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18. 6. 2019

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Michael Farrugia, M.P., Ministru għall-Intern u s-Sigurtà Nazzjonali, f'isem is-Segretarju Parlamentari għas-Servizzi Finanzjarji, Ekonomija Diġitali u Innovazzjoni, u moqri għall-Ewwel darba fis-Seduta tat-12 ta' Ġunju 2019.

A Bill introduced by the Honourable Michael Farrugia, M.P., Minister for Home Affairs and National Security, on behalf of the Parliamentary Secretary for Financial Services, Digital Economy and Innovation, and read the First time at the Sitting of the 12th June 2019.

ATT biex jemenda diversi liġijiet finanzjarji.

AN ACT to amend various financial services laws.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda diversi liġijiet finanzjarji.

Il-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2019 li jemenda Diversi Liġijiet Finanzjarji. Titolu fil-qosor.

TAQSIMA I
EMENDI GHALL-ATT DWAR IL-KUMMERĊ BANKARJU

2. Din it-Taqsima temenda l-Att dwar il-Kummerċ Bankarju u għandha tinqara u tinftiehem ħaġa waħda mal-Att dwar il-Kummerċ Bankarju, minn hawn aktar 'il quddiem imsejjaħ "l-Att prinċipali". Emendi għall-Att dwar il-Kummerċ Bankarju. Kap. 371.

3. Is-subartikolu (1) tal-artikolu 2 tal-Att prinċipali, għandu jiġi emendat kif ġej: Emenda tal-artikolu 2 tal-Att prinċipali.

(a) minnufih wara t-tifsira "amministrazzjoni għolja" għandha tidhol din it-tifsira ġdida li ġejja:

" "Arbitru" tfisser l-Arbitru għas-Servizzi Finanzjarji maħtur taħt l-artikolu 14 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji;" Kap. 555.

(b) minnufih wara t-tifsira "depożitu" għandha tidhol din it-tifsira ġdida li ġejja:

" "id-Direttiva dwar is-Servizzi ta' Pagament" tfisser id-Direttiva (UE) 2015/2366 tal-Parlament Ewropew u tal-Kunsill tal-25 ta' Novembru 2015 dwar is-servizzi ta' pagament fis-suq intern, li temenda d-Direttivi 2002/65/KE, 2009/110/KE u 2013/36/UE u r-Regolament (UE) Nru

1093/2010, u li tħassar id-Direttiva 2007/64/KE, kif tista' tiġi emendata minn żmien għal żmien u li tinkludi kwalunkwe miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;"

(ċ) minnufih wara t-tifsira "fondi proprji" għandhom jidhlu dawn it-tifsiriet ġodda li ġejjin:

Kap. 376. " "fornitur ta' servizzi ta' bidu ta' pagament" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;

Kap. 376. "fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;

Kap. 376. "fornitur ta' servizzi ta' pagament li jiġġestixxi l-kont" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;"

(d) minnufih wara t-tifsira "istituzzjoni" għandhom jidhlu dawn it-tifsiriet ġodda li ġejjin:

Kap. 376. " "istituzzjoni ta' flus elettronici" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;"

Kap. 376. "istituzzjoni ta' pagament" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;"

(e) minnufih wara t-tifsira "kapital inizjali", għandha tidhol din it-tifsira ġdida li ġejja:

Kap. 376. " "kont ta' pagament" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;"

(f) minnufih wara t-tifsira "outsourcing" għandha tidhol din it-tifsira ġdida li ġejja:

" "PAD" tħasser id-Direttiva 2014/92/UE tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Lulju 2014 dwar il-komparabbiltà tat-tariffi relatati mal-kontijiet tal-ħlas, il-bdil tal-kontijiet tal-ħlas u l-aċċess għal kontijiet tal-ħlas b'karatteristiċi bażiċi, kif tista' tiġi emendata minn

żmien għal żmien u li tinkludi kwalunkwe miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;"

(g) minnufih wara t-tifsira "rikostruzzjoni" għandhom jidhlu dawn it-tifsiriet godda li ġejjin:

"servizzi ta' bidu ta' pagament" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji; Kap. 376.

"servizzi ta' informazzjoni dwar kontijiet" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji; Kap. 376.

"servizzi ta' pagament" tfisser kull attività kummerċjali stabbilita fit-Tieni Skeda tal-Att dwar Istituzzjonijiet Finanzjarji;" u Kap. 376.

(h) minnufih wara t-tifsira "uffiċċju rappreżentattiv" għandha tidhol din it-tifsira ġdida li ġejja:

"utent ta' servizzi ta' pagament" għandu jkollha l-istess tifsira bħal dik mogħtija lilha taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji;" Kap. 376.

4. Is-subartikolu (1) tal-artikolu 3 tal-Att prinċipali, għandu jiġi emendat kif ġejj: Emenda tal-artikolu 3 tal-Att prinċipali.

(a) fil-paragrafu (e) tiegħu, il-kliem "jew Regolament tal-UE.", għandhom jiġu sostitwiti bil-kliem "jew Regolament tal-UE;" u

(b) minnufih wara l-paragrafu (e) tiegħu kif emendat, għandhom jiddiedu dawn il-paragrafi godda li ġejjin:

"(f) jittrasponi, jimplimenta u, jew iġib fis-seħħ ir-rekwiziti tal-PAD, u meta jkun qed jagħmel dan jista' wkoll jistabbilixxi jew iżomm miżuri alternattivi għal dawk imsemmija fl-Artikolu 10(2) sa (6) tal-PAD, iżda:

(i) dan għandu jkun b'mod ċar fl-interess tal-konsumatur;

(ii) ma għandu jkun hemm l-ebda piż addizzjonali fuq il-konsumatur; u

(iii) il-bdil kif imfisser fl-Artikolu 2(18)

tal-PAD isir fi żmien, bħala massimu, l-istess perjodu ta' żmien globali bħal dak imsemmi fl-Artikolu 10(2) sa (6) tal-PAD;

(g) iwaqqaf mekkanizmu speċifiku biex jiżgura li l-konsumaturi li ma jkollhomx kont ta' pagament kif imfisser fl-Artikolu 2(3) tal-PAD fit-territorju tagħhom, u li jkunu ġew imcaħħda minn kont ta' pagament bħal dak li dwaru jintalab li tithallas tariffa minn istituzzjonijiet ta' kreditu, ikollhom access effettiv għal kont ta' pagament li jkollu l-karatteristiċi bażiċi skont it-termini tal-PAD, bla ebda ħlas."

Emenda tal-artikolu 4 tal-Att prinċipali.

5. L-artikolu 4 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) fis-subartikolu (7) tiegħu, il-kliem "tista' tagħmel, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ sabiex jiġu implimentati linji gwida, rakkomandazzjonijiet u deċiżjonijiet individwali maħruġin mill-EBA taħt l-Artikoli 16, 17(3) u 18(3) tar-Regolament (UE) Nru 1093/2010.", għandhom jiġu sostitwiti bil-kliem "tista' toħroġ, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ, sabiex jiġu implimentati kwalunkwe linji gwida, rakkomandazzjonijiet, deċiżjonijiet, opinjonijiet jew kull strument ieħor maħruġ mill-EBA, hekk kif jista' jkun meħtieġ.";

(b) fis-subartikolu (8) tiegħu, il-kliem, "tista' tagħmel, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ sabiex jiġu implimentati opinjonijiet u rakkomandazzjonijiet maħruġin mill-BĊE taħt l-Artikoli 127(4) u 132(1) tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea.", għandhom jiġu sostitwiti bil-kliem "tista' toħroġ, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ, sabiex jiġu implimentati kwalunkwe linji gwida, rakkomandazzjonijiet, deċiżjonijiet, opinjonijiet jew kull strument ieħor maħruġ mill-BĊE, kif jista' jkun meħtieġ."

Emenda tal-artikolu 7 tal-Att prinċipali.

6. Fis-subartikolu (3) tal-artikolu 7 tal-Att prinċipali, il-kliem "jekk tirrifjuta applikazzjoni għandha tinforma lill-applikant, bil-miktub, tar-raġunijiet għar-rifjut.", għandhom jiġu sostitwiti bil-kliem "jekk tirrifjuta applikazzjoni għandha tinforma lill-applikant, bil-miktub, bir-raġunijiet għar-rifjut fil-perjodi ta' żmien imsemmija fis-subartikolu (2)."

Emenda tal-artikolu 9 tal-Att prinċipali.

7. Fis-subartikolu (5) tal-artikolu 9 tal-Att prinċipali, il-kliem "għandu jispeċifika perjodu li fih", għandhom jiġu sostitwiti bil-kliem "għandu jispeċifika perjodu, li jkun perjodu ta' mhux inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin ġurnata kalendarja, li fih".

8. Is-subartikolu (4) tal-artikolu 17B tal-Att prinċipali, għandu jiġi mħassar. Emenda tal-artikolu 17B tal-Att prinċipali.

9. L-artikolu 19A tal-Att prinċipali, għandu jiġi emendat kif ġej: Emenda tal-artikolu 19A tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Meta istituzzjoni ta' kreditu tkun bi hsiebha tagħmel *outsourcing* tas-servizzi materjali jew attivitajiet tagħha, din għandha qabel, tgħarraf lill-awtorità kompetenti kif meħtieġ."; u

(b) fis-subartikolu (2) tiegħu, il-kliem "għar-rikonoxximent tal-provditur ta' servizz ta' *outsourcing*", għandhom jiġu sostitwiti bil-kliem "dwar l-informazzjoni li għandha tiġi ppreżentata fir-rigward tal-provditur ta' servizz ta' *outsourcing*".

10. Minnufih wara l-artikolu 19A tal-Att prinċipali, għandhom jiżdiedu dawn l-artikoli ġodda li ġejjin: Żieda tal-artikoli 19B, 19C u 19D fl-Att prinċipali.

"Aċċess għal kontijiet miżmuma f'istituzzjoni ta' kreditu.

19B. (1) L-istituzzjonijiet ta' kreditu għandhom jagħtu lill-istituzzjonijiet ta' pagamenti, lill-istituzzjonijiet ta' flus elettronici u lill-fornituri tas-servizzi ta' informazzjoni dwar il-kontijiet, aċċess għal kont ta' servizzi ta' pagament ta' istituzzjoni ta' kreditu fuq bażi oġġettiva, mhux diskriminatorja u proporzjonali.

(2) L-aċċess imsemmi fis-subartikolu (1) għandu jkun estensiv biżżejjed biex jippermetti lill-istituzzjonijiet tal-pagamenti, lill-istituzzjonijiet ta' flus elettronici u lill-fornituri tas-servizzi tal-informazzjoni dwar il-kontijiet, li jipprovdu servizzi ta' pagament mingħajr diffikultà u b'mod effiċjenti.

(3) F'każ li istituzzjoni ta' kreditu ma tippermettix lill-istituzzjoni ta' pagament, lill-istituzzjoni ta' flus elettronici jew fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet li jkollhom aċċess għall-kont tas-servizzi ta' pagament tal-istituzzjoni ta' kreditu, tali istituzzjoni għandha tipprovdi lill-awtorità kompetenti bir-raġunijiet motivati kif dovut għal tali rifjut.

(4) L-awtorità kompetenti għandha, fil-każ ta' xi avveniment bħal dak imsemmi fis-subartikolu (3), tavża lill-Bank Ċentrali bl-istess avveniment flimkien mar-raġunijiet mogħtija mill-istituzzjoni ta' kreditu, mingħajr l-ebda dewmien.

Ġestjoni tar-riskji operattivi u tas-sigurtà.

19C. (1) L-istituzzjonijiet ta' kreditu għandhom jistabbilixxu qafas li jkollu miżuri ta' mitigazzjoni u mekkaniżmi ta' kontroll xierqa biex jiġġestixxu r-riskji operattivi u tas-sigurtà, relatati mas-servizzi ta' pagament li jkunu qegħdin jipprovdu. Bħala parti minn dak il-qafas, l-istituzzjonijiet ta' kreditu għandhom jistabbilixxu u jaraw li jkollhom proċeduri effettivi ta' ġestjoni ta' inċidenti, inklużi għall-identifikazzjoni u l-klassifika ta' inċidenti operazzjonali u tas-sigurtà maġġuri.

(2) L-istituzzjonijiet ta' kreditu għandhom jipprovdu lill-Bank Ċentrali kull sena, jew fi żminijiet iqsar li jistgħu jiġu stabbiliti mill-awtorità kompetenti, b'kooperazzjoni mal-Bank Ċentrali, stima aġġornata u komprensiva tar-riskji operattivi u tas-sigurtà relatati mas-servizzi ta' pagament li jkunu qegħdin jipprovdu u dwar l-adeqwatezza tal-miżuri ta' mitigazzjoni u l-mekkanizmi ta' kontroll implimentati bħala reazzjoni għal dawk ir-riskji.

(3) L-awtorità kompetenti għandha tikkopera mal-Bank Ċentrali fil-valutazzjoni u l-ipproċessar tad-dokumenti msemmija fis-subartikolu (2).

(4) L-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka Regoli Bankarji kif jista' jkun meħtieġ biex tkun tista' timplimenta aħjar id-dispożizzjonijiet ta' dan l-artikolu.

Rappurtar tal-inċidenti.

19D. (1) F'każ ta' inċident operattiv u tas-sigurtà maġġuri kif imsemmi fl-artikolu 19C u fejn Malta tkun l-Istat Membru tal-orijini, l-istituzzjonijiet ta' kreditu għandhom, mingħajr l-ebda dewmien javżaw lill-Bank Ċentrali. Meta jiġi avżat dwar dan, il-Bank Ċentrali, għandu minnufih jgħarraf lill-awtorità kompetenti.

(2) Meta l-inċident ikollu jew jista' jkollu impatt fuq l-interessi finanzjarji tal-istess utenti tas-servizzi ta' pagament, l-istituzzjoni ta' kreditu involuta għandha, mingħajr l-ebda dewmien, tgħarraf lill-utenti tagħha tas-servizzi ta' pagament bl-inċident u b'kull miżura li dawn jistgħu jieħdu biex inaqqsu l-effetti negattivi tal-inċident.

(3) Malli jirċievi l-avviż imsemmi fis-subartikolu (1), il-Bank Ċentrali għandu, b'kooperazzjoni mal-awtorità kompetenti, jivvaluta r-rilevanza tal-inċident għall-awtoritajiet rilevanti f'Malta, u javża lil kull waħda minn dawn l-awtoritajiet kif meħtieġ.

(4) L-awtorità kompetenti għandha, b'kooperazzjoni mal-Bank Ċentrali, tikkopera mal-EBA u mal-Bank Ċentrali Ewropew għall-finijiet tal-valutazzjoni tar-rilevanza tal-inċident lill-awtoritajiet rilevanti oħra tal-Unjoni Ewropea u nazzjonali skont it-termini tal-Artikolu 96(2) tad-Direttiva dwar is-Servizzi ta' Pagament.

(5) Fejn l-awtorità kompetenti tirċievi avviż dwar xi inċident operattiv jew tas-sigurtà maġġuri fit-termini tas-subartikolu (1), din għandha, fejn ikun xieraq, abbażi ta' dak l-avviż u b'kooperazzjoni mal-Bank Ċentrali, tiegħu l-miżuri kollha meħtieġa biex thares is-sigurtà immedjata tas-sistema finanzjarja.

(6) L-istituzzjonijiet ta' kreditu għandhom, mill-inqas ta' kull sena, jipprovdu lill-Bank Ċentrali informazzjoni statistika dwar frodi relatata ma' mezzi differenti ta' pagament.

(7) L-Awtorità kompetenti tista' toħroġ, temenda jew tirrevoka kwalunkwe Regola Bankarja kif jista' jkun meħtieġ biex ikunu jistgħu jiġu implimentati aħjar d-dispożizzjonijiet ta' dan l-artikolu.

(8) Għall-finijiet ta' dan l-artikolu, it-termini "Stat Membru tal-oriġini" u "Stat Membru ospitanti" għandu jkollhom l-istess tifsira bħal dik mogħtija lilhom taħt l-artikolu 2(1) tal-Att dwar Istituzzjonijiet Finanzjarji."

Kap. 376.

11. Fin-nota margjinali tal-artikolu 23 tal-Att prinċipali, il-kliem "Suspett ta' offiżi", għandhom jiġu sostitwiti bil-kliem "Suspett ta' illegalità."

Emenda tal-artikolu 23 tal-Att prinċipali.

12. Fil-paragrafu (b) tal-artikolu 24 tal-Att prinċipali, il-kliem "dwar l-għemil suspettat ta' xi reat taħt dan l-Att", għandhom jiġu sostitwiti bil-kliem "dwar l-għemil suspettat ta' xi illegalità taħt dan l-Att,".

Emenda tal-artikolu 24 tal-Att prinċipali.

13. Minnufih wara t-tieni proviso tas-subartikolu (9) tal-artikolu 25 tal-Att prinċipali, għandhom jiżdiedu dawn is-subartikoli ġodda li ġejjin:

Emenda tal-artikolu 25 tal-Att prinċipali.

"(9A) L-awtorità kompetenti għandha tikkomunika lill-EBA l-ismijiet tal-awtoritajiet jew tal-organi li jistgħu jirċievu informazzjoni kif deskritt fis-subartikoli (8) u (9).

(9B) Sabiex jimplementaw is-subartikolu (9), l-awtoritajiet jew l-organi msemmija fis-subartikolu (8), għandhom jikkomunikaw lill-awtorità kompetenti li tkun żvelat l-informazzjoni, l-ismijiet u r-responsabilitajiet tal-persuni lil min

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din għandha tintbagħat."

Thassir tal-artikolu 29 tal-Att prinċipali.

14. Is-subartikolu (8) tal-artikolu 29 tal-Att prinċipali, għandu jiġi mħassar.

Emenda tal-artikolu 30 tal-Att prinċipali.

15. Il-paragrafu (b) tal-artikolu 30 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"(b) tagħmel disponibbli għall-pubbliku, b'format stampat jew elettroniku,".

Emenda tal-artikolu 34 tal-Att prinċipali.

16. L-artikolu 34 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) l-ewwel proviso tas-subartikolu (4) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"Izda dawk l-uffiċjali, l-awdituri jew l-esperti jistgħu jikxfu tali informazzjoni għall-iskop tat-twertiq tad-dmirijietom jew tal-eżerċizzju tal-funzjonijiet tagħhom, b'format sommarju u kollettiv biss kif speċifikat fis-subartikolu (4), jew meta dawn ikunu legalment rikjesti jagħmlu dan, minn xi Qorti jew taht xi dispożizzjoni ta' xi liġi:";

(b) is-subartikolu (8) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(8) L-awtorità kompetenti, meta tkun qegħda tipproċessa d-*data* personali għall-finijiet tal-Att u ta' kull regolament u, jew Regoli Bankarji maħruġa tahtu, għandha tagħmel dan fit-termini ta' kull liġi applikabbli dwar il-protezzjoni tad-*data*."

Żieda tal-artikolu 34A fl-Att prinċipali.

17. Minnufih wara l-artikolu 34 tal-Att prinċipali kif emendat, għandu jiżdied dan l-artikolu għdid li ġej:

"Protezzjoni u privatezza tad-*data*."

34A. (1) L-istituzzjonijiet ta' kreditu jistgħu, meta jkun meħtieġ li jharsu l-prevenzjoni, l-investigazzjoni u l-iżvelar tal-frodi ta' pagament, jipproċessaw *data* personali.

(2) Il-provvista tal-informazzjoni lill-individwi dwar l-ipproċessar ta' *data* personali, l-ipproċessar ta' tali *data* personali u kull ipproċessar ieħor ta' *data* personali għall-finijiet ta' dan l-Att u ta' kwalunkwe regolamenti u, jew Regoli maħruġin tahtu għandhom jitwettqu fit-termini ta' kull liġi applikabbli dwar il-protezzjoni tad-*data*.

(3) Kemm-il darba ma jkunx permess xort'ohra taht dispożizzjonijiet ohra ta' dan l-Att, kif ukoll taht ligijiet applikabbli, l-istituzzjonijiet ta' kreditu għandhom biss jaċċessaw, jipprocessaw u jzommu *data* personali li tkun meħtieġa għall-provvista tas-servizzi tagħhom, bil-kunsens espliċitu ta' min ikun qed jagħmel użu mis-servizzi tagħhom."

18. Minnufih wara l-artikolu 36 tal-Att prinċipali, għandhom jizdiedu dawn l-artikoli ġodda li ġejjin:

Żieda tal-artikoli 37 u 38 fl-Att prinċipali.

"Ilmenti.

37. Kwalunkwe ilmenti li jsiru minn kull persuna li tkun qegħda tagħmel użu minn servizz ta' pagament provdut minn istituzzjoni ta' kreditu jew minn persuni terzi ohra, inklużi assoċjazzjonijiet tal-interessati konsumaturi fil-kuntest tat-tifsira tal-Att dwar l-Affarijiet tal-Konsumatur, fir-rigward ta' kwalunkwe ksur allegat tad-dispożizzjonijiet ta' dan l-Att li jitrassponu d-Direttiva dwar is-Servizzi ta' Pagament, minn istituzzjoni ta' kreditu liċenzjata skont dan l-Att, jew agent jew fergħa stabbiliti Malta taht id-dritt ta' stabbiliment ta' istituzzjoni ta' kreditu fi Stat Membru ieħor, għandhom jiġu pprezentati lill-Arbitru fit-termini tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji.

