence and, or recognition" there shall be substituted the words "has been licensed to provide within the time provided for in the licence";

(bb) for the words "or has ceased to provide such service; or" there shall be substituted the words "or if no such time is specified, within twelve months of its issue, or has ceased to provide such service; or";

(iv) in paragraph (e) thereof, for the words "suspend the licence and, or recognition for the protection of beneficiaries," there shall be substituted the words "suspend the licence for the protection of beneficiaries,"; and

(v) in paragraph (g) thereof, for the words "precluded from issuing the licence and, or recognition as the case may be, or where" there shall be substituted the words "precluded from issuing the licence, or where".

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

Amendment of
article 11 of the
principal Act.

(a) in the marginal note thereof, for the words "suspension of a licence and, or recognition." there shall be substituted the words "suspension of a licence.";

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

(i) in paragraph (a) thereof, for the words "to which a licence and, or recognition is subject or to impose a condition thereon;" there shall be substituted the words "to which a licence is subject or to impose a condition thereon;";

A 168

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

"(b) to refuse an application for a licence or to cancel or to suspend a licence,"; and

(iii) in the paragraph immediately following paragraph (b) thereof:

(aa) for the words "to the licence holder and, or recognised person, or in the case of a retirement scheme" there shall be substituted the words "to the licence holder, or in the case of a retirement scheme"; and

(bb) for the words "setting out the reasons for its proposed action." there shall be substituted the words "setting out detailed reasons for its proposed action.";

(c) in sub-article (3) thereof, for the words "The competent authority shall as soon as practicable notify its final decision" there shall be substituted the words "The competent authority shall notify its final decision"; and

(d) sub-article (4) thereof shall be substituted by the following:

"(4) The competent authority shall notify EIOPA of any restriction, suspension or cancellation of a licence of an occupational retirement scheme under article 10."

Amendment of article 13 of the principal Act.

70. In sub-article (1) of article 13 of the principal Act, for the words "the best interests of the retirement scheme and may not use the assets" there shall be substituted the words "the best interests of the retirement scheme, its members and beneficiaries, and may not use the assets".

Addition of article 13A to the principal Act.

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

"System of governance for occupational retirement schemes.

13A. (1) A Retirement Scheme Administrator shall be required to have in place an effective system of governance which provides for sound and prudent management of its activities in connection with the overall operation and administration of an occupational retirement scheme. The system of governance requirements shall be laid down in Pension Rules.

- (2) A Retirement Scheme Administrator shall:
- (a) ensure that persons carrying out a key function, and where applicable, persons or entities to which a key function has been outsourced, are fit and proper, in accordance with criteria set out in the Pension Rules;
 - (b) have in place the following key functions:
 - (i) an effective risk management system, including a risk management function;
 - (ii) an effective internal audit function;
 - and
 - (iii) where applicable, an effective actuarial function;
 - (c) as part of the risk management system, conduct its own risk assessment and the risk assessment of the occupational retirement scheme;
 - (d) have in place an effective internal control system;
 - (e) if it outsources any of its functions or activities, remain fully responsible for discharging all of its obligations under this Act and the regulations and Pension Rules issued thereunder.
- (3) The systems and functions referred to in sub-article (2) shall be determined by Pension Rules.
- (4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the occupational retirement scheme."

72. Article 16 of the principal Act shall be amended as follows:

Amendment of article 16 of the principal Act.

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

"16. (1) Every retirement scheme or retirement fund shall appoint an auditor to carry out the duties as may be specified by Pension Rules.

(1A) Every retirement scheme which provides cover against biometric risks or guarantees an investment performance or a given level of benefits, shall also appoint an actuary to carry out the duties, as may be specified by regulations and Pension Rules."; and

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

(i) for the words "a licence holder or recognised person, as the case may be, shall have the right" there shall be substituted the words "a licence holder shall have the right"; and

(ii) for the words "from that licence holder or recognised person as the case may be." there shall be substituted the words "from that licence holder."

Amendment of the heading of Part V of the principal Act.

73. In the heading of Part V of the principal Act, the words "Other Requirements and General Provisions" shall be substituted by the words "Other Requirements".

Amendment of article 18 of the principal Act.