Kap. 378.

Kap. 555.

Dispożizzjonijiet tranżitorji relatati mad-Direttiva dwar is-Servizzi ta' Pagament.

38. (1) L-istituzzjonijiet ta' kreditu li qabel it-12 ta' Jannar 2016, ikunu wettqu f'Malta attivitajiet ta' fornituri ta' servizzi ta' bidu ta' pagament u fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet m'għandhomx, sa tmintax-il xahar wara d-data tad-dhul fis-seħħ tal-istandards tekniki regolatorji msemmija fl-Artikolu 98 tad-Direttiva dwar is-Servizzi ta' Pagament, ikunu projbiti milli jkomplu jeserċitaw dawk l-attivitajiet f'Malta skont il-qafas regolatorju applikabbli fil-prezent.

(2) Sakemm l-istituzzjonijiet ta' kreditu li jaġixxu bhala fornituri ta' servizzi ta' pagament li jiġġestixxi l-kont jharsu l-istandards tekniki regolatorji msemmija fl-Artikolu 98 tad-Direttiva dwar is-Servizzi ta' Pagament, tali istituzzjonijiet ta' kreditu m'għandhomx iwaqqfu jew jostakolaw l-użu ta' servizzi ta' bidu ta' pagament jew servizzi ta' informazzjoni dwar kontijiet għal dawk il-kontijiet li jkunu qegħdin jagħtu servizz dwarhom."

TAQSIMA II
EMENDI GĦALL-ATT DWAR ISTITUZZJONIJIET
FINANZJARJI

Emendi għall-Att dwar Istituzzjonijiet Finanzjarji. Kap. 376.

19. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar Istituzzjonijiet Finanzjarji, hawn iżjed 'il quddiem f'din it-Taqsima msejjah "l-Att prinċipali".

Sostituzzjoni tal-artikolu 2 tal-Att prinċipali.

20. L-artikolu 2 tal-Att prinċipali, għandu jigi sostitwit b'dan li ġej:

"Tifsir.

2. (1) F'dan l-Att, kemm il-darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra:

"aġent" tfisser persuna li taġixxi f'isem istituzzjoni finanzjarja meta tkun qegħda tipprovdi dawk is-servizzi elenkati taħt l-Ewwel Skeda, għajr il-hruġ ta' flus elettronici;

"akkwist ta' transazzjonijiet ta' pagament" tfisser servizz ta' pagament provdut minn fornitur ta' servizzi ta' pagament li jidhol f'kuntratt ma' min jirċievi l-pagament biex jaċċetta u jipproċessa transazzjonijiet ta' pagament, li jirrizultaw fi trasferiment ta' fondi lil min jirċievi l-pagament;

Kap. 555.

"Arbitru" tfisser l-Arbitru għas-Servizzi Finanzjarji maħtur taħt l-artikolu 14 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji;

"awtentikazzjoni" tfisser proċedura li tippermetti lill-fornitur ta' servizzi ta' pagament jivverifika l-identità ta' utent ta' servizzi ta' pagament jew il-validità tal-użu ta' strument ta' pagament speċifiku, inkluż l-użu tal-kredenzjali ta' sigurtà personalizzati tal-utent;

Kap. 330.

"awtorità kompetenti" tfisser l-Awtorità għas-Servizzi Finanzjarji ta' Malta mwaqqfa bl-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;

"awtorità regolatorja barranija" tfisser awtorità li f'xi pajjiż jew territorju barra minn Malta teżerċita xi funzjoni li tikkorrispondi għall-funzjonijiet tal-awtorità kompetenti taħt dan l-Att;

"awtorità regolatorja Ewropea" tfisser korp li jinsab fi Stat Membru ieħor u li għandu s-setgħa legali jew regolatorja li jissorvelja istituzzjonijiet ta' pagamenti, istituzzjonijiet ta' flus elettronici u, jew fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet;

Kap. 204.

"Bank Ċentrali" tfisser il-Bank Ċentrali ta' Malta kif imfisser fl-Att dwar il-Bank Ċentrali ta' Malta;

"CRD" tfisser id-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività tal-istituzzjonijiet ta' kreditu u s-supervizzjoni prudenzjali tal-istituzzjonijiet ta' kreditu u tad-ditti tal-investment, li temenda d-Direttiva 2002/87/KE u li tħassar id-Direttivi 2006/48/KE u 2006/49/KE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi kwalunkwe miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"CRR" tfisser ir-Regolament (UE) 575/2013 tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar ir-rekwiżiti prudenzjali għall-istituzzjonijiet ta' kreditu u d-ditti tal-investment u li jemenda r-Regolament (UE) Nru 648/2012, kif jista' jiġi emendat minn żmien għal żmien, u li jinkludi kwalunkwe miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtu;

"debitu dirett" tfisser servizz ta' pagament biex jiġi debitat kont ta' pagament ta' min iħallas, fejn transazzjoni ta' pagament tinbeda minn min jirċievi l-pagament abbażi tal-kunsens ta' min iħallas, mogħti lil min jirċievi l-pagament, lill-fornitur ta' servizz ta' pagament ta' min jirċievi l-pagament, jew lill-istess fornitur ta' servizz ta' pagament ta' min iħallas;

"id-Direttiva 86/635/KEE" tfisser id-Direttiva tal-Kunsill 86/635/KEE tat-8 ta' Diċembru 1986 dwar il-kontijiet annwali u l-kontijiet konsolidati ta' banek u istituzzjonijiet finanzjarji oħrajn, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva 2002/21/KE" tfisser id-Direttiva 2002/21/KE tal-Parlament Ewropew u tal-Kunsill tas-7 ta' Marzu 2002 dwar kwadru regolatorju komuni għan-*networks* ta' komunikazzjonijiet u servizzi elettronici, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva 2004/39/KE" tfisser id-Direttiva 2004/39/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta' April 2004 dwar is-swieq fl-istrumenti finanzjarji li temenda d-Direttivi tal-Kunsill 85/611/KEE u 93/6/KEE u d-Direttiva 2000/12/KE tal-Parlament Ewropew u tal-Kunsill u li tħassar id-Direttiva tal-Kunsill 93/22/KEE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva 2008/48/KE" tfisser id-Direttiva 2008/48/KE tal-Parlament Ewropew u tal-Kunsill tat-23 ta' April 2008 dwar ftehim ta' kreditu għall-konsumatur u li tħassar id-Direttiva tal-Kunsill 87/102/KEE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards teknici regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva dwar il-Flus Elettroniċi" tfisser id-Direttiva 2009/110/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Settembru 2009 dwar il-bidu, l-eżerċizzju u s-superviżjoni prudenzjali tan-negozju tal-istituzzjonijiet tal-flus elettroniċi li temenda d-Direttivi 2005/60/KE u 2006/48/KE u li tħassar id-Direttiva 2000/46/KE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva 2013/34/UE" tfisser id-Direttiva 2013/34/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar id-dikjarazzjonijiet finanzjarji annwali, id-dikjarazzjonijiet finanzjarji kkonsolidati u r-rapporti relatati ta' ċerti tipi ta' impriżi, u li temenda d-Direttiva 2006/43/KE tal-Parlament Ewropew u tal-Kunsill u li tħassar id-Direttivi tal-Kunsill 78/660/KEE u 83/349/KEE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniċi regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva (UE) 2015/849" tfisser id-Direttiva (UE) 2015/849 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Mejju 2015 dwar il-prevenzjoni tal-użu tas-sistema finanzjarja għall-finijiet tal-ħasil tal-flus jew il-finanzjament tat-terroriżmu, li temenda r-Regolament (UE) Nru 648/2012 tal-Parlament Ewropew u tal-Kunsill, u li tħassar id-Direttiva 2005/60/KE tal-Parlament Ewropew u tal-Kunsill u d-Direttiva tal-Kummissjoni 2006/70/KE, kif tista' tiġi emendata minn żmien għal żmien, u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniċi regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"id-Direttiva dwar is-Servizzi ta' Pagament" tfisser id-Direttiva (UE) 2015/2366 tal-Parlament Ewropew u tal-Kunsill tal-25 ta' Novembru 2015 dwar is-servizzi ta' pagament fis-suq intern, li temenda d-Direttivi 2002/65/KE, 2009/110/KE u 2013/36/UE u r-Regolament (UE) Nru 1093/2010, u li tħassar id-Direttiva 2007/64/KE, kif tista' tiġi emendata minn żmien għal żmien u li tinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nharġu jew li jistgħu jinħarġu taħtha;

"direttur" tinkludi individwu li jokkupa l-pożizzjoni ta' direttur ta' kumpannija, ikun li jkun l-isem li bih jissejjaħ, li jkollu s-setgħa li jwettaq sostanzjalment l-istess funzjonijiet fir-rigward tad-direzzjoni tal-kumpannija bħal dawk imwettqa minn direttur; u fir-rigward ta' kumpannija reġistrata jew inkorporata barra minn Malta, tinkludi membru ta' bord jew agent jew rappreżentant lokali ta' dik il-kumpannija;

"dritt Ewropew" tfisser id-dritt ta' stabbiliment u, jew il-libertà li jiġu provduti servizzi;

"EBA" tfisser l-Awtorità Bankarja Ewropea stabbilita bir-Regolament (UE) Nru 1093/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jistabbilixxi Awtorità Superviżorja Ewropea (Awtorità Bankarja Ewropea), li jemenda d-Deciżjoni Nru 716/2009/KE u li jħassar id-Deciżjoni tal-Kummissjoni 2009/78/KE, kif jista' jiġi emendat minn żmien għal żmien;

"faċilità ta' kreditu" tfisser is-self ta' somma ta' flus permezz ta' avvanz, *overdraft* jew self jew xi linja oħra ta' kreditu, inkluż l-iskontar ta' kambjali u *promissory notes*, garanziji, indennizzi, aċċettazzjonijiet, kambjali mdawwra b'avall u kuntratti finanzjarji;

Kap. 373.

"fergħa" tfisser post ta' kummerç li ma jkunx l-uffiçju prinçipali, li jkun jiffirma parti minn istituzzjoni finanzjarja, li ma jkollhiex personalità ġuridika u li jkun direttament jiġġestixxi xi transazzjonijiet jew it-transazzjonijiet kollha, kif liçenzjat jew reġistrat, li jkollhom x'jaqsmu man-negozju ta' istituzzjoni finanzjarja; il-postijiet kollha ta' kummerç stabbiliti f'Malta minn istituzzjoni li jkollha uffiçju prinçipali reġistrat fi Stat Membru ieħor għandhom jitqiesu bħala fergħa unika;

"finanzjar ta' terroriżmu" għandha l-istess tifsira mogħtija lilha fl-Att kontra *Money Laundering*, kif jista' jiġi emendat minn żmien għal żmien;

"flus elettronici" tfisser valur monetarju maħzun elettrunikament, inkluż b'mod manjetiku, kif rappreżentat f'talba lil emittent, u li jinħarġu meta jiġu riçevuti fondi bil-għan li jsiru transazzjonijiet ta' pagament u li huma aċċettati minn persuna li ma tkunx l-istituzzjonijiet finanzjarji li ħarġet il-flus elettronici;

"fondi" tfisser karti tal-flus u muniti, flus skritturali u flus elettronici;

"fondi proprji" tfisser fondi kif imfisser fil-paragrafu 118 tal-Artikolu 4(1) tas-CRR, meta mill-inqas 75% tal-Kapital fi Grad 1 jkun fil-forma ta' Kapital Komuni tal-Grad 1 kif imsemmi fl-Artikolu 50 ta' dak ir-Regolament u l-Kapital fi Grad 2 huwa ndaq jew anqas minn terz tal-Kapital fi Grad 1;

"fornitur ta' servizzi ta' bidu ta' pagament" tfisser furnitur ta' servizzi ta' pagament li jkollu liçenza taħt dan l-Att jew li jkollu awtorizzazzjoni ekwivalenti f'pajjiż ieħor kif hemm fid-Direttiva dwar is-Servizzi ta' Pagament, biex jipprovdi servizzi ta' bidu ta' pagament;

"fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet" tfisser furnitur ta' servizzi ta' pagament li jkun ġie reġistrat kif hawn f'dan l-Att jew li jkollu reġistrazzjoni ekwivalenti f'pajjiż ieħor kif hemm fid-Direttiva dwar is-Servizzi ta' Pagament, biex jipprovdi biss servizzi ta' informazzjoni dwar kontijiet;

"fornitur ta' servizzi ta' pagament" tfisser:

Kap. 371.

(a) l-istituzzjonijiet ta' kreditu, inklużi fergħat tagħhom kif imfisser fl-artikolu 2(1) tal-Att dwar il-Kummerċ Bankarju meta dawk il-fergħat ikunu jinsabu fl-Unjoni Ewropea, sew jekk l-uffiċċji prinċipali ta' dawk il-fergħat ikun fl-Unjoni, sew skont l-Artikolu 47 tas-CRD u (fi)d-dritt nazzjonali, jekk barra mill-Unjoni Ewropea;

(b) l-istituzzjonijiet ta' flus elettronici, li jkunu kumpanniji, li ngħataw awtorizzazzjoni taħt it-Titolu II tad-Direttiva dwar il-Flus Elettronici biex joħorġu flus elettronici, inklużi kif hemm fl-Artikolu 8 ta' dik id-Direttiva u fid-dritt nazzjonali, il-fergħat tagħhom, meta dawk il-fergħat ikunu jinsabu fl-Unjoni Ewropea u l-uffiċċji barra mill-Unjoni Ewropea, sakemm is-servizzi ta' pagament provduti minn dawk il-fergħat huma marbuta mal-ħruġ ta' flus elettronici;

(ċ) istituzzjonijiet ta' kontijiet postali fil-forma giro (*post office giro institutions*) li huma intitolati taħt id-dritt nazzjonali biex jipprovdu servizzi ta' pagament;

(d) istituzzjonijiet ta' pagamenti;

(e) fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet;

(f) il-Bank Ċentrali Ewropew u l-banek ċentrali nazzjonali meta ma jkunux qed jaġixxu bhala awtorità monetarja jew awtoritajiet pubbliċi oħra; jew

(g) Stati Membri jew l-awtoritajiet reġjonali jew lokali tagħhom meta ma jkunux qed jaġixxu fil-kapaċità tagħhom ta' awtoritajiet pubbliċi;

"fornitur ta' servizzi ta' pagament li jiġġestixxi l-kont" tfisser fornitur ta' servizzi ta' pagament li jipprovdi u jmantni kont ta' pagament għal min iħallas;

"funzjonarju", relattivament għal kumpannija, tinkludi direttur, soċju, *manager* jew segretarju ta' kumpannija jew kull persuna li tkun effettivament taġixxi f'dik il-kariga kemm jekk tkun giet maħtura formalment, kemm jekk ma tkunx;

"grupp" tfisser grupp ta' impriži li huma marbuta flimkien permezz ta' relazzjoni msemmija fl-Artikolu 22(1), (2) jew (7) tad-Direttiva 2013/34/UE jew impriži kif imfisser fl-Artikoli 4, 5, 6 u 7 tar-Regolament ta' Delega tal-Kummissjoni (UE) Nru 241/2014, li huma marbuta flimkien permezz ta' relazzjoni msemmija fl-Artikolu 10(1) jew fl-Artikolu 113(6) jew (7) tas-CRR;

"*holding company*" jew "*parent company*" għandu jkollha l-istess tifsira mogħtija lill-frazi "*parent company*" fl-Att dwar il-Kumpanniji;

Kap. 386.

"hruġ ta' strumenti ta' pagament" tfisser servizz ta' pagament minn fornitur ta' servizzi ta' pagament li jidhol f'kuntratt li jipprovdi lil min iħallas strument ta' pagament biex jinbdew u jiġu pproċessati t-transazzjonijiet ta' pagament ta' min iħallas;

"istituzzjoni finanzjarja" tfisser kull persuna li b'mod regolari jew abitwali tidhol biex twettaq xi attività elenkata fl-Ewwel Skeda akkont u għar-riskju tal-persuna li tkun qegħda twettaq dik l-attività u li jkollha liċenza jew tkun reġistrata taħt dan l-Att;

"istituzzjoni ta' flus elettronici" tfisser istituzzjoni finanzjarja li tkun inħarġitilha liċenza kif hawn f'dan l-Att li tkun awtorizzata biex toħroġ flus elettronici jew li jkollha awtorizzazzjoni ekwivalenti f'pajjiż ieħor kif hemm fid-Direttiva dwar il-Flus Elettronici biex toħroġ flus elettronici;

"istituzzjoni ta' kreditu" għandu jkollha l-istess tifsira mogħtija lilha fl-Att dwar il-Kummerċ Bankarju;

Kap. 371.

"istituzzjoni ta' pagament" tfisser kumpannija li jkollha liċenza konformi ma' dan l-Att jew li jkollha awtorizzazzjoni ekwivalenti f'pajjiż ieħor kif hemm fid-Direttiva dwar is-Servizzi ta' Pagament, għall-provvista u għall-eżekuzzjoni ta' servizzi ta' pagament mal-Unjoni Ewropea kollha;

"kambjali" tfisser kambjali kummerċjali u ċedoli;

"kapital azzjonarju kwalifikanti" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-paragrafu (36) tal-artikolu 4(1) tas-CRR:

Iżda, sabiex jiġi determinat jekk il-kriterji għal kapital azzjonarju kwalifikanti jkunux ġew sodisfatti, għandhom jitqiesu d-drittijiet tal-voti msemmija fl-Artikoli 9 u 10 tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Diċembru 2004 dwar l-armonizzazzjoni tar-rekwiżiti ta' trasparenza f'dak li għandu x'jaqsam ma' informazzjoni dwar emittenti li t-titoli tagħhom huma ammessi għall-kummerċ f'suq regolat u li temenda d-Direttiva 2001/34/KE, u l-kundizzjonijiet dwar l-aggregazzjoni relattiva stipulati fl-Artikolu 12(4) u (5) ta' dik id-Direttiva:

Iżda wkoll, sabiex jiġi determinat jekk il-kriterji għal kapital azzjonarju kwalifikanti jkunux ġew sodisfatti, l-awtorità kompetenti m'għandhiex tqis id-drittijiet tal-voti jew l-azzjonijiet li jista' jkollhom ditti ta' investiment jew istituzzjonijiet ta' kreditu, minħabba li jkunu qegħdin jipprovdu s-sottoskrizzjoni ta' strumenti finanzjarji jew it-tqegħid ta' strumenti finanzjarji fuq bażi soda ta' impenn skont il-paragrafu 6 tas-Sezzjoni A tal-Anness 1 tad-Direttiva 2004/39/KE, sakemm dawk id-drittijiet ma jiġux eżerċitati jew xort'oħra użati biex isir xi intervent fil-ġestjoni tal-emittenti u wieħed jiddisponi minnhom fi żmien sena mill-akkwist;

"Kapital fi Grad 1" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fl-Artikolu 25 ta' CRR;

"Kapital fi Grad 2" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fl-Artikolu 71 ta' CRR;

"kapital inizjali" tfisser kapital imħallas u riżervi kif imfisser f'xi Regola dwar Istituzzjonijiet Finanzjarji;

"Kapital Komuni tal-Grad 1" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fl-Artikolu 50 tas-CRR;

"konsumatur" tfisser persuna fiżika li, f'kuntratti ta' servizzi ta' pagament koperti mid-Direttiva dwar is-Servizzi ta' Pagament kif trasposta f'direttivi maħruġa mill-Bank Ċentrali taħt l-Att dwar il-Bank Ċentrali ta' Malta, tkun qeġħda taġixxi għal finijiet li mhumiex is-sengħa, in-negozju jew il-professjoni tiegħu jew tagħha;

"kont ta' pagament" tfisser kont miżmum f'isem utent ta' servizz ta' pagament wieħed jew aktar u li jintuża għall-eżekuzzjoni ta' transazzjoni ta' pagamenti;

"kontenut diġitali" tfisser oġġetti jew servizzi li huma prodotti u forniti f'forma diġitali li l-użu jew il-konsum tagħhom hu ristrett għall-apparat tekniku u li bl-ebda mod ma jinkludu l-użu jew il-konsum ta' oġġetti jew servizzi fiżiċi;

"kontroll" fir-rigward ta' korp ġuridiku, hija s-setgħa li tiġi stabbilita b'xi mod il-politika finanzjarja u operattiva tal-korp ġuridiku;

"kontrollur" tfisser persuna li, waħedha jew flimkien ma' oħrajn, teżerċita kontroll fir-rigward ta' korp ġuridiku;

"korp ġuridiku" tfisser korp ta' persuni li jkollu personalità ġuridika distinta minn dik tal-membri tiegħu;

"kumpannija" tfisser kumpannija b'responsabbiltà limitata kostitwita f'Malta skont l-Att dwar il-Kumpanniji jew kwalunkwe liġi li tista' minn żmien għal żmien tkun fis-seħħ;

"kredenzjali personalizzati ta' sigurtà" tfisser karatteristiċi personalizzati pprovduti mill-fornitur ta' servizzi ta' pagament lill-utenti ta' servizzi ta' pagament għall-finijiet ta' awtentikazzjoni;

Kap. 204.

Kap. 386.

"kuntratt qafas" tfisser kuntratt ta' servizzi ta' pagament li jirregola l-esekuzzjoni futura ta' transazzjonijiet ta' pagament individwali u suċċessivi u li jista' jkollu l-obbligu u l-kundizzjonijiet biex jiġi stabbilit kont ta' pagament;

"liċenza" tfisser liċenza mahruġa taħt dan l-Att għall-provvista ta' kwalunkwe attività elenkata fl-Ewwel Skeda;

"medja ta' flus elettronici li jibqgħu dovuti" tfisser l-ammont totali medju ta' passiv finanzjarju li għandu x'jaqsam ma' flus elettronici li jinħarġu fi tmiem kull ġurnata kalendarja matul is-sitt xhur kalendarji ta' qabel, kalkolati fl-ewwel ġurnata kalendarja ta' kull xahar kalendarju u applikata għal dak ix-xahar kalendarju;

"min iħallas" tfisser persuna li jkollha kont ta' pagament u li tkun tippermetti ordni ta' pagament minn dak il-kont ta' pagament jew, meta ma jkun hemm l-ebda kont ta' pagament, persuna li tagħmel ordni ta' pagament;

"min jirċievi l-pagament" tfisser li tkun ir-riċevitur intiż ta' fondi li jikkostitwixxu l-baži ta' transazzjoni ta' pagament;

"il-Ministru" tfisser il-Ministru responsabli għar-regolament tas-Servizzi Finanzjari;

"*money laundering*" għandu jkollha l-istess tifsira mogħtija lilha fl-Att kontra *Money Laundering*, kif jista' jiġi emendat minn żmien għal żmien;

"*network* ta' komunikazzjonijiet elettronici" tfisser *network* kif imfisser fil-paragrafu (a) tal-artikolu 2 tad-Direttiva 2002/21/KE;

"ordni ta' pagament" tfisser kull istruzzjoni li tingħata minn min iħallas jew min jirċievi l-pagament lill-provditur ta' servizz ta' pagament tiegħu fejn tintalab l-eżekuzzjoni ta' transazzjoni ta' pagament;

"*outsourcing*" tfisser l-użu ta' terza persuna (il-provditur tas-servizz ta' *outsourcing*) minn istituzzjoni finanzjarja, biex twettaq attivitajiet u, jew funzjonijiet operattivi li normalment isiru mill-istituzzjoni finanzjarja;

"PAD" tfisser id-Direttiva 2014/92/UE tal-Parlament Ewropew u tal-Kunsill tal-23 ta' Lulju 2014 dwar il-komparabbiltà tat-tariffi relatati mal-kontijiet tal-ħlas, il-bdil tal-kontijiet tal-ħlas u l-aċċess għall-kontijiet tal-ħlas b'karatteristiċi bażiċi, kif tista' tiġi emendata minn żmien għal żmien u inklużi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħargu jew li jistgħu jinħargu taħtha;

"pajjiż terz" tfisser pajjiż li mhux Stat Membru jew Stat ŻEE;

"provvidur ta' servizz ta' *outsourcing*" tfisser il-fornitur ta' oġġetti, servizzi jew faċilitajiet, u li jista' jkun entità affiljata fi hdan grupp korporat jew entità li tkun waħda esterna għall-grupp;

"rabtiet mill-qrib" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-paragrafu (38) tal-artikolu 4(1) tas-CRR;

"Regola dwar Istituzzjonijiet Finanzjarji" tfisser Regola maħruġa mill-awtorità kompetenti biex tirregola istituzzjonijiet finanzjarji bis-saħħa tas-setgħat li joriginaw taht dan l-Att, u "Regola" għandha tinftiehem f'dan is-sens;

"ir-Regolament (KE) Nru 1606/2002" tfisser ir-Regolament (KE) Nru 1606/2002 tal-Parlament Ewropew u tal-Kunsill tad-19 ta' Lulju 2002 rigward l-applikazzjoni ta' standards internazzjonali tal-kontabilità, kif jista' jiġi emendat minn żmien għal żmien, u li jinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniki regolatorji u miżuri simili li jkunu nħargu jew li jistgħu jinħargu tahtu;

"ir-Regolament (UE) Nru 1093/2010" tfisser ir-Regolament (UE) Nru 1093/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jistabbilixxi Awtorità Superviżorja Ewropea (Awtorità Bankarja Ewropea) u li jemenda d-Deciżjoni Nru 716/2009/KE u jhassar id-Deciżjoni tal-Kummissjoni 2009/78/KE, kif jista' jiġi emendat minn żmien għal żmien, u li jinkludi miżuri ta' implimentazzjoni, standards tekniki ta' implimentazzjoni, standards tekniċi regolatorji u miżuri simili li jkunu nħarġu jew li jistgħu jinħarġu tahtu;

"ir-Regolament ta' Delega tal-Kummissjoni (UE) Nru 241/2014" tfisser ir-Regolament ta' Delega tal-Kummissjoni (UE) Nru 241/2014 tas-7 ta' Jannar 2014 li jissupplimenta r-Regolament (UE) Nru 575/2013 tal-Parlament Ewropew u tal-Kunsill fir-rigward ta' standards tekniċi regolatorji għar-Rekwiżiti tal-Fondi Proprji għall-istituzzjonijiet, kif tista' tiġi emendata minn żmien għal żmien;

"registrazzjoni" tfisser registrazzjoni li tingħata taht dan l-Att sabiex jiġu biss provduti servizzi ta' informazzjoni dwar kontijiet skont dan l-Att;

"rikostruzzjoni" għandu jkollha l-istess tifsira mogħtija lilha fl-Att dwar il-Kumpanniji;

Kap. 386.

"rimessa ta' flus" tfisser servizz ta' pagament fejn jiġu riċevuti fondi minn min iħallas, mingħajr il-ħolqien tal-ebda kontijiet ta' pagament f'isem min iħallas jew min jirċievi l-pagament, bil-għan uniku li jsir trasferiment ta' ammont korrispondenti lil min jirċievi l-pagament jew lil xi provditur ta' servizz ta' pagament ieħor li jkun qiegħed jaġixxi f'isem min jirċievi l-pagament u, fejn daww il-fondi jiġu riċevuti f'isem min jirċievi l-pagament u mpoġġija għad-dispożizzjoni tiegħu;

"servizzi ta' bidu ta' pagament" tfisser servizz sabiex tinbeda ordni ta' pagament fuq talba tal-utent ta' servizzi ta' pagament fir-rigward ta' kont ta' pagament miżmum għand fornitur ieħor ta' servizzi ta' pagament;

"servizzi ta' informazzjoni dwar kontijiet" tfisser servizz online li jipprovdi informazzjoni konsolidata dwar kont wiehed jew aktar ta' pagament li jkollu l-utent ta' servizzi ta' pagament ma' fornitur ieħor ta' servizzi ta' pagament jew ma' aktar minn fornitur wiehed ta' servizzi ta' pagament;

"servizzi ta' komunikazzjonijiet elettronici" tfisser servizz kif imfisser fil-paragrafu (ċ) tal-Artikolu 2 tad-Direttiva 2002/21/KE;

"servizzi ta' pagament" tfisser kull attività kummerċjali stipulata fil-paragrafu 2 tat-Tieni Skeda;

"sistema ta' pagament" tfisser sistema ta' trasferiment ta' fondi b'arrangamenti formali u standardizzati u regoli komuni għall-ipproċessar, rilaxx u, jew is-saldu ta' transazzjonijiet ta' pagament;

"Stat Membru tal-origini" tfisser kull waħda minn dawn li ġejjin:

(a) l-Istat Membru li fih jinsab l-uffiċċju reġistrat tal-fornitur ta' servizzi ta' pagament; jew

(b) jekk il-fornitur ta' servizzi ta' pagament, kif provdut fid-dritt nazzjonali tal-istess, ma jkollu l-ebda uffiċċju reġistrat, l-Istat Membru fejn jinsab l-uffiċċju prinċipali tiegħu;

"Stat Membru" tfisser Stat Membru tal-Unjoni Ewropea u tinkludi Stat ŻEE;

"Stat Membru ospitanti" tfisser Stat Membru minbarra Stat Membru tal-origini li fih il-fornitur ta' servizzi ta' pagament ikollu aġent jew fergħa jew fejn jipprovdi servizzi ta' pagament;

"Stat ŻEE" tfisser Stat li huwa parti kontraenti fil-ftehim dwar iż-Żona Ekonomika Ewropea iffirmit f'Oporto fit-2 ta' Mejju, 1992 kif emendat bil-Protokoll iffirmit fi Brussell fis-17 ta' Marzu, 1993 u kif emendat b'atti sussegwenti;

"strument ta' pagament" tfisser kull tagħmir personalizzat u, jew kompilazzjoni ta' proċeduri miftiehma bejn l-utent ta' servizz ta' pagament u l-provditur ta' servizz ta' pagament u li jintuża sabiex jagħti bidu għal ordni ta' pagament;

Kap. 386.

"sussidjarja" għandu jkollha l-istess tifsira mogħtija lil "impriza sussidjarja" fl-Att dwar il-Kumpanniji;

"transazzjoni ta' pagament" tfisser dak l-att, li jinbeda minn min iħallas jew minn min jirċievi l-pagament, li bih jitqieghdu, jiġu trasferiti jew irtirati fondi, irrISPETTIVAMENT minn kull obbligu sottostanti bejn min iħallas u min jirċievi l-pagament;

"trasferiment ta' kreditu" tfisser servizz ta' pagament għall-ikkreditar ta' kont ta' pagament ta' min jirċievi l-pagament bi transazzjoni ta' pagament jew sensiela ta' transazzjonijiet ta' pagament, minn kont ta' pagament ta' min iħallas mill-fornitur ta' servizzi ta' pagament li jżomm il-kont ta' pagament ta' min iħallas, abbażi ta' struzzjoni mogħtija minn min iħallas;

Kap. 330.

"Tribunal għas-Servizzi Finanzjarji" jew "Tribunal" tfisser it-Tribunal għas-Servizzi Finanzjarji stabbilit skont l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;

"utent ta' servizzi ta' pagament" tfisser persuna li tkun qegħda tagħmel użu minn servizzi ta' pagament fil-kapaċità ta' min iħallas, min jirċievi l-pagament, jew tat-tnejn.

(2) Jekk f'dan l-Att ikun hemm xi kunflitt bejn it-test Ingliż u dak Malti, għandu jipprevali t-test Ingliż.

L.S. 378.12

(3) Id-dispożizzjonijiet ta' dan l-Att għandhom ikunu mingħajr preġudizzju għad-dispożizzjonijiet tad - Direttiva 2008/48/KE kif trasposta fir-Regolamenti dwar Kreditu lill-Konsumatur, liġijiet rilevanti oħra tal-Unjoni Ewropea jew miżuri nazzjonali dwar il-kundizzjonijiet għall-provvista ta' kreditu lill-konsumaturi li mhumiex armonizzati mad-Direttiva dwar is-Servizzi ta' Pagament li jikkonformaw mal-liġi tal-Unjoni."

21. Minnufih wara l-artikolu 2 tal-Att prinċipali, l-intestatura "Htiġiet għall-Ħruġ ta' Liċenzi" tal-Att prinċipali, għandha tiġi sostitwita b'dan li ġej:

Sostituzzjoni tal-intestatura "Htiġiet għall-Ħruġ ta' Liċenzi" tal-Att prinċipali.

"REKWIZITI GĦALL-ĦRUĠ TA' LIĊENZI U REĠISTRAZZJONI."

22. L-artikolu 3 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 3 tal-Att prinċipali.

"Attivitajiet imwettqa minn istituzzjonijiet finanzjarji.

3. (1) L-ebda attività elenkata fl-Ewwel Skeda ta' dan l-Att, minbarra servizzi ta' informazzjoni dwar kontijiet, m'għandha tiġi tranżatta regolarment jew abitwalment, fi jew minn Malta, ħlief minn kumpannija li jkollha liċenzja mogħtija taħt dan l-Att mill-awtorità kompetenti:

Iżda l-attivitajiet elenkati fl-Ewwel Skeda ta' dan l-Att, ħlief għas-servizzi ta' informazzjoni dwar kontijiet, jistgħu jiġu tranżatti wkoll fi, jew minn Malta, minn persuna legali li jkollha awtorizzazzjoni maħruġa minn Stat Membru ieħor taħt id-Direttiva dwar is-Servizzi ta' Pagament jew id-Direttiva dwar il-Flus Elettronici, fl-eżerċizzju tad-drittijiet Ewropej relattivi u skont id-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament u d-Direttiva dwar il-Flus Elettronici.

(1A) L-ebda servizz ta' informazzjoni dwar kontijiet m'għandu jkun tranżatt regolarment jew abitwalment fi, jew minn Malta, ħlief minn persuna fiżika jew minn kumpannija li tkun inħarġitilha reġistrazzjoni taħt dan l-Att mill-awtorità kompetenti:

Iżda s-servizzi ta' informazzjoni dwar kontijiet jistgħu jkunu tranżatti wkoll fi jew minn Malta, minn persuna fiżika jew legali li jkollha r-reġistrazzjoni maħruġa minn Stat Membru ieħor skont id-Direttiva dwar is-Servizzi ta' Pagament, fl-eżerċizzju tad-drittijiet Ewropej relattivi u skont id-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament:

Iżda wkoll istituzzjoni finanzjarja li jkollha liċenza skont l-artikolu 4(1) ma tkunx teħtieġ reġistrazzjoni skont dan is-subartikolu, biex tipprovdi servizzi ta' informazzjoni dwar kontijiet.

(2) Għall-finijiet tas-subartikolu (1) u bla ħsara għad-dispożizzjonijiet tas-subartikolu (3), persuna m'għandhiex titqies li tkun istituzzjoni finanzjarja minhabba l-fatt li l-persuna jew:

(a) tkun tagħmel parti minn grupp u tkun tipprovdi xi attività minn dawk elenkati fl-Ewwel Skeda, ħlief għall-attivitajiet 4 u, jew 10 tal-istess, lill-kumpanniji li ma jkunux banek jew istituzzjonijiet finanzjarji u li jkunu jagħmlu parti mill-istess grupp;

(b) tkun impriza u tkun qegħda tipprovdi xi attività minn dawk elenkati fl-Ewwel Skeda, ħlief għall-attivitajiet 4 u, jew 10 tal-istess, lill-imprizi oħra, li ma jkunux banek jew istituzzjonijiet finanzjarji, u dawn l-imprizi kollha jkunu kontrollati direttament jew indirettament mill-istess persuna;

(ċ) tkun impriza u tkun tipprovdi xi attività minn dawk elenkati fl-Ewwel Skeda, ħlief għall-attivitajiet 4 u, jew 10 tal-istess, lil xi persuna, li ma tkunx bank jew istituzzjoni finanzjarja, li jkunu direttament jew indirettament jikkontrollawha; jew

(d) tkun tagħmel u toħroġ kambjali għall-kummerċ fil-kors normali tan-negozju tagħha skont arrangamenti ta' *hire purchase*, jew skont bejgħ li jsir bi kreditu fejn kambjali għall-kummerċ isiru għall-prezz dovut:

Iżda għall-finijiet ta' dan is-subartikolu, persuna titqies li tikkontrolla l-impriza jekk dik il-persuna:

(i) tkun *parent company* kif imfisser fl-artikolu 2(2)(a) tal-Att dwar il-Kumpanniji; jew

(ii) ikollha kull waħda minn dawn il-karatteristiċi kollha li ġejjin:

(aa) setgħa fuq l-impriza, ibbażata fuq il-kapaċità kurrenti li tmexxi l-attivitajiet rilevanti li jaffettwaw id-dhul b'mod sinjifikanti;

(bb) tkun esposta jew ikollha d-dritt għal dhul varjabbli mill-involvement tagħha mal-impriza; u

(ċċ) il-kapaċità li tuża s-setgħa li għandha fuq l-impriża biex taffettwa l-ammont tad-dhul tal-persuna.

Għall-finijiet ta' dan is-subartikolu:

"persuna" tfisser persuna fiżika jew impriża; u

"impriża" tfisser korp ġuridiku jew xort'oħra li jiġġestixxi xi kummerċ jew negozju.

(2A) Is-subartikolu (1) m'għandux ikun applikabbli għall-persuni li jeżercitaw xi attività minn dawn li ġejjin:

(a) transazzjonijiet ta' pagament li jsiru esklużivament fi flus kontanti direttament minn min iħallas lil min jirċievi l-pagament, mingħajr l-ebda intervent intermedjarju;

(b) transazzjonijiet ta' pagament li jsiru minn min iħallas lil min jirċievi l-pagament permezz ta' aġent kummerċjali awtorizzat permezz ta' ftehim li jinneozja jew jikkonkludi l-bejgħ jew ix-xiri ta' oġġetti jew servizzi, esklużivament f'isem min iħallas jew min jirċievi l-pagament;

(ċ) trasport fiżiku professjonali ta' flus kontanti u muniti, inkluż il-ġbir, l-ipproċessar u t-tqassim tagħhom;

(d) transazzjonijiet ta' pagament li jikkonsistu fil-ġbir u t-tqassim mhux professjonali ta' flus kontanti fil-qafas ta' attività mhux bi skop ta' qligħ jew għall-karità;

(e) servizzi fejn il-flus kontanti huma provduti minn min jirċievi l-pagament lil min iħallas, bħala parti minn transazzjoni ta' pagament wara li tkun saret talba espliċita mill-utent tas-servizz ta' pagament minnufih qabel l-eskuzzjoni tat-transazzjoni tal-pagament, permezz ta' pagament għax-xiri ta' oġġetti jew servizzi;

(f) operazzjonijiet ta' kambju ta' munita kontanti għal kontanti, fejn il-fondi ma jkunux miżmuma f'kont ta' pagament;

(g) transazzjonijiet ta' pagament ibbażati fuq xi wieħed mid-dokumenti segwenti li jinħarġu fuq il-fornitur ta' servizz ta' pagament bil-għan li jitqiegħdu fondi għad-dispożizzjoni ta' min jirċievi l-pagament:

(i) ċekkijiet fuq karta rregolati mill-Konvenzjoni ta' Ġinevra tad-19 ta' Marzu 1931 li ttiprovdi liġi uniformi għaċ-ċekkijiet;

(ii) ċekkijiet fuq karta simili għal daww imsemmija fis-subparagrafu (i) u rregolati bil-liġijiet tal-Istati Membri li mhumiex parti mill-Konvenzjoni ta' Ġinevra tad-19 ta' Marzu 1931 li ttiprovdi liġi uniformi għaċ-ċekkijiet;

(iii) ċedoli fuq karta skont il-Konvenzjoni ta' Ġinevra tas-7 ta' Ġunju 1930 li ttiprovdi liġi uniformi għal kambjali u *promissory notes*;

(iv) ċedoli fuq karta simili għal daww imsemmija fis-subparagrafu (iii) u rregolati bil-liġijiet tal-Istati Membri li ma jagħmlux parti mill-Konvenzjoni ta' Ġinevra tas-7 ta' Ġunju 1930 li ttiprovdi liġi uniformi għall-kambjali u *promissory notes*;

(v) kupuni fuq karta;

(vi) *travellers cheques* fuq karta;

(vii) *money orders* postali fuq karta kif imfissra mill-Unjoni Postali Universali;

(h) transazzjonijiet ta' pagament ġestiti fil-kuntest ta' sistema ta' hla ta' pagament jew sigurtajiet bejn aġenti tal-hla, kontro-partijiet ċentrali, *clearing houses* u, jew Banek Ċentrali u parteċipanti oħra fis-sistema u fornituri ta' servizzi ta' pagament, mingħajr preġudizzju għall-Artikolu 35 tad-Direttiva dwar is-Servizzi ta' Pagament, kif trasposta f'direttivi maħruġa mill-Bank Ċentrali skont l-Att dwar il-Bank Ċentrali ta' Malta;

(i) transazzjonijiet ta' pagament relatati mal-manutenzjoni tal-assi tas-sigurtajiet, inklużi dividendi, introjtu jew distribuzzjonijiet oħra, fidi jew bejgħ imwettqa mill-persuni msemmija fil-paragrafu (h), minn ditti tal-investment, istituzzjonijiet ta' kreditu, impriži ta' investment kollettiv jew kumpanniji tal-amministrazzjoni tal-assi li jipprovdu s-servizzi ta' investment u, jew kull entità oħra li hi permessa li jkollha l-kustodja ta' strumenti finanzjarji;