74. Paragraph (a) of article 18 of the principal Act shall be substituted by the following:

"(a) the rates of contributions payable towards the retirement scheme, as may be prescribed;"

Substitution of article 20 of the principal Act.

75. Article 20 of the principal Act shall be substituted by the following:

"20. Every retirement scheme and Retirement Scheme Administrator shall forward to the competent authority a copy of its audited financial statements within the periods stipulated in the Pension Rules and shall comply with any reporting requirements, as may be required by Pension Rules."

Substitution of the heading "Defined Benefit Occupational Retirement Schemes" of the principal Act.

76. Immediately before article 26 of the principal Act the heading "Defined Benefit Occupational Retirement Schemes" shall be substituted by the heading "Quantitative Requirements".

Substitution of article 26 of the principal Act.

77. Article 26 of the principal Act shall be substituted by the following:

"Technical provisions.

26. (1) Every retirement scheme shall:

(a) establish at all times an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts; and

(b) where it provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, establish sufficient technical provisions.

(2) The manner in which technical provisions shall apply to retirement schemes licensed under the Act may be determined by regulations prescribed for this purpose."

78. In article 28 of the principal Act, for the words "as the case may be, shall produce such annual accounts," there shall be substituted the words "as the case may be, and comply with any reporting requirements such as annual accounts,".

Amendment of article 28 of the principal Act.

79. In article 30 of the principal Act, for the words "Every licence holder and recognised person under this Act" there shall be substituted the words "Every licence holder under this Act".

Amendment of article 30 of the principal Act.

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

Amendment of article 31 of the principal Act.

(a) for the words "A licence holder or recognised person, or any person having responsibility," there shall be substituted the words "A licence holder or any person having responsibility"; and

(b) for the words "the information provided under this Act as soon as such person or its delegate" there shall be substituted the words "the information provided under this Act, and any regulations made thereunder, or any Pension Rules, as soon as such person or its delegate".

81. Article 32 of the principal Act shall be amended as follows:

Amendment of article 32 of the principal Act.

(a) in sub-article (1) thereof, for the words "No person shall acquire," there shall be substituted the words "Notwithstanding anything contained in any other law, no person shall acquire,";

(b) in sub-article (4) thereof, for the words "mentioned in sub-article (1)(b) shall state the reasons" there shall be substituted the words "mentioned in sub-article (1)(c) shall state the reasons";

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

"(10) Without prejudice to the provisions of articles 46 and 48, where a shareholding in a service provider is acquired despite the objection of the competent authority, the competent authority shall have the power to make an order:

(a) restraining such person or service

provider from taking, or continuing with such action;

(b) declaring such action to be null and void;

(c) requiring such person or service provider to take such steps, as may be necessary, to restore the position existing immediately before the action was taken;

(d) restraining such person or service provider from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attached to the shares acquired;

(e) restraining such person or service provider from taking any similar action or any other action within the categories set out in sub-articles (1) and (6)."; and

(d) immediately after sub-article (11) thereof there shall be added the following new sub-article:

"(12) The requirements set out in this article shall apply to a retirement scheme set up as an investment company with variable share capital

Cap. 386. ("SICAV") under the Companies Act."

Amendment of article 33 of the principal Act.

82. In article 33 of the principal Act, for the words "from time to time by the Commissioner of Inland Revenue." there shall be substituted the words "from time to time by the Commissioner for Revenue."

Amendment of article 34 of the principal Act.

83. In article 34 of the principal Act, for the words "The competent authority may, by a Pension Rule made for" there shall be substituted the words "The competent authority may, by Pension Rules made for".

Amendment of article 35 of the principal Act.

84. Article 35 of the principal Act shall be amended as follows:

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

(i) for the words "a licence holder or recognised person, as applicable, shall have the duty" there shall be substituted the words "a licence holder shall have the duty";

(ii) for the words "any fact or decision of which it becomes aware" there shall be substituted the words "any fact or decision concerning that licence holder of which it becomes aware";

(iii) for the words "such licence holder or recognised person" there shall be substituted the words "such licence holder";

(iv) for the word "which –" there shall be substituted the words "which relates to any matter which may be prescribed or is likely to bring or has brought about the following:";

(v) paragraphs (a), (b) and (c) thereof shall be substituted by the following:

"(a) a serious qualification, or refusal of the auditor's or actuary's report on the accounts of such licence holder;