(j) servizzi provduti minn fornituri ta' servizzi tekniki li jsostnu l-provvista ta' servizzi ta' pagament, mingħajr ma dawn fl-ebda hin ma jkunu fil-pussess tal-fondi li għandhom jiġu trasferiti, inkluż l-ipproċessar u l-ħażna ta' *data*, is-servizzi ta' fiduċjarji u tal-protezzjoni tal-privatezza, l-awtentikazzjoni tad-*data* u tal-entità, il-provvista ta' teknoloġija tal-informatika (IT) u *networks* tal-komunikazzjoni, il-provvista u l-manutenzjoni ta' *terminals* u apparat użat għas-servizzi ta' pagament, bl-esklużjoni għas-servizzi ta' bidu ta' pagament u għas-servizzi ta' informazzjoni dwar il-kontijiet;

(k) servizzi bbażati fuq strumenti ta' pagament speċifiċi li jistgħu jintużaw biss b'mod limitat, kemm-il darba jissodisfaw wahda mill-kundizzjonijiet li ġejjin:

(i) strumenti li jippermettu lid-detentur jakkwista oġġetti jew servizzi unikament fil-post tal-emittent, jew fi ħdan *network* limitat ta' fornituri ta' servizzi skont ftehim kummerċjali dirett ma' emittent professjonali;

(ii) strumenti li jistgħu jintużaw unikament għall-akkwist ta' firxa limitata ħafna ta' oġġetti jew servizzi;

(iii) strumenti validi biss fi Stat Membru wieħed provduti fuq talba ta' impriża jew entità tas-settur pubbliku u regolati minn awtorità pubblika nazzjonali jew reġjonali għall-finijiet speċifiċi soċjali jew fiskali, biex jiġu akkwistati prodotti jew servizzi speċifiċi minn fornituri li jkollhom ftehim kummerċjali mal-emittent:

Iżda, il-fornituri ta' servizzi li jkunu qegħdin jiggēstixxu xi waħda mill-attivitajiet imsemmija fis-subparagrafi (i) u (ii) jew it-tnejn li huma, li fir-rigward tagħhom il-valur totali tat-transazzjonijiet tal-pagament li jkun sar matul it-tnax-il xahar preċedenti jkun jeċċedi l-ammont ta' miljun euro (€1,000,000), għandhom jibgħatu avviz kull sena lill-awtorità kompetenti li jkun fih deskrizzjoni tas-servizzi offruti, fejn tkun speċifikata taht liema esklużjoni msemmija fis-subparagrafi (i) u (ii), l-attività titqies li tkun qegħda tigi gēstita:

Iżda wkoll, abbażi tal-istess notifika, l-awtorità kompetenti għandha tiddeċiedi b'mod debitament motivat abbażi tal-kriterji msemmija f'dan il-paragrafu, fejn l-attività ma tkunx tikkwalifika bħala *network* limitat, u għandhom jgħarrfu lill-fornitur tas-servizzi kif meħtiegħ:

(l) transazzjonijiet ta' pagament minn fornitur ta' *networks* jew servizzi ta' komunikazzjonijiet elettroniki, provduti flimkien mas-servizzi ta' komunikazzjonijiet elettroniki għall-abbonat ta' *network* jew servizz:

(i) għax-xiri ta' kontenut diġitali u servizzi bl-użu tal-vuċi, irrispettivament mill-apparat użat għax-xiri jew għall-konsum tal-kontenut diġitali u addebitat lill-kont relatat; jew

(ii) imwettqa minn jew permezz ta' apparat elettroniku u addebitati lill-kont relatat fil-qafas ta' attività għall-karità, jew għax-xiri ta' biljetti:

Iżda l-valur ta' kwalunkwe transazzjoni unika ta' pagament imsemmija fis-subparagrafi (i) u (ii) ma għandhiex teċċedi ħamsin euro (€50), u:

- il-valur kumulattiv tat-transazzjonijiet ta' pagament għal abbonat individwali ma jeċċedix tlett mitt euro (€300) kull xahar; jew

- fejn l-abbonat jiffinanzja l-kont tiegħu minn qabel mal-fornitur ta-*network* tal-komunikazzjonijiet elettronici jew tas-servizz, il-valur kumulattiv tat-transazzjonijiet ta' pagament ma jeċċedix tlett mitt euro (€300) kull xahar:

Iżda wkoll, fornituri ta' servizzi li jkunu qegħdin jiġġestixxu attività msemmija f'dan il-paragrafu għandhom jagħtu avviż lill-awtorità kompetenti u jipprovdu lill-istess awtorità b'opinjoni ta' verifika annwali, li tkun tipprova li l-attività tkun konformi mal-limiti stipulati f'dan il-paragrafu;

(m) transazzjonijiet ta' pagament imwettqa bejn fornituri ta' servizzi ta' pagament, l-aġenti jew il-fergħat tagħhom għall-kont f'isimhom;

(n) transazzjonijiet ta' pagament u servizzi relatati bejn impriża prinċipali u s-sussidjarja tagħha, jew bejn sussidjarji tal-istess impriża prinċipali, mingħajr l-ebda intervent intermedjarju minn fornitur ta' servizzi ta' pagament, li ma tkunx impriża li tappartjeni lill-istess grupp; u, jew

(o) servizzi ta' rtitar ta' flus offruti permezz ta' *ATM* mill-fornituri, li jkunu qed jaġixxu f'isem wiehed jew aktar emittenti ta' *cards*, li mhumiex parti fil-kuntratt tal-qafas mal-klijent li jirtira l-flus minn kont ta' pagament, bil-kundizzjoni li daww il-fornituri ma jwettqux servizzi oħra ta' pagament kif imsemmi fit-Tieni Skeda:

Iżda kull persuna li tipprovdi tali servizz tal-irtitar tal-flus għandha tosserva kwalunkwe rekwiżit, li jista' jiġi speċifikat f'direttiva maħruġa mill-Bank Ċentrali skont l-Att dwar il-Bank Ċentrali ta' Malta, li jittrasponi l-Artikolu 3(o) tad-Direttiva dwar is-Servizzi ta' Pagament.

(3) F'każ ta' dubju raġjonevoli dwar jekk attività tikkostitwix kummerċ ta' istituzzjoni finanzjarja, jew jekk il-kummerċ ta' istituzzjoni finanzjarja jkunx qed jiġi tranżatt f'Malta jew minn Malta minn xi persuna, il-kwistjoni għandha tiġi konkluzivament deċiża mill-awtorità kompetenti.

(3A) (a) Persuna li la hija fornitur ta' servizzi ta' pagament, u lanqas ma hija esplicitament eskluża mill-iskop ta' dan l-Att, għandha tkun projbita milli tipprovdi servizzi ta' pagament.

(b) Minkejja l-paragrafu (a) ta' dan is-subartikolu, l-awtorità kompetenti għandha tgħarraf lill-EBA bis-servizzi notifikati konformament mal-paragrafi (k) u (l) tas-subartikolu (2A), filwaqt li tiddikjara skont liema esklużjoni tkun qegħda twettaq l-attività.

(ċ) Id-deskrizzjoni tal-attività notifikata skont il-paragrafi (k) u (l) tas-subartikolu (2A), għandha tkun disponibbli għall-pubbliku fir-reġistru pubbliku msemmi fl-artikolu 8D u fir-reġistru ċentrali u elettroniku żviluppat, operat u amministrat mill-EBA skont l-Artikolu 15 tad-Direttiva dwar is-Servizzi ta' Pagament.

(4) Il-ħruġ ta' liċenza jew reġistrazzjoni kif jista' jkun il-każ, għandu jkun soġġettat għal tariffa annwali, li l-awtorità kompetenti tista' tistabbilixxi minn żmien għal żmien.

(5) Istituzzjoni finanzjarja li tkun liċenzjata jew registrata ma tistax tircievi depożiti jew fondi oħra li dwarhom jista' jerga' jsir pagament mill-pubbliku fil-kuntest tal-Att dwar il-Kummerċ Bankarju.

(6) Fejn persuna diġà jkollha liċenza skont l-Att dwar il-Kummerċ Bankarju jew l-Att dwar Servizzi ta' Investiment sabiex tiġġestixxi xi attività elenkata fl-Ewwel Skeda, dik il-persuna ma tkunx teħtieġ liċenza jew reġistrazzjoni għal dik l-attività skont dan l-Att."

Kap. 371.

Kap. 371.
Kap. 370.

Sostituzzjoni tal-artikolu 3A tal-Att prinċipali.

23. L-artikolu 3A tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Eżenzjoni għall-kiri finanzjarju ta' bastimenti u inġenji tal-ajru.

3A. (1) Minkejja d-dispożizzjonijiet tal-artikolu 3, kull entità kemm jekk tkun stabbilita jew tkun qed topera f'Malta jew xort'oħra, li twettaq l-attività ta' kiri finanzjarju f'Malta jew minn Malta, u kwalunkwe transazzjoni relatata li tinvolvi:

(a) inġenju tal-ajru registrat jew li jkun ser jiġi registrat fir-Registru Nazzjonali tal-Inġenji tal-Ajru kif imfisser fl-Att dwar ir-Registrazzjoni ta' Inġenji tal-Ajru jew registrat fi kwalunkwe ġurisdizzjoni oħra u kwalunkwe magna ta' inġenju tal-ajru; jew

Kap. 503.

Kap. 234.

(b) bastiment reġistrat jew li jkun ser jiġi reġistrat fir-reġistru kif imfisser fl-Att dwar il-Bastimenti Merkantili jew reġistrat fi kwalunkwe ġurisdizzjoni oħra, ma jkun jeħtieġ l-ebda liċenza mill-awtorità kompetenti għall-finijiet ta' dan l-Att fejn:

(i) dik l-entità tkun proprjeta ta', u tkun kontrollata minn, jew tkun sussidjarja ta', jew tkun esklużivament finanzjata minn; u

(ii) kull transazzjoni ta' kiri finanzjarju, jew l-assi sottostanti rilevanti, konsistenti f'ingenju tal-ajru, magna ta' ingenju tal-ajru jew bastiment, tkun esklużivament finanzjata minn persuni jew entitajiet kif deskritti fl-Anness II tad-Direttiva 2014/65/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 dwar swieq fi strumenti finanzjarji, jew persuni jew entitajiet li jkunu rikonoxxuti bħala kontropartijiet eliġibbli skont l-Artikolu 30 tal-istess Direttiva 2014/65/UE:

Iżda fl-interpretazzjoni u l-applikazzjoni tas-subparagrafi (i) u (ii) u sabiex tiġi żgurata konformità mar-rekwiżiti tagħhom, fejn d-dritt ta' proprjeta ta' tali entità kif deskritt fis-subparagrafu (i), jew tal-entità li tiffinanzja t-transazzjoni kif indikat fis-subparagrafu (ii) (imsemmi) jew l-assi sottostanti tagħha jkunu vestiti f' fiduċjarju, jew alternattivament ikun miżmum minn intermedjarju ieħor fuq bażi fiduċjarja, il-kriterji msemmija fl-Anness II tad-Direttiva 2014/65/UE għandhom japplikaw b'referenza għall-interessi benefiċjarji involuti, u mhux għall-imsemmi fiduċjarju jew intermedjarju.

(2) Id-dispożizzjonijiet ta' dan l-artikolu għandhom japplikaw unikament għal entità fejn in-negożju ta' tali entità jkun limitat għall-kiri finanzjarju ta' ingeni tal-ajru, magni ta' ingeni tal-ajru jew bastimenti kif deskritti fis-subartikolu (1) u għal attivitajiet li jkunu anċillari għalihom, bl-esklużjoni ta' tipi oħrajn ta' assi u attivitajiet li b'xi mod ieħor jaqgħu fl-iskopijiet ta' dan l-Att."

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Sostituzzjoni
tal-artikolu 4
tal-Att
prinċipali.

24. L-artikolu 4 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Applikazzjoni
għal liċenza jew
reġistrazzjoni.

4. (1) Kwalunkwe kumpannija li jkollha l-intenzjoni li twettaq regolarment jew abitwalment, transazzjonijiet tal-attivitajiet elenkati fl-Ewwel Skeda ta' dan l-Att fi jew minn Malta, minbarra servizzi tal-informazzjoni dwar il-kontijiet, għandha qabel ma tibda regolarment jew abitwalment twettaq transazzjonijiet għal tali attivitajiet, tapplika bil-miktub lill-awtorità kompetenti għal liċenza skont dan l-Att:

Iżda persuna ġuridika li jkollha awtorizzazzjoni maħruġa minn Stat Membru ieħor taht id-Direttiva dwar is-Servizzi ta' Pagament jew id-Direttiva dwar il-Flus Elettroniċi, tista' teżerċita d-drittijiet Ewropej tagħha skont id-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament u tad-Direttiva dwar il-Flus Elettroniċi.

(1A) Kull persuna fiżika jew kumpannija li jkollha l-intenzjoni li twettaq, regolarment jew abitwalment, transazzjonijiet ta' servizzi ta' informazzjoni dwar kontijiet, qabel ma tibda regolarment jew abitwalment tagħmel transazzjonijiet fl-imsemmija servizzi, għandha tapplika bil-miktub lill-awtorità kompetenti għar-reġistrazzjoni skont dan l-Att:

Iżda persuna fiżika jew ġuridika li jkollha reġistrazzjoni maħruġa minn Stat Membru ieħor skont id-Direttiva dwar is-Servizzi ta' Pagament tista' teżerċita d-drittijiet Ewropej tagħha skont id-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament.

(2) L-applikazzjonijiet kollha għal liċenza jew reġistrazzjoni, kif jista' jkun il-każ, għandu jkollhom dak il-format u jkollhom magħhom dik l-informazzjoni u jkunu konformi ma' dawk il-kondizzjonijiet li jistgħu jiġu preskritti minn żmien għal żmien minn xi Regola dwar Istituzzjonijiet Finanzjarji, u applikazzjoni tista' tiġi irtirata biss b'avviż bil-miktub li jingħata lill-awtorità kompetenti fil-perjodu qabel ma tiġi maħruġa jew irtirata l-liċenza jew ir-reġistrazzjoni li fir-rigward tagħha qegħda ssir l-applikazzjoni.

(3) L-awtorità kompetenti għandu jkollha s-setgħa li tordna lil kull persuna tipprovdi dik l-informazzjoni li hija tista' tqis li tkun meħtieġa sabiex tigi deċiża applikazzjoni għal liċenza jew għar-reġistrazzjoni, kif jista' jkun il-każ.

(4) L-awtorità kompetenti għandha biss toħroġ liċenza jew reġistrazzjoni jekk l-informazzjoni u l-evidenza mogħtija flimkien mal-applikazzjoni jkunu konformi mar-rekwiżiti kollha stipulati fir-Regola dwar Istituzzjonijiet Finanzjarji msemmija fis-subartikolu (2), u jekk il-valutazzjoni globali tal-awtorità kompetenti, wara li tkun fliet l-applikazzjoni, tkun waħda favorevoli.

(5) L-awtorità kompetenti tista', fejn ikun rilevanti, qabel ma' toħroġ il-liċenza jew ir-reġistrazzjoni, tikkonsulta mal-Bank Ċentrali jew ma' xi awtoritajiet pubbliċi oħra rilevanti.

(6) Il-liċenza biex jiġu pprovduti servizzi ta' pagament jew biex jinħarġu flus elettronici u r-reġistrazzjoni biex jiġu pprovduti servizzi ta' informazzjoni dwar kontijiet, għandhom ikunu validi fl-Istati Membri kollha u għandhom jippermettu lill-istituzzjoni ta' pagament, lill-istituzzjoni ta' flus elettronici jew lill-fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet involuti, jipprovdu s-servizzi li jkunu koperti bil-liċenza jew bir-reġistrazzjoni mal-Unjoni Ewropea kollha, b'mod konformi mad-dritt Ewropew."

25. L-artikolu 5 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 5 tal-Att prinċipali.

"Provviista ta' liċenza jew reġistrazzjoni.

5. (1) L-ebda kumpannija m'għandha tingħata liċenza skont dan l-Att kemm-il darba:

(a) il-kapital inizjali tagħha kemm jekk f'euro kif ukoll fi kwalunkwe valuta oħra aċċettabbli għall-awtorità kompetenti, ma jkunx jammonta għall-valur ta' dak l-ammont kif jista' jiġi stabbilit mill-awtorità kompetenti fi kwalunkwe Regola dwar Istituzzjonijiet Finanzjarji u kif jista' jkun adegwat għall-attivitajiet li għandhom jiġu assunti mill-applikant;

(b) ma jkunx hemm mill-inqas żewġ individwi, jew xi numru ieħor ta' individwi kif jista' jiġi xort'oħra deċiż mill-awtorità kompetenti, li jkunu effettivament se jmexxu l-kummerċ tal-istituzzjoni finanzjarja minn Malta;

(ċ) l-awtorità kompetenti ma tkunx sodisfatta li l-kumpannija għandha ġestjoni soda u prudenti, u arrangamenti ta' governanza robusti, li jinkludu struttura organizzattiva ċara b'linji ta' responsabbiltà definiti sew, trasparenti u konsistenti, proċeduri effettivi biex jidentifikaw, jamministraw, josservaw u jirrappurtaw ir-riskji li l-kumpannija tkun jew tista' tkun esposta għalihom, u l-mekkaniżmi ta' kontroll interni adegwati, inklużi proċeduri amministrattivi u ta' kontabbiltà sodi:

Iżda dawk l-arrangamenti, il-proċeduri u l-mekkaniżmi għandhom ikunu komprensivi u proporzjonati għan-natura, l-iskala u l-komplessità tas-servizzi provduti mill-kumpannija, li jistgħu jiġu stabbiliti mill-awtorità kompetenti minn żmien għal żmien u, jew li jistgħu jiġu speċifikati minn Regola dwar Istituzzjonijiet Finanzjarji;

(d) l-awtorità kompetenti ma tkunx sodisfatta li, meta tkun ikkunsidrata l-htieġa li tiġi żgurata il-ġestjoni soda u prudenti tal-kumpannija, l-azzjonisti li jkollhom kapital azzjonarju kwalifikanti, il-kontrolluri u l-persuni kollha li jkunu effettivament se jmexxu n-negozju tal-istituzzjoni finanzjarja, jkunu persuni adegwati biex jiżguraw il-ġestjoni soda u prudenti tagħha;

(e) l-awtorità kompetenti ma tkunx sodisfatta li, fejn ikun hemm rabtiet mill-qrib bejn il-kumpannija u persuna jew persuni oħra, tali rabtiet ma jtellfuhix mill-eżerċizzju effettiv tal-funzjonijiet superviżorji tagħha;

(f) l-awtorità kompetenti ma tkunx sodisfatta li, fejn ikun hemm rabtiet mill-qrib bejn il-kumpannija u persuna jew persuni oħra, il-ligijiet, ir-regolamenti jew id-disposizzjonijiet amministrattivi ta' pajjiż terz li jirregolaw lil xi persuna jew persuni li magħhom il-kumpannija jkollha rabtiet mill-qrib, jew diffikultajiet li jinqualgħu fl-infurzar ta' dawk il-ligijiet, ir-regolamenti jew id-dispożizzjonijiet amministrattivi, ma jtellfux l-eżerċizzju effettiv tal-funzjonijiet superviżorji tagħha; u

(g) ma tkunx tissodisfa kwalunkwe kundizzjoni oħra għall-ħruġ ta' liċenza, li tista' tiġi speċifikata f'Regola dwar Istituzzjonijiet Finanzjarji:

Iżda l-kumpannija għandha, wara li tinħarġilha liċenza skont dan l-Att, tgħarraf lill-awtorità kompetenti minnufih b'kull bidla fiċ-ċirkostanzi li jirrigwardaw l-applikazzjoni u tkun ukoll meħtieġa li ttipprovi lill-awtorità kompetenti l-informazzjoni meħtieġa biex tissorvelja l-konformità mal-kundizzjonijiet imsemmija f'dan is-subartikolu fuq bażi kontinwa.