(b) a material breach of the provisions of this Act and regulations or any Pension Rules which lay down the legal or regulatory requirements applicable to a licence holder in or under this Act; or

(c) a grave impairment of the licence holder's ability to meet the current or future liabilities attributable to it; or";

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

(i) for the words "a licence holder or recognised person, as applicable, shall report" there shall be substituted the words "a licence holder shall report";

(ii) for the words "any facts or decisions as specified in sub-article (1)" there shall be substituted the words "any facts or decisions of which he becomes aware of in the course of carrying out his duties, which relate to or have a serious adverse effect, upon the members or beneficiaries, as specified in sub-article (1)," and

(iii) for the words "of the licence holder or recognised person or of the person having such close links." there shall be substituted the words "of the licence holder or of the person having such close links.";

(c) in sub-article (3) thereof, for the words "the services listed in the Schedule and, or back-office administrative activities as established by Pension Rules." there shall be substituted the words "the services listed in the Schedule.";

(d) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(3A) Without prejudice to any provision contained in this Act, the competent authority may request the auditor or the actuary, as the case may be, to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (1) or (2) concerning the licence holder."; and

(e) in sub-article (4) thereof, for the words "a licence holder or recognised person, as applicable, to change its appointed auditor," there shall be substituted the words "a licence holder to change its appointed auditor".

Amendment of article 37 of the principal Act.

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

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

(i) in paragraph (b) thereof, for the words "provide for the safekeeping and custody of the property of retirement schemes" there shall be substituted the words "provide for the safekeeping and oversight duties, and custody of the property of retirement schemes";

(ii) in paragraph (f) thereof, for the words "other licence holders or recognised persons, or advertisement from" there shall be substituted the words "other licence holders or advertisement from";

(iii) immediately after paragraph (h) thereof there shall be added the following new paragraph:

"(ha) regulate the restriction or prohibition of the free disposal of the assets of a retirement scheme falling within such description as may be prescribed, when in particular:

(i) that retirement scheme has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;

(ii) that retirement scheme has failed to hold any regulatory own funds as may be applicable.";

(iv) in paragraph (i) thereof, for the words "the manner in which a defined benefit retirement scheme deals with surplus funds" there shall be substituted the words "the manner in which a scheme which provides cover against biometric risks or guarantees an investment performance or a given level of benefits deals with surplus funds";

(v) in paragraph (k) thereof, for the words "as the case may be, of licence or recognition fees or other fees" there shall be substituted the words "as the case may be, of licence fees or other fees";

(vi) in paragraph (l) thereof, for the words "and any other legislative measures of the European Union requiring transposition and, or implementation as may be amended from time to time, and including any implementing measures issued thereunder as may be applicable to retirement schemes;" there shall be substituted the words "and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures issued thereunder as may be applicable to retirement schemes that have or may be issued thereunder;";

(vii) paragraph (n) thereof shall be substituted by the following:

"(n) transpose, implement and, or give effect to the provisions and requirements of Directives, regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified therein; any such regulations strictly related to the transposition or implementation as aforesaid may contain provisions which are inconsistent with the provisions of this Act or of any other law, and for this purpose may provide that any provision in this Act or in any other law shall not apply to matters falling under the regulations, and in case of such

inconsistency, such provisions in any such regulations shall prevail;"

(viii) paragraph (o) thereof shall be substituted by the following:

Cap. 403. "(o) provide for the application of specific provisions of the Occupational Pensions Directive to the occupational pensions provision business carried out by insurance undertakings authorised under the Insurance Business Act carrying on long term business"; and

(b) sub-article (2) thereof shall be deleted.

Amendment of article 38 of the principal Act.