(1A) L-ebda persuna fiżika jew kumpannija m'għandha tinħarġilha reġistrazzjoni biex twettaq servizzi ta' informazzjoni dwar kontijiet kemm-il darba:

(a) l-awtorità kompetenti ma tkunx sodisfatta li, fejn japplika, l-azzjonisti li jkollhom kapital azzjonarju kwalifikanti, kontrolluri u l-persuni kollha li jkunu effettivament imexxu b'mod dirett il-kummerċ tal-fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet, ikunu persuni idoneji biex jiżguraw il-ġestjoni soda u prudenti tagħha;

(b) l-awtorità kompetenti ma tkunx sodisfatta li l-persuna fiżika jew kumpannija jkollha ġestjoni soda u prudenti, u jkollha arrangamenti ta' governanza robusti, li jinkludu struttura organizzattiva ċara b'linji ta' responsabbiltà definiti sew, trasparenti u konsistenti, proċeduri effettivi biex jidentifikaw, jamministraw, josservaw u jirrappurtaw r-riskji li l-kumpannija tkun jew tista' tkun esposta għalihom, u mekkaniżmi ta' kontroll interni adegwati, inklużi proċeduri amministrattivi u ta' kontabbiltà sodi:

Iżda dawk l-arrangamenti, il-proċeduri u l-mekkanizmi għandhom ikunu komprensivi u proporzjonati għan-natura, l-iskala u l-kumplessità tas-servizzi provduti mill-persuna fiżika jew mill-kumpannija, li jistgħu jiġu stabbiliti mill-awtorità kompetenti minn żmien għal żmien u, jew li jistgħu jiġu speċifikati minn Regola dwar Istituzzjonijiet Finanzjarji;

(ċ) l-awtorità kompetenti ma tkunx sodisfatta li, meta jkun hemm rabtiet mill-qrib bejn il-persuni fiżiċi jew l-kumpannija u persuna jew persuni oħra, tali rabtiet ma jtellfuhomx mill-eżerċizzju effettiv tal-funzjonijiet superviżorji tagħha;

(d) l-awtorità kompetenti ma tkunx sodisfatta li, meta jkun hemm rabtiet mill-qrib bejn il-persuna fiżika jew il-kumpannija u persuna jew persuni oħra, il-liġijiet, ir-regolamenti jew id-disposizzjonijiet amministrattivi ta' pajjiż terz li jirregolaw lil xi persuna jew persuni oħra li magħhom il-kumpannija jkollha rabtiet mill-qrib, jew diffikultajiet li jinqalgħu fl-infurzar ta' dawk il-liġijiet, ir-regolamenti jew id-disposizzjonijiet amministrattivi, ma jtellfuhomx l-eżerċizzju effettiv tal-funzjonijiet superviżorji tagħha; u

(e) il-persuna fiżika jew il-kumpannija ma tkunx tissodisfa kwalunkwe kundizzjoni oħra għall-ħruġ tar-reġistrazzjoni kif jista' jiġi speċifikat f'Regola dwar Istituzzjonijiet Finanzjarji:

Iżda l-persuna fiżika jew il-kumpannija għandha, wara li tkun giet reġistrata skont dan l-Att, tgħarraf lill-awtorità kompetenti minnufih b'kull bidla fiċ-ċirkostanzi li jirrigwardaw l-applikazzjoni, u tkun ukoll meħtieġa li ttipprovi lill-awtorità kompetenti li informazzjoni meħtieġa biex tissorvelja l-konformità mal-kundizzjonijiet imsemmija f'dan is-subartikolu fuq bażi kontinwa.

(1B) Persuna fiżika jew il-kumpannija li tapplika għal liċenza jew reġistrazzjoni, kif jista' jkun il-każ, skont dan l-artikolu, biex ttipprovi servizzi ta' bidu ta' pagament u, jew servizzi ta' informazzjoni dwar kontijiet, bħala kundizzjoni għall-hruġ tal-liċenza jew ir-reġistrazzjoni tagħha, kif jista' jkun il-każ, għandha wkoll tkun meħtieġa li jkollha assigurazzjoni ta' indennizz professjonali li tkopri t-territorji fejn tkun toffri s-servizzi tagħha, jew xi garanzija oħra komparabbli fil-konfront tar-responsabbiltà. Fir-rigward ta' applikant li jkun bi ħsiebu jipprovi servizzi ta' bidu ta' pagament, l-assigurazzjoni ta' indennizz professjonali meħtieġa jew il-garanzija l-oħra komparabbli fil-konfront tar-responsabbiltà għandhom ikunu meħtieġa biex jiżguraw li din tista' tkopri r-responsabbiltajiet tagħha kif speċifikat fl-Artikoli 73, 89, 90 u 92 tad-Direttiva dwar is-Servizzi ta' Pagament, kif trasposta f'direttivi mahruġa mill-Bank Ċentrali skont l-Att dwar il-Bank Ċentrali ta' Malta. Fir-rigward ta' applikant li jkun bi ħsiebu jipprovi servizzi ta' informazzjoni dwar kontijiet, l-assigurazzjoni ta' indennizz professjonali meħtieġa jew il-garanzija l-oħra komparabbli fil-konfront tar-responsabbiltà tagħha, għandhom ikunu meħtieġa fir-rigward tal-fornitur ta' servizzi ta' pagament li jiġġestixxi l-kont jew l-utent ta' servizzi ta' pagament li jirriżultaw minn aċċess mhux awtorizzat jew frawdolenti għal, jew l-użu mhux awtorizzat jew frawdolenti, ta' informazzjoni dwar kont ta' pagament:

Iżda l-ammont tal-assigurazzjoni ta' indennizz professjonali jew tal-garanzija komparabbli l-oħra msemmija f'dan is-subartikolu għandu jiġi kkalkolat skont il-metodu li jista' jiġi stipulat f'Regola dwar Istituzzjonijiet Finanzjarji:

Iżda wkoll kull informazzjoni meħtieġa mill-awtorità kompetenti biex jiġi kkalkolat l-ammont tal-assigurazzjoni ta' indennizz professjonali jew tal-garanzija komparabbli l-oħra meħtieġa skont dan is-subartikolu għandha tiġi pprovduta lill-awtorità kompetenti skont xi Regola dwar Istituzzjonijiet Finanzjarji.

(1Ċ) Istituzzjonijiet finanzjarji li jkunu meħtieġa li jkollhom assicurazzjoni ta' indennizz professjonali jew il-garanzija komparabbli l-oħra skont is-subartikolu (1B) għandhom jirrevedu, u jekk ikun meħtieġ jikkalkolaw mill-ġdid, l-inqas ammont monetarju tal-assigurazzjoni ta' indennizz professjonali jew tal-garanzija komparabbli l-oħra tagħhom mill-inqas ta' kull sena u kif jista' jiġi stabbilit f'Regola dwar Istituzzjonijiet Finanzjarji.

(2) L-awtorità kompetenti għandha tiddeċiedi kull applikazzjoni għal liċenza jew għal reġistrazzjoni fi żmien tliet xhur minn meta tasal l-applikazzjoni jew, jekk l-applikazzjoni ma tkunx konformi mal-artikolu 4(2) jew tkun teħtieġ informazzjoni addizzjonali, fi żmien tliet xhur minn meta jkun hemm konformità mas-subartikolu msemmi jew is-sottomissjoni tal-informazzjoni meħtieġa, kif jista' jkun il-każ, skont liema jkun tal-aħħar.

(3) L-awtorità kompetenti tista' toħroġ jew tirrifjuta milli toħroġ liċenza jew reġistrazzjoni li tkun saret applikazzjoni għaliha skont dan l-Att, u meta tirrifjuta xi applikazzjoni, din għandha tgħarraf lill-applikant bil-miktub dwar ir-raġunijiet għar-rifjut tagħha.

(4) (a) Fil-ħruġ ta' liċenza jew reġistrazzjoni, l-awtorità kompetenti tista' tissoġġetta istituzzjoni finanzjarja għal dawk il-kundizzjonijiet li tista' tqis li jkunu xierqa, u wara li tkun ħarġet liċenza tista', minn żmien għal żmien, tibdel jew tirrevoka kwalunkwe kundizzjoni li tkun giet hekk imposta jew timponi kundizzjonijiet godda.

(b) Għat twettiq aħjar tad-dispożizzjonijiet ta' dan l-Att jkunu jistgħu jiġu ġestiti bl-aħjar mod, l-awtorità kompetenti tista', minn żmien għal żmien, toħroġ u tippubblica Regoli dwar Istituzzjonijiet Finanzjarji skont l-artikolu 13.

(5) Meta l-awtorità kompetenti għal xi raġuni, tonqos milli tiddeċiedi dwar xi applikazzjoni għal liċenza jew reġistrazzjoni fiż-żmien preskritt skont is-subartikolu (2), tali fatt għandu jitqies li jikkostitwixxi rifjut li tohroġ liċenza jew reġistrazzjoni, kif jista' jkun il-każ.

(6) Fejn istituzzjoni finanzjarja liċenzjata jew reġistrata tippovdi xi servizz minn dawk imsemmija fl-Ewwel Skeda u, fl-istess hin, tkun bi ħsiebha twettaq attivitajiet oħrajn li ma jkunux dawk elenkati fl-Ewwel Skeda, hija ma tistax tagħmel dan mingħajr il-kunsens preċedenti tal-awtorità kompetenti. L-awtorità kompetenti tista' tirrikjedi li titwaqqaf entità separata għall-ġestjoni tan-negozju li fir-rigward tiegħu l-istituzzjoni finanzjarja jkollha liċenza jew tkun reġistrata, fejn l-attivitajiet li fihom l-istituzzjoni finanzjarja tkun involuta jew tkun bi ħsiebha tinvolvi ruħha u li ma jkunux elenkati fl-Ewwel Skeda jkunu jaffettwaw hażin, jew x'aktarx li jaffettwaw hażin, sew is-sodezza finanzjarja tal-istituzzjoni finanzjarja sew l-abbiltà tal-awtorità kompetenti biex tissorvelja l-konformità tal-istituzzjoni finanzjarja mal-obbligi kollha stipulati f'dan l-Att u f'kwalunkwe regolamenti u, jew Regoli maħruġin tahtu.

(7) Istituzzjoni finanzjarja li jkollha liċenza jew li tkun reġistrata f'Malta għandu jkollha l-uffiċċju prinċipali u l-uffiċċju reġistrat tagħha f'Malta u tkun twettaq mill-inqas parti mill-attivitajiet tagħha li għalihom ikollha liċenza u, jew tkun reġistrata f'Malta:

Iżda fejn fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet reġistrat, ikun persuna fiżika, tali persuna fiżika għandu jkollha l-indirizz ta' kuntatt tagħha Malta."

26. L-artikolu 5A tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 5A tal-Att prinċipali.

"Fondi proprji.

5A. (1) Mingħajr preġudizzju għall-inqas livell tar-rekwiżiti kapitali kif jistgħu jiġu stabbiliti f'Regola dwar Istituzzjonijiet Finanzjarji, il-fondi proprji ta' istituzzjoni finanzjarja, minbarra fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet, m'għandhomx jaqgħu taħt l-ammont ta' kapital inizjali kif jista' jiġi stabbilit f'Regola dwar Istituzzjonijiet Finanzjarji, jew l-ammont ta' fondi proprji kalkolati skont Regola dwar Istituzzjonijiet Finanzjarji mahruġa mill-awtorità kompetenti, liema minnhom tkun l-oġhla.

(2) Minkejja r-rekwiżiti ta' kapital inizjali, istituzzjonijiet finanzjarji li jkunu qegħdin jipprovdu xi servizz minn dawk elenkati fit-Tieni jew it-Tielet Skeda, hlief għas-servizzi ta' bidu ta' pagament u s-servizzi ta' informazzjoni dwar kontijiet, għandu jkollhom f'kull waqt, fondi proprji kkalkolati skont wieħed jew aktar, fejn applikabbli, mill-metodi kif stabbiliti f'Regola dwar Istituzzjonijiet Finanzjarji.

(2A) Meta istituzzjoni ta' pagament jew istituzzjoni ta' flus elettronici tkun tappartjeni lill-istess grupp bħal xi istituzzjoni ta' pagament, istituzzjoni ta' flus elettronici, istituzzjoni ta' kreditu, ditta ta' investment, kumpannija ta' amministrazzjoni ta' assi jew impriża oħra tal-assigurazzjoni, jew fejn istituzzjoni ta' pagament jew istituzzjoni ta' flus elettronici tkun twettaq attivitajiet li ma jkunux jirrigwardaw il-forniment ta' servizzi ta' pagament jew il-ħruġ ta' flus elettronici, kif applikabbli, l-użu multiplu ta' elementi eligibbli għal fondi proprji għandu jkun projbit.

(2B) (Jekk jiġri li jitharsu) Fl-eventwalità li l-kundizzjonijiet stabbiliti fl-Artikolu 7 tas-CRR jiġu sodisfatti, l-awtorità kompetenti tista' tagħzel li ma tapplikax is-subartikolu (2) għall-istituzzjonijiet ta' pagamenti jew għall-istituzzjonijiet ta' flus elettronici, li jkunu inklużi fis-sorveljanza konsolidata tal-istituzzjonijiet ta' kreditu prinċipali b'mod konformi mas-CRD.

(3) Fejn l-ammont ta' fondi proprji ta' istituzzjoni finanzjarja, għajr fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet, jinzel taħt l-ammont stabbilit skont is-subartikoli (1) u (2), l-awtorità kompetenti għandha tirrikjedi li l-istituzzjoni finanzjarja tiegħu l-miżuri meħtieġa sabiex tirkupra l-livell ta' fondi proprji f'dak iż-żmien li l-awtorità kompetenti tista' tistabbilixxi:

Iżda jekk il-livell ta' fondi proprji ta' istituzzjoni finanzjarja, għajr fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet, ma jingiebx għal li kien fiż-żmien stabbilit, l-awtorità kompetenti tista', b'żieda mas-setgħa li timponi piena amministrattiva, teżerċita xi waħda mis-setgħat mogħtija lilha skont id-dispożizzjonijiet tal-artikolu 6."

27. L-artikolu 6 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 6 tal-Att prinċipali.

(a) in-nota marginali tiegħu, għandha tiġi sostitwita b'dan li ġej:

"Restrizzjoni, sospensjoni u tħassir ta' liċenza jew reġistrazzjoni.";

(b) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) L-awtorità kompetenti tista' tħassar, tissospendi jew tirrestringi liċenza jew reġistrazzjoni maħruġa lill-istituzzjoni finanzjarja fejn:

(a) l-istituzzjoni finanzjarja espressament tirrinunzja għal liċenza jew għar-reġistrazzjoni;

(b) l-istituzzjoni finanzjarja ma tibdiex in-negozju b'mod konformi mal-liċenza jew mar-reġistrazzjoni, kif applikabbli, fi żmien tnax-il xahar minn meta din tinhareġ, jew xi data ulterjuri li tista' tiġi speċifikata mill-awtorità kompetenti, jew tkun waqfet mill-kummerċ tagħha għal aktar minn sitt xhur, jew għal xi perjodu ieħor ta' żmien li jista' jiġi stabbilit mill-awtorità kompetenti;

(c) (i) l-istituzzjoni finanzjarja tkun kisbet il-liċenza jew ir-reġistrazzjoni permezz ta' dikjarazzjonijiet foloz jew b'kull mezz irregolari ieħor; jew

(ii) fejn xi dokument jew informazzjoni li jakkumpanjaw applikazzjoni għal liċenza jew għar-reġistrazzjoni jew xi informazzjoni mogħtija relatata mal-istess, tkun falza f'xi dettal materjali; jew

(iii) fejn l-istituzzjoni finanzjarja taħbi minn, jew tonqos milli tinnotifika jew

tippreżenta lill-awtorità kompetenti, xi dokument jew informazzjoni jew bidla fihom, li kienet fid-dmir li turi jew li tiżvela skont dan l-Att u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu;

(d) l-istituzzjoni finanzjarja ma tibqax tissodisfa l-kundizzjonijiet meħtieġa għall-ħruġ jew għar-registrazzjoni tal-liċenza jew xi kundizzjonijiet stipulati f'xi Regola dwar Istituzzjonijiet Finanzjarji, jew tonqos milli tgharraf lill-awtorità kompetenti dwar żviluppi maġġuri f'dan ir-rigward;

(e) l-istituzzjoni finanzjarja tiġi dikjarata falluta jew titqiegħed f'likwidazzjoni jew tagħmel ftehim mal-kredituri jew tiġi xort' oħra xolta;

(f) l-istituzzjoni finanzjarja tkun waqfet topera bħala riżultat ta' amalgamazzjoni ma' xi istituzzjoni finanzjarja oħra;

(g) l-istituzzjoni finanzjarja tkun fergħa ta' istituzzjoni inkorporata barra minn Malta u l-awtorità regolatorja barranija fil-pajjiż tal-inkorporazzjoni, tkun ħassret l-awtorizzazzjoni jew ir-registrazzjoni tal-istituzzjoni;

(h) l-istituzzjoni finanzjarja tkun ta' theddida għall-istabbiltà tas-sistema ta' pagament jekk hija tkompli bis-servizzi tagħha ta' pagament jew ta' flus elettronici;

(i) l-istituzzjoni finanzjarja tonqos jew x'aktarx li tonqos, milli tħares xi dispożizzjoni ta' dan l-Att jew ta' regolamenti u, jew ta' Regoli dwar Istituzzjonijiet Finanzjarji maħruġin tahtu jew il-kundizzjonijiet li taħthom tinħareġ il-liċenza jew ir-registrazzjoni jew kwalunkwe direttiva li tista' tinħareġ mill-Awtorità;

(j) l-istituzzjoni finanzjarja m'għandhiex biżżejjed assi biex tkopri r-responsabbiltajiet tagħha; jew

(k) l-awtorità kompetenti tqis illi, minħabba l-mod li bih l-istituzzjoni finanzjarja tkun qegħda tmexxi jew tipproponi li tmexxi l-affarijiet tagħha,

jew għal kwalunkwe raġuni oħra, dawn ikunu ta' theddida għall-istabbiltà jew għall-integrità tas-sistema finanzjarja.";

(ċ) is-subartikolu (2) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) Fejn l-awtorità kompetenti tħassar, tissospendi jew tirrestringi liċenza jew reġistrazzjoni, hija għandha tgħarraf lill-istituzzjoni finanzjarja bir-raġunijiet għat-tħassir, għas-sospensjoni jew għar-restrizzjoni tal-liċenza jew tar-reġistrazzjoni.";

(d) is-subartikolu (3) tiegħu, għandu jiġi mħassar.

(e) is-subartikolu (4) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(4) Restrizzjonijiet ta' liċenza jew reġistrazzjoni maħruġa lill-istituzzjoni finanzjarja li jkunu imposti mill-awtorità kompetenti b'mod konformi mas-subartikolu (1), għandhom ikunu dawk ir-restrizzjonijiet li l-awtorità kompetenti jkun jidhrilha li huma adegwati sabiex l-istituzzjoni finanzjarja tħares kif xieraq id-dispożizzjonijiet ta' dan l-Att u ta' kull regolamenti u, jew Regoli maħruġa taħt dan l-Att flimkien mal-kundizzjonijiet, jekk ikun hemm, tal-liċenza jew tar-reġistrazzjoni tagħha u għall-protezzjoni tal-integrità tas-sistema finanzjarja tal-pajjiż u dawn jistgħu jinkludu:

(a) ir-reqwiżit li l-istituzzjoni finanzjarja tkun projbita milli timpenja ruħha f'xi transazzjoni jew transazzjonijiet jew f'xi attività elenkati fl-Ewwel Skeda; jew

(b) ir-reqwiżit li l-istituzzjoni finanzjarja tithalla timpenja ruħha f'xi transazzjoni jew transazzjonijiet jew f'xi attività minn dawk elenkati unikament fl-Ewwel Skeda, skont dawk it-termini u l-kundizzjonijiet li l-awtorità kompetenti tista' tippreskrivi.";

(f) minnufih wara s-subartikolu (5) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(5A) Meta l-awtorità kompetenti tvarja jew tneħhi xi restrizzjoni imposta skont dan l-artikolu, din għandha

tgħarraf lill-istituzzjoni finanzjarja bir-raġunijiet għat-tibdil jew it-tneħħija ta' tali restrizzjonijiet.";

(g) is-subartikolu (6) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(6) Liċenza mogħtija lil fergħa ta' istituzzjoni inkorporata barra minn Malta tista' tiġi biss mhassra wara konsultazzjoni mal-awtorità regolatorja barranija tal-pajjiż ta' inkorporazzjoni, kemm-il darba l-awtorità kompetenti ma tiddeċidix li l-kwistjoni tkun urġenti jew li jkun hemm ċirkostanzi fejn ma jkunx xieraq li ssir dik il-konsultazzjoni minn qabel.";

(h) is-subartikolu (7) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(7) Meta ssir ir-restrizzjoni jew it-tħassir ta' liċenza jew reġistrazzjoni ta' istituzzjoni finanzjarja inkorporata f'Malta, l-awtorità kompetenti għandha tgħarraf lill-awtoritajiet regolatorji barranin tal-pajjiż li fih l-istituzzjoni finanzjarja jew is-sussidjarji tagħha jkunu qegħdin jagħmlu xi attività skont l-Ewwel Skeda, jew kull attività oħra li l-awtorità kompetenti jista' jidhrilha li tkun kumplimentari għall-attivitajiet ta' dik l-istituzzjoni f'Malta.";

(i) is-subartikolu (8) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(8) Fejn l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi jeħtieġu dan, din tista' f'kull waqt tippubblika xi restrizzjoni imposta skont dan l-artikolu.";

(j) minnufih wara is-subartikolu (8) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(9) L-awtorità kompetenti għandha tippubblika kull tħassir jew sospensjoni ta' liċenza jew reġistrazzjoni, inklużi dawk fir-reġistru msemmi fl-artikolu 8D u fir-reġistru ċentrali u elettroniku żviluppat, operat u amministrat mill-EBA skont l-Artikolu 15 tad-Direttiva dwar is-Servizzi ta' Pagament.".

ġej:

"Avviż ta' tibdil, restrizzjoni, sospenzjoni jew tħassir ta' liċenza jew reġistrazzjoni.