86. Sub-article (2) of article 38 of the principal Act shall be amended as follows:

(a) for the words "binding on licence holders and, or recognised persons under this Act" there shall be substituted the words "binding on licence holders under this Act";

(b) for the words "may relate to a particular class of retirement scheme and, or retirement fund" there shall be substituted the words "to a particular category of retirement scheme and, or retirement fund";

(c) for the words "activities of that licence holder or recognised person, the conduct of" there shall be substituted the words "activities of that licence holder, the conduct of";

(d) in paragraph (b) thereof, for the words "management of the retirement scheme and, or fund;" there shall be substituted the words "management of the retirement fund";

(e) in paragraph (c) thereof, for the words "management of the retirement scheme and, or retirement fund" there shall be substituted the words "management of the retirement fund";

(f) in sub-paragraph (ii) of paragraph (e) thereof, for the words "that retirement scheme has failed to hold any regulatory own funds as may be applicable, in accordance with the procedure established under article 17B of the Malta Financial Services Authority Act with respect to freezing of assets;" there shall be substituted the words "that retirement scheme has failed to hold any regulatory own funds as may be applicable";

(g) paragraph (g) thereof shall be substituted by the

following:

"(g) the provision of specific requirements for personal retirement schemes;"

(h) in paragraph (h) thereof, for the words "for licensing or recognition or other purposes" there shall be substituted the words "for licensing or other purposes";

(i) paragraph (i) thereof shall be deleted;

(j) in paragraph (j) thereof, for the words "applicable to licence holders and, or recognised persons as the case may be;", there shall be substituted the words "applicable to licence holders;"

(k) paragraph (o) thereof shall be substituted by the following:

"(o) establishing conditions and requirements regarding the payment to a member in the event that the member is no longer employed by the employer;"

(l) in paragraph (p) thereof:

(i) for the words "licence holders and, or recognised persons or providing that the persons" there shall be substituted the words "licence holders or providing that the persons"; and

(ii) for the words "licence holders and, or recognised persons as applicable and the duty of a licence holder or recognised person to make documents available to the auditors of such licence holder or recognised person as applicable;" there shall be substituted the words "licence holders and the duty of a licence holder to make documents available to the auditors of such licence holder;"

(m) in paragraph (t) thereof, for the words "retirement schemes." there shall be substituted the words "retirement schemes;" and

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

"(u) issuing Pension Rules in relation to occupational retirement schemes transferring all or part of their liabilities, technical provisions and other obligations

and rights, as well as corresponding assets or cash equivalent to another retirement scheme;

(v) issuing Pension Rules to enable a member, beneficiary, contributor and generally any person who has entered or offered to enter into a retirement scheme, to rescind the agreement or withdraw the offer within such period and in such manner as stipulated in the said Rules."

Amendment of article 39 of the principal Act.

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

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

(i) for the words "The competent authority may," there shall be substituted the words "Without prejudice to anything contained in any other provision of this Act which requires a Retirement Scheme Administrator, a retirement scheme and a retirement fund to furnish to the competent authority any information or documentation, the competent authority may,";

(ii) in sub-paragraph (i) thereof, for the words "as it may require, with respect to any service," there shall be substituted the words "as it may require, including existing telephone and existing data traffic records, with respect to any service,"; and

(iii) in sub-paragraph (ii) thereof, for the words "verified in such manner as it may specify; or" there shall be substituted the words "verified in such manner and in such language as it may specify; or";

(b) in sub-article (2) thereof, for the words "under this article." there shall be substituted the words "under this article or extracts from them.";

(c) in sub-article (8) thereof, for the words "a holder of a licence or recognition may be required to submit" there shall be substituted the words "a holder of a licence may be required to submit"; and

(d) immediately after sub-article (8) thereof there shall be added the following new sub-article:

"(9) The powers to obtain information available to the competent authority pursuant to this article with regard to the persons listed in sub-article (1), shall also be available with regard to the service providers of outsourced

key functions or any other activities at any time."

88. In sub-article (1) of article 40 of the principal Act, for the words "referred to in article 39(1)(a) to (c)." there shall be substituted the words "referred to in article 39(1)(a) to (c) and to report thereon to it." Amendment of article 40 of the principal Act.

89. Article 41 of the principal Act shall be amended as follows: Amendment of article 41 of the principal Act.

(a) in sub-article (1) thereof, for the words "or further directive." there shall be substituted the words "or further directive:", and immediately thereafter there shall be added the following new provisos:

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

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

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

(i) in paragraph (a) thereof, for the words "or any other requirement, and confer powers," there shall be substituted the words "or any other requirement, including any requirement emanating from European Union legislation, and confers powers,";

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

"(c) require that any officer or any person having functions in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or be removed, or removed and replaced by another person acceptable to the competent authority;" and

(iii) in paragraph (d) thereof, for the words "management of the retirement scheme or retirement fund" there shall be substituted the words "management of the retirement fund".

Addition of articles 41A and 41B to the principal Act.

90. Immediately after article 41 of the principal Act, as amended, there shall be added the following new articles:

"Supervisory review process of occupational retirement schemes.

41A. (1) The competent authority shall review the strategies, processes and reporting procedures which are established by a Retirement Scheme Administrator or an occupational retirement scheme to comply with the provisions of this Act and any regulations and Pension Rules issued thereunder taking into account the size, nature, scale and complexity of the activities of the scheme.

(2) The review carried out by the competent authority pursuant to sub-article (1), shall take into account the circumstances in which the occupational retirement scheme is operating, and where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise of an assessment of the following elements:

- (a) an assessment of the qualitative requirements relating to the system of governance;
- (b) an assessment of the risks which the occupational retirement scheme faces;
- (c) an assessment of the ability of the occupational retirement scheme to assess and manage those risks.

(3) Where the competent authority identifies any weakness or deficiency as a consequence of the supervisory review process, it shall request the Retirement Scheme Administrator or an occupational retirement scheme to remedy such weakness or deficiency within such period and in such manner, as it may deem necessary or appropriate in the circumstances.

(4) The reviews, evaluations and assessments referred to in sub-articles (1) and (2), shall be conducted regularly and the competent authority shall establish the minimum frequency and the scope of the review referred to in sub-article (1) having regard to the nature, scale and complexity of the activities of a Retirement Scheme Administrator or the occupational retirement scheme.

Information to be provided for supervisory purposes.

41B. Without prejudice to the provisions of the Act, an occupational retirement scheme shall submit to the competent authority the information which is necessary for the purposes of supervision, as may be specified by means of regulations or Pension Rules which shall also specify the period within which such information is to be submitted."

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

Amendment of article 42 of the principal Act.

(a) in sub-article (1) thereof, for the words "Any officer, employee or agent" there shall be substituted the words "Without prejudice to the provisions of the Companies Act, relating to the entry and search of premises, any officer, employee or agent";

Cap. 386.

(b) in sub-article (2) thereof, for the words "on producing, if required, evidence of his authorisation, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents, being information or documents" there shall be substituted the words "on producing if required, evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining from there any information or documents, specified in the notice, being information or documents"; and

(c) in sub-article (3) thereof, for the words "enforcement of law and order." there shall be substituted the words "enforcement of law and order:", and immediately thereafter there shall be added the following new proviso:

"Provided that, where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning."

92. Sub-article (1) of article 43 of the principal Act shall be amended as follows:

Amendment of article 43 of the principal Act.

(a) in paragraph (a) thereof, for the words "on the licence or recognition granted" there shall be substituted the words "on the licence granted"; and

(b) in paragraph (b) thereof, for the words "suspend a licence or recognition under article 10(1);" there shall be substituted the words "suspend a licence under article 10(1);".

A 182

Amendment of article 44 of the principal Act.

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

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

(i) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(aA) any condition imposed in a licence in terms of article 9(3);";

(ii) in paragraph (c) thereof, for the words "suspension of a licence or recognition under articles" there shall be substituted the words "suspension of a licence under articles";

(b) in the proviso to sub-article (2) thereof, for the words "a licence or recognition shall not become operative" there shall be substituted the words "a licence shall not become operative"; and

(c) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) The Financial Services Tribunal shall have exclusive competence to hear appeals on the matters listed in sub-article (1)."

Amendment of article 46 of the principal Act.

94. Article 46 of the principal Act shall be amended as follows:

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

(i) for the words "where a licence holder or recognised person" there shall be substituted the words "where a licence holder";

(ii) for the words "or the manager, secretary, director or any other person responsible" there shall be substituted the words "or an officer, or any other person responsible";

(iii) for the words "responsible for a licence holder or recognised person contravenes or fails to comply with any of the conditions imposed in a licence or recognition, and, or where the competent authority" there shall be substituted the words "responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence and, or where the competent authority";

(iv) for the words "impose on the licence holder or recognised person," there shall be substituted the words "impose on the licence holder,";