7. (1) Fejn l-awtorità kompetenti jkollha l-ħsieb:

(a) li tibdel xi kundizzjoni li għaliha l-liċenza jew ir-reġistrazzjoni tkun soġġetta, jew li timponi xi kundizzjoni magħha; jew

(b) li tirtira, tissospendi jew tirrestringi jew tvarja xi restrizzjoni li għaliha l-liċenza jew ir-reġistrazzjoni tkun soġġetta,

din għandha b'avviż bil-miktub tinnotifika l-intenzjoni tagħha lill-istituzzjoni finanzjarja u għandha tispeċifika fuq liema bażi l-awtorità kompetenti tkun bi ħsiebha tiegħu tali azzjoni.

(2) Kull avviż mogħti skont is-subartikolu (1), għandu jispeċifika li l-istituzzjoni finanzjarja involuta tista', fi żmien raġjonevoli wara n-notifika tiegħu kif jista' jiġi speċifikat fl-avviż, li għandu jkun perjodu ta' mhux inqas minn tmienja u erbgħin siegħa u mhux iżjed minn tletin ġurnata, tressaq sottomissjonijiet bil-miktub quddiem l-awtorità kompetenti fejn tagħti r-raġunijiet għaliex dik l-azzjoni m'għandhiex tittieħed, u l-awtorità kompetenti għandha tqis tali sottomissjonijiet qabel ma tasal għal deċiżjoni finali.

(3) Kemm-il darba l-awtorità kompetenti ma' tiddeċidix li l-kwistjoni tkun waħda urġenti, hija m'għandha timponi jew tibdel l-ebda restrizzjoni jew kundizzjoni, jew tissospendi jew tħassar liċenza jew reġistrazzjoni qabel ma' jkun għadda ż-żmien stipulat skont is-subartikolu (2).

(4) L-awtorità kompetenti għandha, kemm jista' jkun malajr, tavża bil-miktub id-deċiżjoni finali tagħha lil kull istituzzjoni finanzjarja li tkun ingħatat l-avviż skont is-subartikolu (1)."

29. L-artikolu 7A tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 7A tal-Att prinċipali.

"Tibdil fl-informazzjoni.

7A. Istituzzjoni finanzjarja li jkollha liċenza jew li tkun reġistrata skont dan l-Att għandha tipprovdi lill-awtorità kompetenti d-dettalji dwar kull tibdil fl-informazzjoni provduta taħt dan l-Att, u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu, malli dik l-istituzzjoni finanzjarja ssir taf b'dak it-tibdil."

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Żieda tal-artikoli 7B u 7Ċ fl-Att prinċipali.

30. Minnufih wara l-artikolu 7A tal-Att prinċipali kif sostitwit, għandhom jiżiedu l-artikoli godda li ġejjin:

"Setgħa li toħroġ direttivi.
Kap. 330.

7B. (1) Mingħajr preġudizzju għal xi setgħa mogħtija skont dan l-Att, l-awtorità kompetenti tista', biex twettaq il-funzjonijiet u d-dmirijiet preskritti fl-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta u f'dan l-Att u kull regolamenti u, jew Regoli maħruġa tahtu, kull meta tqis li jkun hekk meħtieġ, tagħti b'avviż bil-miktub dawk id-direttivi li tista' tqis li jkunu xierqa fiċ-ċirkostanzi.

(2) Persuna li tingħata avviż skont is-subartikolu (1), għandha tikkonforma ma' u gġib fis-seħħ lil, kull tali direttiva fiż-żmien u bil-mod imsemmi fid-direttiva.

(3) Is-setgħa li jingħataw direttivi skont dan l-artikolu għandha tinkludi s-setgħa li tvarja, tbiddel, iżżid jew tħassar xi direttiva, kif ukoll is-setgħa li toħroġ direttivi godda jew direttivi ulterjuri.

(4) Fejn l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi jeħtieġu dan, din tista' f'kull waqt tippubblika kwalunkwe direttiva li hija tkun haġet skont xi dispożizzjonijiet ta' dan l-artikolu.

Informazzjoni li għandha tingħata lill-klijenti jew lill-klijenti potenzjali.

7Ċ. Istituzzjoni finanzjarja li jkollha liċenza jew li tkun reġistrata skont dan l-Att għandha ttipprovdi lill-klijenti jew lill-klijenti potenzjali tagħha, inklużi f'xi forma jew mezz ta' attività ta' tqegħid fis-suq jew ta' komunikazzjoni mwassla lill-pubbliku permezz ta' kull xorta ta' mezzi tal-informazzjoni, dikjarazzjoni tal-fatt li l-istituzzjoni finanzjarja hija liċenzjata jew reġistrata mill-awtorità kompetenti, kif applikabbli, flimkien mal-indirizz tal-awtorità kompetenti."

Sostituzzjoni tal-intestatura "Obbligi ta' Detenturi ta' Liċenza u Ohrajn" tal-Att prinċipali.

31. Minnufih wara l-artikolu 7Ċ kif miżjud fl-Att prinċipali, l-intestatura "OBBLIGI TA' DETENTURI TA' LIĊENZA U OHRAJN" tal-Att prinċipali, għandha tiġi sostitwita b'dan li ġej:

"OBBLIGI TA' ISTITUZZJONIJIET FINANZJARJI U OHRAJN."

Emenda tal-artikolu 8 tal-Att prinċipali.

32. L-artikolu 8 tal-Att prinċipali, għandu jiġi emendat b'dan li ġej:

(a) in-nota marginali tiegħu, għandha tiġi sostitwita b'dan li ġej:

"Ftuħ ta' fergħat u sussidjarji.";

(b) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Istituzzjoni finanzjarja, li ma tkunx waħda minn dawk li jeżerċitaw xi dritt Ewropew, għandha tgħarraf lill-awtorità kompetenti bil-miktub qabel ma tiftaħ fergħa ġdida f'Malta.";

(ċ) is-subartikolu (2) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) Istituzzjoni finanzjarja li jkollha l-intenzjoni li tiftaħ fergħa jew ufficcju barra minn Malta biex tipprovdi xi attività elenkata fl-Ewwel Skeda, bl-eċċezzjoni tal-attivitàjiet 4 jew 10 tal-istess, u istituzzjoni finanzjarja li tkun intenzjonata tiftaħ fergħa jew ufficcju f'pajjiż terz biex tipprovdi xi attività elenkata fl-Ewwel Skeda, għandu jkollha minn qabel l-approvazzjoni bil-miktub tal-awtorità kompetenti.";

(d) minnufih wara s-subartikolu (2) tiegħu, għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(2A) Istituzzjoni finanzjarja li jkollha l-intenzjoni tipprovdi l-attivitàjiet elenkati fit-Tieni jew it-Tielet Skeda fi Stat Membru ieħor fl-eżerċizzju ta' xi dritt Ewropew, għandha tgħarraf lill-awtorità kompetenti skont il-proċedura stipulata fl-Artikolu 28 tad-Direttiva dwar is-Servizzi ta' Pagament.

Ftuħ ta' sussidjarja.

(2B) Istituzzjoni finanzjarja li jkollha l-intenzjoni tiftaħ jew takkwista xi sussidjarja f'Malta jew barra minn Malta għandu jkollha minn qabel l-approvazzjoni bil-miktub tal-awtorità kompetenti.";

(e) is-subartikoli (3) sa (6) tiegħu, għandhom jiġu mħassra;

(f) minnufih wara is-subartikolu (6) tiegħu, għandu

jiżdied is-subartikolu ġdid li ġej:

"Informazzjo ni lill-klijenti u lill-klijenti potenzjali. (7) L-istituzzjonijiet finanzjarji għandhom jiżguraw li ferġat li jkunu jaġixxu f'isimhom jgħarrfu lill-klijenti u lill-klijenti potenzjali tagħhom b'dan il-fatt."

Sostituzzjoni tal-artikolu 8A tal-Att prinċipali.

33. L-artikolu 8A tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Arranġamenti dwar id-Distribuzzjoni tal-Aġenzija.

8A. (1) Istituzzjoni finanzjarja li jkollha l-intenzjoni tipprovdi xi attività minn dawk imsemmija fl-Iskedi ma' dan l-Att permezz ta' agent jew, fil-każ ta' istituzzjoni ta' flus elettronici li jkollha l-intenzjoni taħtar distributur biex iqassam jew isarraff flus elettronici, għandha tikkomunika din l-informazzjoni li ġejja lill-awtorità kompetenti:

(a) l-isem u l-indirizz tal-agent u, jew tad-distributur;

(b) deskrizzjoni tal-mekkanizmi ta' kontroll intern li jkunu ser jintużaw mill-agent biex jiġarsu l-obbligi dwar *money laundering* u l-iffinanzjar ta' terrorizmu skont kwalunkwe liġi kontra *money laundering* u l-iffinanzjar ta' terrorizmu;

(c) l-identità tad-diretturi u tal-persuni responsabbli għall-ġestjoni tal-agent li jkun se jiġi ingaġġat biex jipprovdi l-attivitajiet imsemmija fl-Iskedi ta' dan l-Att u, għal agenti li ma jkunux fornituri ta' servizzi ta' pagament, evidenza li jkunu persuni adattati u idoneji;

(d) l-attivitajiet imsemmija fl-Iskedi ta' dan l-Att li jitwettqu mill-istituzzjoni finanzjarja u li għalihom l-agent ikun mandatarju; u

(e) fejn applikabbli, il-kodiċi jew in-numru uniku ta' identifikazzjoni tal-agent jew distributur:

Iżda persuna li tinħatar agent ta' istituzzjoni finanzjarja għandha taġixxi biss bħala agent fir-rigward ta' dawk l-attivitajiet li l-istituzzjoni finanzjarja li jkun ser jagħmilha ta' agent tagħha, ikollha liċenza jew tkun reġistrata għalihom skont dan l-Att.

(1A) Fil-każ ta' bidliet sostanzjali fid-dettalji mogħtija lill-awtorità kompetenti meta jingħata l-avviż inizjali skont il-paragrafu (b) tas-subartikolu (1), l-istituzzjoni finanzjarja kkonċernata għandha tippovdi lill-awtorità kompetenti l-informazzjoni aġġornata mingħajr ebda dewmien.

(2) Istituzzjoni ta' flus elettronici m'għandhiex toħroġ flus elettronici permezz ta' aġenti:

Iżda istituzzjoni ta' flus elettronici tista', bla ħsara għal dawg il-kundizzjonijiet li jistgħu jiġu stabbiliti mill-awtorità kompetenti, tqassam u ssarraf flus elettronici permezz ta' aġenti u, jew distributuri.

(3) L-awtorità kompetenti tista' tassogġetta lill-persuna li tinħatar bhala aġent għal kull obbligu impost fuq l-istituzzjoni finanzjarja skont dan l-Att.

(4) L-awtorità kompetenti għandha, fi żmien xahrejn minn meta tiġi riċevuta l-informazzjoni msemmija fis-subartikolu (1), tikkomunika lill-istituzzjoni finanzjarja jekk l-aġent ikunx ġie elenkat fir-reġistru msemmi fl-artikolu 8D:

Iżda jekk l-awtorità kompetenti ma tkunx sodisfatta li l-informazzjoni li tiġi provduta lilha tkun korretta, hija għandha tieħu azzjoni ulterjuri biex tivverifika dik l-informazzjoni qabel ma telenka lill-aġent fir-reġistru:

Iżda wkoll jekk, wara li tkun ħadet azzjoni biex tivverifika l-informazzjoni, l-awtorità kompetenti ma tkunx sodisfatta li l-informazzjoni li tkun ingħatat skont is-subartikolu (1) tkun korretta, hija għandha tirrifjuta li telenka lill-aġent fir-reġistru msemmi fl-artikolu 8D u għandha tgħarraf b'dan lill-istituzzjoni finanzjarja mingħajr ebda dewmien neċessarju.

(4A) Aġent jista' biss jibda jipprovdi l-attivitajiet rilevanti wara li jiġi elenkat fir-reġistru msemmi fl-artikolu 8D.

(4B) Fejn istituzzjoni ta' pagament jew istituzzjoni ta' flus elettronici tkun intenzjonata tippovdi servizzi ta' pagament fi Stat Membru ieħor billi tingaġġa aġent jew tistabilixxi fergħa, din għandha wkoll issegwi l-proċeduri stipulati fl-Artikolu 28 tad-Direttiva dwar is-Servizzi ta' Pagament.

(5) Fejn istituzzjoni finanzjarja li jkollha liċenza jew li jkollha awtorizzazzjoni ekwivalenti fi Stat Membru ieħor tiġġestixxi l-attivitajiet elenkati f'xi Skeda f'Malta permezz ta' fergħa jew billi tingaġġa aġent jew distributtur, l-istituzzjoni finanzjarja għandha ssegwi l-proċeduri stipulati f'kull Regola dwar Istituzzjonijiet Finanzjarji:

Iżda jekk l-awtorità kompetenti jkollha raġunijiet biex tissuspetta li, permezz ta' dik il-fergħa, aġent jew distributtur, ikun qed jiġi kkommiss, jew ġie kkommiss jew hemm tentattiv ta' *money laundering* jew finanzjament ta' terroriżmu, jew l-ingaġġ ta' tali fergħa jew aġent jista' jżid ir-riskju ta' *money Laundering* jew il-finanzjament tat-terroriżmu, hija għandha tgħarraf lill-Istat Membru fejn tkun stabbilita l-istituzzjoni finanzjarja, u tista' tirrifjuta milli tirreġistra l-fergħa jew l-aġent, jew tista' tħassar ir-registrazzjoni tal-fergħa jew aġent.

(6) Istituzzjonijiet finanzjarji għandhom, mingħajr ebda dewmien neċessarju u skont il-proċedura li dwarha jipprovdus-subartikoli (4) u (4A), tikkomunika lill-awtorità kompetenti kull tibdil dwar l-użu ta' aġenti jew distributuri, inklużi aġenti jew distributuri addizzjonali.

(7) Istituzzjoni finanzjarja li għandha l-intenzjoni li twettaq l-attivitajiet tagħha permezz ta' aġent f'pajjiż terz, għandu jkollha minn qabel l-approvazzjoni bil-miktub tal-awtorità kompetenti.

Informazzjoni lill-klijenti u lill-klijenti potenzjali.

(8) L-istituzzjonijiet finanzjarji għandhom jiżguraw li l-aġenti jew id-distributuri li jkunu qegħdin jaġixxu f'isimhom jgħarrafu lill-klijenti tagħhom u lill-klijenti potenzjali b'dan il-fatt."

Sostituzzjoni tal-artikolu 8B tal-Att prinċipali.

34. L-artikolu 8B tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"*Outsourcing* ta' funzjonijiet operattivi.

8B. (1) Meta istituzzjoni finanzjarja tkun intenzjonata tagħmel *outsourcing* ta' funzjonijiet operattivi tas-servizzi tagħha hija għandha tgħarraf lill-awtorità kompetenti kif meħtieġ:

Iżda l-*outsourcing* ta' funzjonijiet operattivi importanti, inklużi sistemi ta' teknoloġija tal-informatika, m'għandux isir b'tali mod li materjalment jaffettwa hażin il-kwalità tal-kontroll intern tal-istituzzjoni finanzjarja u l-abbiltà tal-awtorità kompetenti li tissorvelja u tirrintraċċa l-konformità tal-istituzzjoni finanzjarja mal-obbligi kollha stabbiliti f'dan l-Att, u f'kwalunkwe regolamenti u, jew Regoli magħmulin tahtu.

(2) Għall-fini tas-subartikolu (1), funzjoni operattiva għandha titqies bħala waħda importanti jekk xi difett jew nuqqas fit-twettiq tagħha jkunu tali li jaffettwaw materjalment hażin il-konformità kontinwa tal-istituzzjoni finanzjarja mar-rekwiżiti tal-liċenza jew tar-reġistrazzjoni tagħha, mal-obbligi l-oħra tagħha skont dan l-Att jew kull regolamenti u, jew Regoli maħruġa tahtu, mat-twettiq finanzjarju tagħha, jew mas-sodezza jew il-kontinwità tas-servizzi tagħha:

Iżda istituzzjonijiet finanzjarji li jagħmlu *outsourcing* ta' funzjonijiet operattivi importanti, għandhom jikkonformaw ma' dawn il-kundizzjonijiet li ġejjin:

(a) l-*outsourcing* m'għandux jirriżulta fid-delega tar-responsabbiltà tal-ġestjoni ewlenija;

(b) m'għandhomx jinbidlu r-relazzjoni u l-obbligi tal-istituzzjoni finanzjarja lejn persuna li tuża s-servizzi tagħha skont dan l-Att, u r-regolament u, jew ir-Regoli maħruġin tahtu;

(ċ) il-kundizzjonijiet li l-istituzzjoni finanzjarja għandha tikkonforma magħhom biex tkun u tibqa' hekk liċenzjata skont dan l-Att, u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu, m'għandhomx jiġu preġudikati; u

(d) m'għandha titneħħa jew tiġi modifikata l-ebda waħda mill-kundizzjonijiet l-oħra li abbażi tagħhom il-liċenza jew r-reġistrazzjoni tal-istituzzjoni finanzjarja tkun inħarġet u tkun soġġetta għalihom.

(2A) L-istituzzjonijiet finanzjarji għandhom, mingħajr ebda dewmien neċessarju, jikkomunikaw lill-awtorità kompetenti kull tibdil dwar l-ingaġġ tal-entitajiet li jkun sarilhom *outsourcing* tal-attivitajiet.

(3) L-awtorità kompetenti tista' tohrog Regola dwar Istituzzjonijiet Finanzjarji, fejn jiġu stipulati r-rekwiżiti ta' provdituri tas-servizz tal-*outsourcing* u l-provvista ta' tali servizzi ta' *outsourcing*."

Sostituzzjoni tal-artikolu 8Ċ tal-Att prinċipali.

35. L-artikolu 8Ċ tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Responsabbiltà. 8Ċ. (1) Fejn l-istituzzjonijiet finanzjarji jkunu jiddependu fuq terzi għat-twettiq ta' funzjonijiet operattivi, dawk l-istituzzjonijiet finanzjarji għandhom jieħdu l-passi raġjonevoli biex jiżguraw li jitharsu r-rekwiżiti ta' dan l-Att, u ta' kwalunkwe regolamenti u, jew Regoli maħruġin taħtu.

(2) Istituzzjonijiet finanzjarji għandhom jibqgħu għal kollox responsabbli għal kull att li jsir mill-impjegati tagħhom, jew minn xi aġent, fergħa jew entità li lilhom seta' sarilhom *outsourcing* ta' xi attivitajiet."

Sostituzzjoni tal-artikolu 8D tal-Att prinċipali.

36. L-artikolu 8D tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Reġistru pubbliku.

8D. (1) L-awtorità kompetenti għandha twaqqaf u żżomm reġistru pubbliku fejn jitniżżel dan li ġej:

(a) l-istituzzjonijiet finanzjarji li jkollhom liċenza jew li jkunu reġistrati skont dan l-Att;

(b) l-aġenti ta' istituzzjonijiet finanzjarji f'Malta jew fi Stat Membru ieħor;

(ċ) il-fergħat ta' istituzzjonijiet finanzjarji, stabbiliti f'Malta jew barra minn Malta, jekk dawk il-fergħat ikunu jipprovdu servizzi fi Stat Membru ieħor;

(d) il-fergħat f'Malta ta' istituzzjonijiet ta' pagamenti awtorizzati fi Stat Membru ieħor;

(e) il-fergħat f'Malta ta' fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet awtorizzati fi Stat Membru ieħor;

(f) il-fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet reġistrati skont dan l-Att li jeżerċitaw id-dritt Ewropew tagħhom li jipprovdu servizzi fi Stat Membru ieħor;

(g) il-fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet awtorizzati fi Stat Membru biex jeżerċitaw id-dritt Ewropew tagħhom li jipprovdu servizzi f'Malta;

(h) l-istituzzjonijiet imsemmija fil-paragrafi (4) sa (23) tal-Artikolu 2(5) tas-CRD li jkunu intitolati skont id-dritt nazzjonali li jipprovdu servizzi ta' pagament;

(i) il-fergħat f'Malta ta' istituzzjonijiet ta' flus elettronici awtorizzati fi Stat Membru ieħor;

(j) l-istituzzjonijiet ta' pagament u l-istituzzjonijiet ta' flus elettronici li jkollhom liċenza skont dan l-Att, li jeżerċitaw id-dritt Ewropew tagħhom li jipprovdu servizzi fi Stat Membru ieħor;

(k) l-istituzzjonijiet ta' pagamenti u l-istituzzjonijiet ta' flus elettronici awtorizzati fi Stat Membru ieħor li jeżerċitaw id-dritt Ewropew tagħhom li jipprovdu servizzi f'Malta;

(l) il-fornituri ta' servizzi li jkunu qegħdin jipprovdu servizzi bbażati fuq strumenti ta' pagament li jistgħu jintużaw biss b'mod limitat, sakemm jissodisfaw waħda mill-kundizzjonijiet li ġejjin:

(i) strumenti li jippermettu lid-detentur jakkwista oġġetti jew servizzi unikament fil-bini tal-emittent jew fi ħdan *network* limitat ta' fornituri ta' servizzi skont ftehim kummerċjali dirett ma' emittent professjonali;

(ii) strumenti li jistgħu jintużaw unikament għall-akkwist ta' firxa limitata ħafna ta' oġġetti jew servizzi; u

(m) il-fornituri ta' servizzi li jkunu qegħdin iwettqu transazzjonijiet ta' pagament minn fornitur ta' *networks* jew servizzi provduti minbarra dawk ta' komunikazzjoni elettronika għal abbonat ta' *network* jew servizz:

(i) għax-xiri ta' kontenut digitali u servizzi bl-użu tal-vuċi, irrISPettivament mill-apparat użat għax-xiri jew konsum tal-kontenut digitali u addebitat lill-kont relatat; jew

(ii) imwettqa minn jew permezz ta' apparat elettroniku u addebitati lill-kont relatat fil-qafas ta' attività karitatevoli jew għax-xiri ta' biljetti.

(2) Ir-reġistru imsemmi fis-subartikolu (1) għandu jidentifika s-servizzi li l-istituzzjoni finanzjarja għandha tkun liċenzata jew reġistrata għalihom u dan għandu jkun disponibbli pubblikament għall-konsultazzjoni, ikun aċċessibbli *online* u jkun aġġornat fuq bażi regolari.

(3) L-istituzzjonijiet ta' pagamenti għandhom jiġu elenkati fir-reġistru separatament mill-fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet.

(4) L-awtorità kompetenti għandha tniżżel fir-reġistru pubbliku kwalunkwe tħassir ta' liċenza jew reġistrazzjoni.

(5) L-awtorità kompetenti għandha tavża lill-EBA bir-raġunijiet għat-tħassir ta' xi liċenza jew reġistrazzjoni.

(6) L-awtorità kompetenti għandha, mingħajr dewmien, tinnotifika lill-EBA bl-informazzjoni mniżżla fir-reġistru pubbliku.

(7) L-awtorità kompetenti għandha tkun responsabbli għall-korrettezza tal-informazzjoni msemmija fis-subartikolu (6) u għall-aġġornament ta' dik l-informazzjoni."

Sostituzzjoni tal-artikolu 8E tal-Att prinċipali.

37. L-artikolu 8E tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Ftuħ ta' fergħat li jkollhom l-uffiċċju prinċipali tagħhom barra mill-Unjoni Ewropea.

8E. (1) Fil-valutazzjoni ta' applikazzjoni għall-ftuħ ta' fergħa minn istituzzjoni ta' flus elettronici li jkollha l-uffiċċju prinċipali tagħha barra mill-Unjoni Ewropea, l-awtorità kompetenti ma tistax tapplika dispożizzjonijiet li jirriżultaw fi trattament aktar favorevoli minn dak mogħti lill-istituzzjoni ta' flus elettronici li jkollha l-uffiċċju prinċipali tagħha għewwa l-Unjoni Ewropea.

(2) L-awtorità kompetenti għandha tavża lill-Kummissjoni Ewropea b'kull awtorizzazzjoni għall-fergħat ta' istituzzjonijiet ta' flus elettronici li jkollhom l-uffiċċju prinċipali tagħhom barra mill-Unjoni Ewropea kif imsemmi fis-subartikolu (1)."

Sostituzzjoni tal-artikolu 8F tal-Att prinċipali.

38. L-artikolu 8F tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Fruġ u fidi ta' flus elettronici.

8F. (1) L-istituzzjonijiet ta' flus elettronici għandhom joħroġu flus elettronici b'valur ta' parità meta jirċievu l-flus.

(2) Meta ssirilhom talba mid-detentur ta' flus elettronici, l-istituzzjonijiet ta' flus elettronici għandhom jifdu l-valur monetarju tal-flus elettronici fi kwalunkwe mument, b'valur ta' parità u mingħajr ebda dewmien.

(3) Għall-finijiet tat-twettiq aħjar id-dispożizzjonijiet ta' dan l-artikolu u sabiex tkun tista' issir trasposizzjoni aħjar tad-dispożizzjonijiet tad-Direttiva dwar il-Flus Elettronici, l-awtorità kompetenti tista', minn żmien għal żmien, toħroġ, temenda jew tirrevoka Regoli dwar l-istituzzjonijiet Finanzjarji li jkunu jorbtu lill-istituzzjonijiet ta' flus elettronici kif (ikun hemm) speċifikat fihom."

39. Minnufih wara l-artikolu 8F tal-Att prinċipali kif sostitwit, għandu jiżdied l-artikolu ġdid li ġej:

Żieda tal-artikolu 8G fl-Att prinċipali.

"Zamma tar-rekords.

8G. Mingħajr preġudizzju għal kwalunkwe liġi kontra *Money Laundering* jew il-ġlieda kontra l-finanzjament tat-terroriżmu, jew Liġi tal-Unjoni Ewropea oħra rilevanti, l-istituzzjonijiet finanzjarji li ma jkunux il-fornituri ta' servizzi tal-informazzjoni dwar il-kontijiet, għandhom iżommu r-rekords kollha xierqa għall-finijiet ta' dan l-Att u ta' kwalunkwe regolamenti u, jew Regoli maħruġin tahtu mill-inqas għal hames snin."

40. L-artikolu 9 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 9 tal-Att prinċipali.

"Avviż ta' parteċipazzjoni ġdida jew tibdil fiha jew fil-kontroll.

9. (1) Jekk –

(a) xi persuna tiegħu jew tkun intenzjonata li tiegħu xi azzjoni biex tikseb jew tiddisponi, direttament jew indirettament, minn kapital azzjonarju kwalifikanti f'istituzzjoni finanzjarja, jew li tkompli żżid jew tnaqqas, direttament jew indirettament, tali kapital azzjonarju kwalifikanti biex b'hekk il-proporzjon tad-drittijiet tal-votazzjoni, jew tal-kapital azzjonarju kkontrollat minnha f'dik l-istituzzjoni finanzjarja jkun jilhaq, jeċċedi jew jaqa' taht l-għoxrin fil-mija, tletin fil-mija jew hamsin fil-mija, jew biex dik l-istituzzjoni finanzjarja ssir jew ma tibqax is-sussidjarja ta' dik il-persuna; jew

(b) xi istituzzjoni finanzjarja tieġu jew tkun intenzjonata li tieġu xi azzjoni biex tbiegħ jew tiddisponi mill-kummerċ tagħha jew xi parti sinjifikanti minnu, tingħaqad ma' xi kumpannija oħra, tagħmel xi rikostruzzjoni jew tvarja l-kapital azzjonarju nominali jew maħrug jew taffettwa xi bidla materjali fid-drittijiet tal-votazzjoni, mingħajr ma tikseb minn qabel l-approvazzjoni tal-awtorità kompetenti jew, jekk wara li tkun kisbet tali approvazzjoni, l-awtorità jkun jidhrilha sussegwentement li xi waħda minn dawn l-azzjonijiet, jew li l-influwenza eżercitata mill-persuna li tkun intenzjonata li tieġu tali azzjoni, tkun qegħda topera jew x'aktarx tkun se topera għad-detriment tal-amministrazzjoni prudenti u soda tal-istituzzjoni finanzjarja, f'dan il-każ,

mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 22, l-awtorità kompetenti għandha tesprimi l-oppożizzjoni tagħha u għandu jkollha s-setgħa li tieġu miżuri xierqa biex tirroratiffika s-sitwazzjoni.

(1A) Il-miżuri xierqa msemmija fis-subartikolu (1) jistgħu jinkludu:

(i) li żżomm lill-persuna jew lill-istituzzjoni finanzjarja milli tieġu jew tkompli tieġu l-azzjoni;

(ii) li tiddikjara l-azzjoni nulla u bla effett;

(iii) li tordna lill-persuna jew lill-istituzzjoni finanzjarja biex tieġu daww il-miżuri li jkunu meħtieġa biex il-qagħda titregġa lura għal kif kienet minnufih qabel ma tkun ittiegħdet l-azzjoni;

(iv) li żżomm lill-persuna jew lill-istituzzjoni finanzjarja milli teżerċita tali drittijiet li l-azzjoni kienet tagħtiha, li kieku kienet waħda legittima, inkluż id-dritt li tircievi xi pagament jew li teżerċita xi drittijiet ta' votazzjoni naxxenti mill-azzjonijiet akkwistati;

(v) li żżomm lill-persuna jew lill-istituzzjoni finanzjarja milli tieġu xi azzjoni simili, jew xi azzjoni oħra fil-kategoriji stipulati fil-paragrafi (a) u (b) tas-subartikolu (1); u, jew

(vi) is-sospensjoni tal-eżerċizzju tad-drittijiet tal-votazzjoni assenjati lill-azzjonijiet miżmuma mill-azzjonisti jew minn membri tal-istituzzjoni finanzjarja involuta.

(2) Jekk bħala riżultat tal-akkwist tal-ishma f'istituzzjoni finanzjarja, l-istituzzjoni finanzjarja li fiha l-persuna tipproponi li takkwista l-kapital azzjonarju ssir sussidjarja jew tkun sugġetta għall-kontroll tal-persuna li takkwista dawk l-azzjonijiet, l-awtorità kompetenti jkollha d-diskrezzjoni li tikkunsidra jekk talba magħmula minn tali persuna għall-approvazzjoni tal-awtorità kompetenti skont id-dispożizzjonijiet ta' dan l-artikolu, tkunx tikkostitwixxi talba biex tapplika għal liċenza biex tmexxi l-kummerç ta' istituzzjoni finanzjarja skont id-dispożizzjonijiet ta' dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu.

Kap. 345.

(3) Is-subartikolu (1) għandu japplika kemm jekk l-ishma rilevanti jkunu jew xort'oħra elenkati f'suq regolat skont l-Att dwar is-Swieq Finanzjarji, jew f'suq ekwivalenti f'pajjiż terz.

(4) (a) Fejn persuna ikollha l-intenzjoni li tiegħu xi azzjoni kif stabbilit fis-subartikolu (1)(a) jew (b), tali persuna għandha tavża minn qabel lill-awtorità kompetenti bil-miktub b'dik id-deċiżjoni, fejn tindika id-daqs tal-parteċipazzjoni fl-ishma li għandha l-intenzjoni li jkollha u tipprovdi kull informazzjoni rilevanti meta u kif l-awtorità kompetenti tista' tirrikjedi permezz ta' Regola dwar Istituzzjonijiet Finanzjarji, inkluża l-formola li fuqha għandu jsir dak l-avviż u l-kriterji adottati mill-awtorità kompetenti meta tkun qegħda tistabbilixxi jekk tali persuna tkunx persuna xierqa.

(b) Fejn il-kapital azzjonarju kwalifikanti tinkiseb minkejja l-oppożizzjoni tal-awtorità kompetenti, l-istess awtorità għandha, irrispettivament minn kwalunkwe piena amministrattiva oħra jew ta' xi miżura superviżorja oħra li tista' tiġi adottata, tipprovdi għas-sospensjoni tal-eżerċizzju tad-drittijiet tal-votazzjoni tal-akkwiredent, in-nullità tal-voti mitfugħin, jew il-possibilità li dawk il-voti jiġu annullati.

(ċ) Fejn persuna tonqos milli tħares l-obbligu li tipprovdi bil-quddiem informazzjoni fit-termini tal-paragrafu (a) ta' dan is-subartikolu, l-awtorità kompetenti jkollha s-setgħa li tadotta miżuri xierqa fit-termini tas-subartikolu (1A).

(5) (a) Istituzzjoni finanzjarja għandha tavża lill-awtorità kompetenti bil-miktub bid-dettalji kollha ta' kull persuna li tkun qegħda tiġi proposta li ssir kontrollur jew direttur tal-istituzzjoni finanzjarja jew ta' kull persuna oħra li tkun qegħda tiġi proposta li ma tibqax kontrollur jew direttur tal-istituzzjoni finanzjarja.

(b) Jekk l-awtorità kompetenti tkun tal-fehma li xi persuna li tkun jew li tkun qegħda tiġi proposta li ssir kontrollur jew direttur ta' istituzzjoni finanzjarja ma tkunx persuna idoneja li ssir kontrollur jew direttur, l-awtorità kompetenti tista' toħroġ ordni li tirrikjedi li dik il-persuna tieqaf milli tkun kontrollur jew direttur, jew li żżomm lil tali persuna milli ssir kontrollur jew direttur.

L-awtorità kompetenti tista' wkoll toħroġ, temenda jew tirrevoka kwalunkwe Regola dwar Istituzzjonijiet Finanzjarji kif jista' jkun meħtieġ biex ikunu jistgħu jiġu implimentati d-dispożizzjonijiet ta' dan l-artikolu."

Sostituzzjoni tal-artikolu 10A tal-Att prinċipali.

41. L-artikolu 10A tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Projbizzjoni fuq l-ghoti ta' interessi. 10A. Hu projbit li jingħata imġhax jew xi benefiċċju ieħor relatat mat-tul ta' żmien li matulu l-istituzzjoni ta' flus elettronici tkun qegħda żżomm flus elettronici."

Sostituzzjoni tal-artikolu 10B tal-Att prinċipali.

42. L-artikolu 10B tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Rekwiżiti ta' salvagwardja. 10B. (1) Istituzzjoni ta' pagament li tkun qegħda tipprovdi servizzi ta' pagament kif imsemmi fil-paragrafi 2(a) sa (f) tat-Tieni Skeda u istituzzjoni ta' flus elettronici għandhom iħarsu l-flejjes kollha li huma minn utenti tas-servizzi tagħha, jew li jirċievu permezz ta' xi fornitur ieħor ta' servizzi ta' pagament għall-eżekuzzjoni ta' transazzjonijiet ta' pagament, jew bi skambju għall-flus elettronici mahruġa.

(2) Għall-finijiet tat-twettiq aħjar id-dispożizzjonijiet ta' dan l-Att dwar ir-rekwiżiti ta' ħarsien, l-awtorità kompetenti tista' minn żmien għal żmien, toħroġ, temenda jew tirrevoka Regoli dwar Istituzzjonijiet Finanzjarji li jkunu jorbtu lill-istituzzjonijiet finanzjarji kif speċifikat fihom."

Sostituzzjoni tal-artikolu 11 tal-Att prinċipali.

43. L-artikolu 11 tal-Att prinċipali, għandu jiġi sostitwit b'dan li

ġej:

"Istituzzjonijiet
finanzjarji li ma
jkuwx jistgħu
jonoraw l-obbligi.

11. Minkejja kwalunkwe investigazzjoni li dwarha jipprovdi dan l-Att:

(a) fejn istituzzjoni finanzjarja tqis illi tkun naqset milli tħares, jew li x'aktarx ma tkunx tista' tħares, xi dispożizzjoni ta' dan l-Att jew ta' kwalunkwe regolamenti u, jew Regoli dwar Istituzzjonijiet Finanzjarji maħruġin taħtu, jew il-kundizzjonijiet li taħthom tkun ingħatat il-liċenza jew saret ir-registrazzjoni, hija għandha minnufih tgħarraf lill-awtorità kompetenti u lill-Bank Ċentrali bil-miktub;

(b) fejn l-awtorità kompetenti ssir taf illi istituzzjoni finanzjarja tkun naqset milli tħares, jew li x'aktarx ma tkunx tista' tħares, xi dispożizzjoni ta' dan l-Att jew ta' kwalunkwe regolamenti u, jew Regoli dwar Istituzzjonijiet Finanzjarji maħruġin taħtu jew il-kundizzjonijiet li taħthom tkun ingħatat il-liċenza jew saret ir-registrazzjoni, hija għandha minnufih tgħarraf lill-Bank Ċentrali bil-miktub;

(ċ) fejn il-Bank Ċentrali jsir jaf illi istituzzjoni finanzjarja tkun naqset milli tħares, jew li x'aktarx ma tkunx tista' tħares, xi dispożizzjoni ta' dan l-Att jew ta' kwalunkwe regolamenti u, jew Regoli dwar Istituzzjonijiet Finanzjarji maħruġin taħtu jew il-kundizzjonijiet li taħthom tkun ingħatat il-liċenza jew saret ir-registrazzjoni, hija għandha minnufih tgħarraf lill-awtorità kompetenti bil-miktub."

44. Minnufih wara l-artikolu 11 tal-Att prinċipali kif sostitwit, għandu jiddied l-artikolu ġdid li ġej:

Żieda tal-artikolu
11A fl-Att
prinċipali.

"Gestjoni ta' riskji operazzjonali u ta' sigurtà.

11A. (1) L-istituzzjonijiet ta' pagamenti, istituzzjonijiet ta' flus elettronici u fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet għandhom jistabbilixxu qafas li jkollu miżuri ta' mitigazzjoni u mekkaniżmi ta' kontroll xierqa, biex jiġġestixxu r-riskji operazzjonali u ta' sigurtà, relatati mas-servizzi ta' pagament li dawn ikunu qegħdin jipprovdu. Bħala parti minn dak il-qafas, istituzzjonijiet ta' pagament, istituzzjonijiet ta' flus elettronici u fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet għandhom jistabbilixxu u jzommu proċeduri għall-ġestjoni ta' incidenti effettivi, inklużi dawk għall-identifikazzjoni u l-klassifikazzjoni ta' incidenti maġġuri operazzjonali u ta' sigurtà.

(2) L-istituzzjonijiet ta' pagamenti, istituzzjonijiet ta' flus elettronici u fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet għandhom jipprovdu lill-Bank Ċentrali ta' kull sena, jew fi żminijiet aqsar li jistgħu jiġu stabbiliti mill-awtorità kompetenti b'kooperazzjoni mal-Bank Ċentrali, stima aġġornata u komprensiva tar-riskji operazzjonali u ta' sigurtà relatati mas-servizzi ta' pagament li dawn ikunu qegħdin jipprovdu u fuq l-adeqwatezza tal-miżuri ta' mitigazzjoni u l-mekkanizmi ta' kontroll implimentati bħala reazzjoni għal dawk ir-riskji.

(3) L-awtorità kompetenti għandha tikkoopera mal-Bank Ċentrali fl-istima u l-ipproċessar tad-dokumenti msemmija fis-subartikolu (2).

(4) L-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka Regoli dwar Istituzzjonijiet Finanzjarji kif jista' jkun meħtieġ biex ikunu jistgħu jiġu implimentati d-dispożizzjonijiet ta' dan l-artikolu."

Żieda tal-artikolu 11B fl-Att prinċipali.

45. Minnufih wara l-artikolu 11A tal-Att prinċipali kif miżjud, għandu jiżdied l-artikolu ġdid li ġej:

"Rappurtar ta' incidenti.

11B. (1) Fil-każ ta' incident maġġuri operazzjonali u ta' sigurtà u fejn Malta tkun l-Istat Membru tal-orġini, l-istituzzjonijiet tal-pagamenti, l-istituzzjonijiet ta' flus elettronici u l-fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet, għandhom minghajr ebda dewmien neċessarju, javżaw lill-Bank Ċentrali. Malli jirċievu tali avviz, il-Bank Ċentrali għandu minnufih javża lill-awtorità kompetenti.

(2) Fejn l-inċident ikollu jew jista' jkollu impatt fuq l-interessi finanzjarji tal-utenti tas-servizzi ta' pagament, l-istituzzjoni ta' pagament, l-istituzzjoni ta' flus elettronici jew il-fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet involuti, għandhom minghajr ebda dewmien neċessarju, jgħarrfu lill-utenti tagħhom tas-servizzi ta' pagament bl-inċident u b'kull miżura li tista' tittiehed biex itaffu l-effetti negattivi tal-inċident.

(3) Malli jirċievi l-avviż imsemmi fis-subartikolu (1), il-Bank Ċentrali għandu jivvaluta, b'kooperazzjoni mal-awtorità kompetenti, ir-rilevanza tal-inċident lill-awtoritajiet rilevanti f'Malta, u javża lil kull tali awtorità kif ikun meħtieġ.

(4) L-awtorità kompetenti għandha, b'kooperazzjoni mal-Bank Ċentrali, tikkopera mal-EBA u mal-Bank Ċentrali Ewropew bil-għan li ssir valutazzjoni tar-rilevanza tal-inċident lill-awtoritajiet rilevanti oħra tal-Unjoni Ewropea u lill-awtoritajiet nazzjonali skont l-Artikolu 96(2) tad-Direttiva dwar is-Servizzi ta' Pagament.

(5) Fejn l-awtorità kompetenti tirċievi avviż dwar xi inċident maġġuri operazzjonali u ta' sigurtà kif hemm fis-subartikolu (1), meta jkun xieraq, din għandha abbażi ta' dak l-avviż u b'kooperazzjoni mal-Bank Ċentrali, tiegħu l-miżuri kollha meħtieġa biex tħares is-sigurtà f'waqtha tas-sistema finanzjarja.

(6) L-istituzzjonijiet ta' pagament, l-istituzzjonijiet ta' flus elettronici u l-fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet għandhom, mill-inqas ta' kull sena, jipprovdu lill-Bank Ċentrali l-informazzjoni statistika dwar frodi relatata ma' mezzi ta' pagament differenti.