(v) for the words "manager, secretary, director, and, or any other person, as the case may be, an administrative penalty which may not exceed ninety-three thousand and two hundred euro." there shall be substituted the words "officer and, or any other person, as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues.";

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

(i) for the words "on licence holders, recognised persons or others, as may be specified," there shall be substituted the words "on licence holders or others, as may be specified,"; and

(ii) for the words "whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the rules." there shall be substituted the words "whether in the form of a fixed penalty, a daily penalty or both, for any breach of the said Pension Rules.";

(c) sub-article (4) thereof shall be substituted by the following:

"(4) The competent authority shall, without undue delay, publish in such medium and in such manner and for such duration, as it may determine, any administrative penalty or other measure which is imposed for breaches of the provisions of this Act, any regulations or Pension Rules issued thereunder, and with regard to which no appeal was filed within the time limit prescribed by law. Such publication shall include information on the type and nature of the breach and the identity of the natural or legal person responsible for the breach."; and

(d) immediately after sub-article (4) thereof there shall be added the following new sub-article:

"(4A) Notwithstanding sub-article (1), the competent authority may decide to defer publication, not to publish, or to publish on an anonymous basis, any administrative penalty or other measure imposed, in any of the following circumstances:

(a) where the publication of the identity of legal persons, or the identity or personal data of natural persons, is considered by the competent authority to be disproportionate, following a case by case assessment conducted on the proportionality of the publication of such data; or

(b) where the publication jeopardises the stability of financial markets or an ongoing investigation."

Substitution of article 48 of the principal Act.

95. Article 48 of the principal Act shall be substituted by the following:

"Offences.

48. Any person who:

(a) for the purposes of obtaining a licence under this Act, or pursuant to any of the provisions of this Act, any regulations or Pension Rules issued thereunder, or any condition, obligation, requirement or Pension Rules or directive made or given as aforesaid, furnishes information or makes a statement or a declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement or a declaration which is inaccurate, false or misleading in any material respect;

(b) is knowingly a party to the carrying out of any retirement scheme or retirement fund or licensable activity with an intent to defraud or for a fraudulent purpose;

(c) by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into, or offer to enter into a retirement scheme or retirement fund;

(d) with intent to avoid detection of the commission of an offence under this Act, any regulations or Pension Rules issued thereunder removes, destroys, conceals or fraudulently alters any book, document or other paper; or

(e) intentionally obstructs a person exercising rights conferred by this Act or any regulations or Pension Rules issued thereunder,

shall be guilty of an offence."

96. In article 49 of the principal Act, for the words "of article 48 shall, unless another penalty is prescribed, be liable on conviction to a fine (multa) not exceeding four hundred and sixty-six thousand euro or to" there shall be substituted the words "of article 48 shall, be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-six thousand euro (€466,000) or to".

Amendment of article 49 of the principal Act.

97. Article 50 of the principal Act shall be amended as follows:

Amendment of article 50 of the principal Act.

(a) in sub-article (1) thereof, for the words "under this Act shall be commenced without the consent of" there shall be substituted the words "under this Act and any regulations made thereunder, shall be commenced without the sanction of"; and

(b) in sub-article (2) thereof, for the words "this Act shall not affect any criminal liability that may be incurred by any person under any other law." there shall be substituted the words "this Act and any regulations made thereunder shall not affect any criminal proceedings that may be competent under any other law."

98. Article 51 of the principal Act shall be deleted.

Deletion of article 51 of the principal Act.

99. Article 52 of the principal Act shall be substituted by the following:

Substitution of article 52 of the principal Act.

"Confidentiality. 52. (1) Information obtained by the competent authority or its officers, employees, agents, including former officers, employees or agents, as well as by inspectors, auditors, actuaries and experts acting on behalf of the competent authority for the purposes of, or pursuant to any of the provisions of this Act, or any regulations or Pension Rules issued thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy.

(2) Without prejudice to cases covered by criminal law, the persons referred to in sub-article (1) shall not disclose information obtained, from a retirement scheme, a retirement fund and a service provider licensed under the Act, unless such disclosure of information is done in summary or aggregate form, so as not to enable the identity of such scheme, to whom such information relates, to be ascertained:

Provided that such persons may disclose confidential information in civil or commercial proceedings where a retirement scheme, a retirement fund or a service provider is being compulsorily wound up.