(7) L-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka Regoli dwar Istituzzjonijiet Finanzjarji, kif jista' jkun meħtieġ, biex tkun tista' timplimenta aħjar id-dispożizzjonijiet ta' dan l-artikolu."

46. L-artikolu 12 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 12 tal-Att prinċipali.

"Setgħat u dmirijiet tal-Ministru.

12. (1) Il-Ministru, bil-parir tal-awtorità kompetenti, jista' jagħmel regolamenti li jgħibu fis-seħħ lid-dispożizzjonijiet ta' dan l-Att, u mingħajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi jista', b'dawk ir-regolamenti, partikolarment, jagħmel kwalunkwe haġa mis-segwenti:

(a) jemenda kull Skeda li tinsab ma' dan l-Att;

(b) jeżenta lil xi persuna minn xi dispożizzjoni jew iktar ta' dan l-Att, inklużi eżenzjoni mill-htieġa ta' licenza jew registrazzjoni skont dan l-Att, bla ħsara għal tali tibdiliet, żidiet, adattamenti u modifiki kif jistgħu jiġu preskritti u bla ħsara għal tali kundizzjonijiet jew rekwiżiti oħra, inklużi forom oħra ta' awtorizzazzjoni u proċeduri ta' notifikazzjoni, kif jistgħu jiġu preskritti;

(ċ) jittrasponi, jimplimenta u jgħibu fis-seħħ lir-rekwiżiti tad-Direttiva dwar il-Flus Elettronici u d-Direttiva dwar is-Servizzi ta' Pagament:

Iżda, meta tintuża xi alternattiva minn dawk imsemmija fl-Artikolu 107(1) tad-Direttiva dwar is-Servizzi ta' Pagament, il-Ministru għandu jgħarraf lill-Kummissjoni Ewropea dwar l-użu ta' tali għażliet kif ukoll b'kull bidla li tista' ssirilha sussegwentement;

(d) jittrasponi, jimplimenta u jgħib fis-seħħ id-dispożizzjonijiet, ir-rekwiżiti, l-obbligi u l-impenji relatati mar-regolamentazzjoni tal-istituzzjonijiet ta' pagamenti u l-istituzzjonijiet ta' flus elettronici, li jitnisslu mis-shubija, l-affiljazzjoni jew ir-relazzjoni ma' organizzazzjonijiet internazzjonali jew reġjonali, jew raggruppamenti ta' pajjiżi, jew minn xi trattat, konvenzjoni jew ftehim internazzjonali ieħor sew bilaterali, reġjonali jew multilaterali, li Malta tkun tiffirma parti minnu;

(e) jipprovdi li xi liġi oħra, jew kwalunkwe dispożizzjoni tagħha, m'għandhiex tkun applikabbli għall-kwistjonijiet li jaqgħu taħt ir-regolamenti u, partikolarment, jista' jeżenta attivitajiet rilevanti bl-applikazzjoni ta' xi artikolu jew dispożizzjoni tal-Kodiċi Ċivili;

(f) jittrasponi, jimplimenta u, jew iġib fis-seħħ ir-rekwiżiti tal-PAD, u fl-istess hin jista' wkoll jistabbilixxi jew iżomm miżuri alternattivi għal dawk imsemmija fl-Artikolu 10(2) sa (6) tal-PAD:

Iżda:

(i) dan għandu jkun b'mod ċar fl-interess tal-konsumatur;

(ii) ma għandu jkun hemm l-ebda piż addizzjonali fuq il-konsumatur; u

(iii) il-bdil kif imfisser fl-Artikolu 2(18) tal-PAD isir fi żmien, bħala massimu, tal-istess perjodu ta' żmien globali bħal dak imsemmi fl-Artikolu 10(2) sa (6) tal-PAD;

(g) iwaqqaf mekkaniżmu speċifiku biex jiżgura li l-konsumaturi li ma jkollhomx kont ta' pagament kif imfisser fl-Artikolu 2(3) tal-PAD fit-territorju tagħhom, u li jkunu ġew imcaħħda mill-aċċess għal tali kont ta' pagament li għalih tkun qed tintalab miżata mill-istituzzjonijiet ta' kreditu, ikollhom aċċess effettiv għall-kont ta' pagament li jkollu l-karatteristiċi bażiċi skont il-PAD, bla ebda ħlas; u, jew

(h) jittrasponi, jimplimenta u, jew iġib fis-seħħ lid-dispożizzjonijiet u r-rekwiżiti tad-Direttivi, tar-Regolamenti u kull miżura legiżlattiva oħra tal-Unjoni Ewropea li tkun teħtieġ traspożizzjoni u, jew implimentazzjoni, kif jistgħu jiġu emendati minn żmien għal żmien, inklużi miżuri ta' implimentazzjoni li jkunu nħarġu jew li jistgħu jinħarġu taħthom u li jkunu relatati, iżda mhux limitatament għad-detenturi ta' licenza kif jista' jiġi hemmhekk speċifikat; kwalunkwe mit-tali regolamenti li jkunu strettament relatati mat-traspożizzjoni jew l-implimentazzjoni kif imsemmi preċedentement, jista' jkun fihom dispożizzjonijiet li jkunu inkonsistenti mad-dispożizzjonijiet ta' dan l-Att jew ta' kull liġi oħra, u għal dan l-għan jistgħu jipprovdu li xi dispożizzjoni f'dan l-Att jew f'xi liġi oħra m'għandhiex tkun applikabbli għall-kwistjonijiet li (jinkwadraw) jaqgħu taħt ir-regolamenti, u fil-każ ta' inkonsistenza, tali dispożizzjonijiet li jkunu f'tali regolamenti għandhom jipprevalu.

(2) Regolamenti magħmulin skont dan l-artikolu jistgħu jsiru bla ħsara għal dawk l-eżenzjonijiet jew kundizzjonijiet li jistgħu jiġu hemmhekk speċifikati, jistgħu jipprovdu b'mod differenti għall-każijiet, għaċ-ċirkostanzi jew għall-għanijiet differenti u jistgħu jagħtu lill-awtorità kompetenti tali setgħat ta' adattament tar-regolamenti, kif jista' jiġi speċifikat.

(3) Fejn ikunu nħargu regolamenti skont dan l-artikolu, l-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka kwalunkwe Regola dwar Istituzzjonijiet Finanzjarji fil-kuntest tat-tifsir ta' dan l-Att għat-twettiq tajjeb u l-aħjar implimentazzjoni tad-dispożizzjonijiet tar-regolamenti."

Emenda tal-artikolu 13 tal-Att prinċipali.

47. L-artikolu 13 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Għandu jkun id-dmir tal-awtorità kompetenti li twettaq l-funzjonijiet mogħtija lilha b'dan l-Att u b'kull regolament u, jew Regoli maħruġa tahtu u biex tiżgura li l-istituzzjonijiet finanzjarji li jkunu qegħdin jiġġestixxu negozju fi jew minn Malta jikkonformaw ma' dan l-Att, regolamenti u, jew Regoli maħruġin tahtu u l-kundizzjonijiet tal-liċenza jew tar-registrazzjoni tagħhom. Fit-twettiq ta' tali funzjonijiet, l-awtorità kompetenti għandha tiżgura li l-kontrolli li jiġu eżerċitati sabiex tiġi vverifikata l-konformità kontinwa skont dan l-Att, jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu jkunu proporzjonati, adegwati u responsivi għar-riskji li l-istituzzjonijiet finanzjarji jkunu esposti għalihom. L-imsemmija funzjonijiet ikunu, fost l-oħrajn, jikkonsistu f'dan li ġej:

(a) li jeħtieġu lill-istituzzjoni finanzjarja biex skont l-artikolu 14, tipprovdi kull informazzjoni meħtieġa sabiex tkun tista' tiġi sorveljata l-konformità fejn jiġi speċifikat l-għan tat-talba, kif xieraq, u t-terminu sa meta dik l-informazzjoni għandha tiġi provduta;

(b) li jsiru spezzjonijiet fil-fond tal-istituzzjoni finanzjarja, ta' kull aġent jew fergħa tagħha li jkunu jipprovdu servizzi taht ir-responsabbiltà tal-istituzzjoni finanzjarja, jew f'xi entità li jsirilha *outsourcing* tal-attivitajiet;

(ċ) li tirtira, tissospendi jew tħassar kwalunkwe liċenza jew reġistrazzjoni b'mod konformi mal-artikolu 6; u

(d) li toħroġ rakkomandazzjonijiet mhux vinkolanti u linji gwida, Regoli fil-kuntest tat-tifsir ta' dan l-artikolu u dispożizzjonijiet amministrattivi vinkolanti skont dan l-Att u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu.";

(b) Minnufih wara s-subartikolu (1) tiegħu, għandhom jiżdiedu s-subartikoli godda li ġejjin:

"(1A) Minkejja r-rekwiżiti tal-artikolu 5A(1), (2A) u (2) u l-Artikoli 7 u 9 tad-Direttiva dwar is-Servizzi ta' Pagament, l-awtorità kompetenti tista' tiegħu passi kif imsemmi fis-subartikolu (1), biex tiżgura li jkun hemm kapital suffiċjenti għall-attivitajiet imwettqa minn istituzzjoni finanzjarja u, jew biex tiżgura konformità mal-Artikolu 5(1B), b'mod partikolari meta l-attivitajiet tal-istituzzjoni finanzjarja minbarra dawk elenkati fl-Iskedi jkunu jaffettwaw hażin jew x'aktarx li jaffettwaw hażin is-sodezza finanzjarja tal-istituzzjoni finanzjarja involuta.

(1B) Mingħajr preġudizzju għall-proċeduri ta' tħassir ta' liċenza jew reġistrazzjoni tal-artikolu 22; tad-dispożizzjonijiet nazzjonali tal-liġi kriminali u kull setgħa oħra mogħtija lill-awtorità kompetenti skont id-dispożizzjonijiet ta' dan l-Att, jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu jew skont id-dispożizzjonijiet tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, fejn l-awtorità kompetenti tkun sodisfatta li l-kondotta ta' istituzzjoni finanzjarja tkun tammonta għall-ksur ta' xi dispożizzjoni ta' dan l-Att, jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu, jew ta' xi direttiva, restrizzjoni u, jew sospensjoni imposti, jew ta' xi talba jew ordni oħra magħmula mill-awtorità kompetenti konformament mad-dispożizzjonijiet ta' dan l-Att, jew kwalunkwe regolamenti u, jew Regoli maħruġa tahtu, jew tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, jew ta' xi kundizzjoni ta' liċenza, jew ta' xi kundizzjoni meħtieġa għall-ħruġ ta' liċenza jew reġistrazzjoni, l-awtorità kompetenti tista' tadotta jew timponi fuq tali istituzzjoni finanzjarja u, jew fuq dawk li effettivament jikkontrollaw in-negozju ta' dik l-istituzzjoni finanzjarja, kull miżura li tista' tqis li tkun xierqa u li jkollha l-għan speċifiku li ttejjem kull ksur li jkun ġie osservat jew il-kawżi ta' tali ksur.

Kap. 330.

(1Ċ) L-awtorità kompetenti għandu jkollha kull setgħa u r-riżorsi adegwati meħtieġa biex twettaq dmirijietha u għandha tiggarrantixxi kull indipendenza minn korpi ekonomiċi u tevita kunflitti ta' interess.";

(ċ) is-subartikolu 2 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) L-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka Regoli dwar Istituzzjonijiet Finanzjarji kif jista' jkun meħtieġ biex tagħti effett lil kull waħda mid-dispożizzjonijiet ta' dan l-Att u kwalunkwe regolamenti u, jew Regoli dwar Istituzzjonijiet Finanzjarji mahruġin taħtu. L-istess Regola tista' tistipula rekwiżiti u kundizzjonijiet addizzjonali relatati mal-attivitajiet ta' istituzzjonijiet finanzjarji, mal-kondotta tan-negozju tagħhom, mar-relazzjonijiet tagħhom mal-klijenti, mal-pubbliku u ma' partijiet oħra, mar-responsabbilitajiet tagħhom lejn l-awtorità kompetenti, rekwiżiti ta' rappurtar u kull haġa oħra, kif l-awtorità kompetenti tista' tqis li jkun xieraq.";

(d) minnufih wara subartikolu (2) tiegħu, għandhom jiżdedu s-subartikoli ġodda li ġejjin:

"(2A) L-awtorità kompetenti tista' toħroġ, temenda jew tirrevoka Regoli dwar Istituzzjonijiet Finanzjarji kif jista' jkun meħtieġ bil-għan li timplimenta kwalunkwe linji gwida, rakkomandazzjonijiet, deċiżjonijiet, opinjonijiet jew kull strument ieħor mahruġ mill-EBA, kif jista' jkun meħtieġ.

(2B) Regoli dwar Istituzzjonijiet Finanzjarji għandhom ikunu vinkolanti fuq istituzzjonijiet finanzjarji u oħrajn li jistgħu jiġu speċifikati fihom.";

(e) is-subartikolu 3 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(3) Regoli dwar Istituzzjonijiet Finanzjarji u kull emenda jew revoka tagħhom għandha tiġi uffiċjalment komunikata lill-istituzzjonijiet finanzjarji kollha u l-awtorità kompetenti għandha tipprovdi kopji tagħhom lill-pubbliku meta tintalab tagħmel dan.";

(f) is-subartikolu 5 tiegħu, għandu jiġi mħassar.

(g) minnufih wara is-subartikolu (5) tiegħu, għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(6) L-awtorità kompetenti għandha tavża, kemm jista' jkun malajr, lill-Kummissjoni Ewropea li hija kienet inġatret biex, parzjalment, tiżgura u tissorvelja konformità effettiva mad-Direttiva dwar is-Servizzi ta' Pagament. L-awtorità kompetenti għandha tgħarraf lill-Kummissjoni Ewropea bid-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament li hija tkun responsabbli għalihom. L-awtorità kompetenti li tkun inġatret biex, parzjalment tiżgura u tissorvelja l-konformità effettiva mad-Direttiva dwar is-Servizzi ta' Pagament, għandha minnufih tavża lill-Kummissjoni Ewropea b'kull bidla sussegwenti dwar il-ħatra u l-kompetenza tagħha.

(7) L-ebda haġa f'dan l-Att m'għandha tinftiehem li timplika li l-awtorità kompetenti għandha tkun meħtieġa tissorvelja l-attivitajiet tal-istituzzjonijiet finanzjarji ħlief għall-provvista tas-servizzi elenkati fl-Iskedi ma' dan l-Att.

(8) Is-setgħat, il-funzjonijiet u d-dmirijiet mogħtija lill-awtorità kompetenti f'dan l-Att u f'kwalunkwe regolamenti u, jew Regoli maħruġin taħtu li jittrasponu t-Titolu II tad-Direttiva dwar is-Servizzi ta' Pagament, għandhom jiġu vestiti fl-awtorità kompetenti meta l-awtorità kompetenti tkun l-Istat Membru tal-orġini.

(9) L-awtorità kompetenti għandha tiżgura li l-istituzzjonijiet finanzjarji ma jidderogawx għad-detriment tal-klijenti tagħhom, mid-dispożizzjonijiet ta' dan l-Att jew ta' kwalunkwe regolamenti u, jew Regoli maħruġin taħtu, ħlief meta jkun esplicitament provdut fihom:

Iżda l-istituzzjonijiet finanzjarji jistgħu, mingħajr preġudizzju għall-artikolu 10, jiddeciedu li jagħtu termini aktar favorevoli lill-klijenti tagħhom."

48. Minnufih wara l-artikolu 13 tal-Att prinċipali kif emendat, għandu jiżdied l-artikolu ġdid li ġej:

Żieda tal-artikolu
13A fl-Att
prinċipali.

"Raġunijiet u komunikazzjoni.

L.S. 376.05.

Emenda tal-artikolu 14 tal-Att prinċipali.

13A. Kull miżura meħuda mill-awtorità kompetenti, jew mill-awtorità kompetenti b'kollaborazzjoni mal-Bank Ċentrali kif applikabbli, skont ir-Regolamenti dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet Finanzjarji u l-artikolu 23(1) li jinvolve pieni amministrattivi jew restrizzjonijiet fuq l-eżerċizzju ta' dritt Ewropew, għandha tkun debitament ġustifikata u komunikata lill-istituzzjoni ta' pagament, lill-istituzzjoni ta' flus elettronici jew lill-fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet involuti."

49. L-artikolu 14 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Istituzzjoni finanzjarja għandha tippreżenta lill-awtorità kompetenti tali informazzjoni u dokumentazzjoni li l-awtorità kompetenti tista' teħtieġ, sew fuq bażi perjodika u, jew fuq bażi *ad hoc*, fit-tweġġ ta' dmirijietha skont dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu jew kwalunkwe liġi oħra, u l-awtorità kompetenti tista' tinvestiga u titlob kjarifika dwar l-informazzjoni ppreżentata.";

(b) is-subartikolu (2) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) Kull informazzjoni u dokumentazzjoni perjodika meħtieġa skont is-subartikolu (1), għandha tiġi ppreżentata f'dik l-għamla u f'dawk il-perjodi li l-awtorità kompetenti tista' minn żmien għal żmien tordna, b'Regoli dwar Istituzzjonijiet Finanzjarji u, jew f'dawk il-perjodi li l-awtorità kompetenti tista' teħtieġ bil-miktub.";

(ċ) is-subartikolu (3) tiegħu, għandu jiġi mhassar;

(d) is-subartikolu 4 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(4) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu wkoll applikabbli għal kwalunkwe fergħat, aġenziji jew ufficċji f'Malta ta' istituzzjoni finanzjarja li ma jkunux inkorporati f'Malta.";

(e) is-subartikolu 5 tiegħu, għandu jiġi sostitwit b'dan li

ġej:

"(5) Istituzzjoni finanzjarja għandha tippreżenta lill-Bank Ċentrali dik l-informazzjoni li l-Bank Ċentrali jista' jeħtieġ fit-twettiq ta' dmirijiet u l-Bank Ċentrali jista' jindaga u jitlob kjarifiki dwar kull informazzjoni hekk ippreżentata.";

(f) is-subartikolu (6) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(6) L-awtorità kompetenti tista', b'avviż bil-miktub, teħtieġ li istituzzjoni finanzjarja jew xi wiehed mill-funzjonarji tagħha jwettqu s-segwenti jew xi waħda minnhom:

(a) jagħtu lill-awtorità kompetenti, f'dak il-ħin u lok u f'dik l-għamla li hija tista' tispeċifika, dik l-informazzjoni u dokumentazzjoni li tista' tkun teħtieġ u kif jista' jiġi speċifikat skont id-deskrizzjoni fl-avviż;

(b) jagħtu lill-awtorità kompetenti kull informazzjoni jew dokumentazzjoni msemmija aktar 'il fuq, verifikata b'dak il-mod li hija tista' tispeċifika; u, jew

(ċ) jattendu quddiem l-awtorità kompetenti, jew quddiem persuna maħtura minnha, f'dak il-ħin u lok li hija tista' tispeċifika, biex twieġeb domandi u tipprovdi dik l-informazzjoni u dokumentazzjoni li l-awtorità kompetenti tista' raġonevolment teħtieġ għat-twettiq tal-funzjonijiet tagħha taħt dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin taħtu.";

(g) is-subartikolu 7 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(7) L-awtorità kompetenti tista' tagħmel kopji ta' kull dokument mgħoddi jew provdut taħt dan l-artikolu.".

50. L-artikolu 15 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 15 tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) L-awtorità kompetenti tista', kull meta jidhrilha

meħtieġ jew xieraq, taħtar spettur jew spetturi biex jinvestigaw u jirrappurtaw dwar l-affarijiet, in-natura, il-kondotta jew l-istat tan-negozju ta' istituzzjoni finanzjarja jew dwar xi aspett partikolari tagħha, jew biex jirrappurtaw dwar min ikun is-sid jew ikollu l-kontroll tal-istituzzjoni finanzjarja.";

(b) minnufih wara is-subartikolu (3) tiegħu, għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(4) Kull investigazzjoni li ssir b'mod konformi mas-subartikoli (1) u (2) għandha tkun notifikata bil-miktub lill-persuna taħt investigazzjoni.

(5) Ikun id-dmir ta' kull persuna li tkun jew kienet funzjonarju, impjegat, aġent, jew awditur ta' persuna li tkun qegħda tigi investigata skont dan l-Att u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu, jew ta' kull persuna maħtura biex tagħmel rapport dwar dik il-persuna skont dan l-Att u kwalunkwe regolamenti u, jew Regoli maħruġin tahtu u kwalunkwe persuna li jkollha kapital azzjonarju kwalifikanti fi, jew tkun kontrollur ta' dik il-persuna taħt investigazzjoni li:

(a) ġġib quddiem l-ispettur jew l-ispetturi maħtura skont is-subartikolu (1), f'dak iż-żmien u f'dak il-post kif jista' jkun meħtieġ mill-ispettur jew mill-ispetturi involuti, id-dokumenti kollha relatati mal-persuna taħt investigazzjoni li jkunu fil-kustodja jew is-setgħa tagħha;

(b) tattendi quddiem l-ispettur jew l-ispetturi f'dak il-ħin