(3) The competent authority, when processing personal data for the purposes of the Act and any regulations and Pension Rules issued thereunder, shall do so in accordance with 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), as amended from time to time."

Addition of articles 52A, 52B, 52C, 52D and 52E to the principal Act.

100. Immediately after article 52 of the principal Act, as substituted, there shall be added the following new articles:

"Use of confidential information.

52A. (1) Where the competent authority receives confidential information under this Act and any regulations or Pension Rules issued thereunder, it may only use such confidential information in the course of its duties and for the following purposes:

(a) to verify that conditions for taking up the activity for the provision of retirement benefits are met by the retirement scheme before commencing its activities;

(b) to facilitate the monitoring of activities of the retirement scheme, including the monitoring of technical provisions, the solvency, the system of governance and the information provided to members and beneficiaries, as applicable;

(c) to impose corrective measures, including administrative sanctions;

(d) to publish key performance indicators for all individual occupational retirement schemes which may assist members and beneficiaries in taking financial decisions regarding their pension where permitted by national law;

(e) in appeals filed from decisions of the competent authority under article 44;

(f) in judicial proceedings relating to the provisions of the Act, any regulations and, or Pension Rules issued thereunder.

(2) Articles 52 and 52A of the Act shall be without prejudice to the right of inquiry conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union, pursuant to Article 54 of the Occupational Pensions Directive.

Co-operation
in supervisory
duties and
sharing of
information.

52B. (1) Notwithstanding the provisions of articles 52 and 52A, the competent authority:

(a) in the discharge of its supervisory functions, shall exchange information with:

(i) overseas regulatory authorities;

(ii) authorities responsible for the supervision of the financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;

(iii) authorities or bodies charged with the responsibility for maintaining the stability of the financial system in Member States through the use of macro-prudential rules;

(iv) bodies involved in the winding up of retirement schemes and in other similar procedures;

(v) reorganisation bodies or authorities aiming at protecting the stability of the financial system;

(vi) persons responsible for carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;

(vii) authorities responsible for overseeing the bodies involved in the winding up of retirement schemes and other similar procedures;

(viii) authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;

(ix) independent actuaries of retirement schemes carrying out supervision of those schemes and the bodies responsible for overseeing such actuaries;

(b) shall disclose to bodies which administer the winding up of a retirement scheme the information necessary for the performance of their duties.

(2) Any information provided by the competent authority to authorities, bodies or persons referred to in sub-article (1)(a)(i) to (vi), shall be subject to the duty of professional secrecy.

(3) Notwithstanding the provisions of articles 52 and 52A, the competent authority may transmit information for the purposes of the exercise of their respective tasks to the following:

(a) the Central Bank of Malta, the central banks of the European System of Central Banks (including the European Central Bank) and other bodies with a similar function in their capacity as monetary authorities;

(b) where appropriate, other national public authorities responsible for overseeing payment systems; and

(c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council.

(4) Without prejudice to the provisions of this article and articles 52C and 52D, the authorities or bodies referred to in sub-article (4) shall communicate to the competent authority any information which the competent authority requires for the purposes of article 52A.

(5) Any information provided by the competent authority in accordance with sub-article (4) or received by the competent authority in accordance with sub-article (5) shall be subject to the duty of professional secrecy.

Disclosure of confidential information in relation to occupational retirement schemes.

52C. (1) Notwithstanding the provisions of articles 52(1), 52(2), 52A and 52D(1), the competent authority may exchange information with other departments of central government administration responsible for the enforcement of legislation on the supervision of occupational retirement schemes, credit institutions, financial institutions, investment services and insurance undertakings, or inspectors acting on behalf of those departments, provided that:

(a) such disclosures shall be made only where necessary for reasons of prudential control and prevention and resolution of failing occupational retirement schemes; and

(b) without prejudice to sub-article (3), persons having access to such information shall be subject to the duty of professional secrecy.

(2) Any information obtained by means of an on-site verification may be disclosed to the departments referred to in sub-article (1), only with the express consent of the competent authority from which the information originated from, or the overseas regulatory authority of the country in which the on-site verification was carried out.

(3) The competent authority may disclose confidential information relating to the prudential supervision of an occupational retirement scheme to national parliamentary enquiry committees or national courts of auditors and other national entities in charge of enquiries, where all the following conditions are satisfied:

(a) the entities have competence under national law to investigate or scrutinise the actions of authorities responsible for the supervision of occupational retirement schemes or for laws on such supervision;

(b) the information is strictly necessary for satisfying the competence referred to in paragraph (a);

(c) the persons with access to the information are subject to the duty of professional secrecy requirements;

(d) if the information originates from another Member State, that information is disclosed with the explicit agreement of the originating overseas regulatory authorities and solely for the purposes for which those authorities gave their agreement.

Conditions
for the
exchange of
information.

52D. (1) For exchanges of information under articles (1) to (3) of article 52B of the Act, transmission of information under sub-articles (4), (5) and (6) of article 52B and the disclosure of information under article 52C, the following conditions shall be satisfied:

(a) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;

(b) the information received shall be subject to the duty of professional secrecy;

(c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and where appropriate, solely for the purposes for which that authority gave its agreement.

(2) Notwithstanding the provisions of article 52A, the competent authority may exchange information with authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings, for the purposes of strengthening the stability and integrity of the financial system, provided that:

(a) the information is intended for the purpose of detection, investigation and scrutiny as referred to in article 52C(3)(a);

(b) the information received shall be subject to the duty of professional secrecy;

(c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(3) Where the authorities or bodies referred to in sub-article (2) perform their tasks of detection or investigation with the assistance of persons appointed in view of their specific competence and for that purpose, and who are not employed in the public sector, the possibility of exchanging information provided for in article 52C(3), shall apply.

Co-operation with EIOPA and the European Commission.

52E. (1) The competent authority shall co-operate with EIOPA in accordance with Regulation (EU) No. 1094/2010 and with the European Commission for the purposes of the Occupational Pensions Directive and to facilitate supervision of the operations of retirement schemes.

(2) The competent authority shall provide EIOPA with all information necessary to carry out its duties under the Occupational Pensions Directive and Regulation (EU) No. 1094/2010, in accordance with Article 35 of Regulation (EU) No. 1094/2010.

(3) The competent authority shall inform EIOPA and the European Commission of any major difficulties which the application of the Occupational Pensions Directive gives rise to and the European Commission, EIOPA and the competent authority shall examine such difficulties as quickly as possible in order to find an appropriate solution."

101. Article 53 of the principal Act shall be deleted.

Deletion of article 53 of the principal Act.

102. Article 54 of the principal Act shall be amended as follows:

Amendment of article 54 of the principal Act.

(a) in the marginal note thereof, for the words "Notices." there shall be substituted the words "Service of notices.";

(b) in the English text of paragraph (a) thereof, for the words "delivered to it;" there shall be substituted the words "delivered to him;"

(c) in the English text of paragraph (b) thereof, for the words "address furnished by it to the competent authority, or to its last known address;" there shall be substituted the words "address furnished by him to the competent authority, or to his last known address;" and

(d) in paragraph (c) thereof, for the words "sent to it by post, e-mail or by telefax at any of" there shall be substituted the words "sent to it by post or e-mail at any of".

A 192

Amendment of
article 56 of the
principal Act.

103. Immediately after sub-article (3) of article 56 of the principal Act, there shall be added the following new sub-article:

Cap.514.

"(4) The Minister, acting on the advice of the competent authority may, by regulations, make transitional provisions in respect of such persons who were granted a recognition by the competent authority under article 7 of the Retirement Pensions Act and, without prejudice to the generality of the foregoing may, by such regulations, in particular, prescribe a period within which back office administrators are to surrender their recognition, subject to such conditions and requirements as may be prescribed."

PART XI
AMENDMENTS TO THE COMPANY
SERVICE PROVIDERS ACT

Amendments to
the Company
Service
Providers Act.
Cap. 529.

104. This Part amends the Company Service Providers Act and it shall be read and construed as one with the Company Service Providers Act, hereinafter in this Part referred to as "the principal Act".

Amendment of
article 5 of the
principal Act.

105. In sub-article (5) of article 5 of the principal Act, for the words "as may be prescribed, which is payable annually upon the anniversary of the date of such registration." there shall be substituted the words "as may be prescribed."

Passed by the House of Representatives at Sitting No. 302 of the
26th February, 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA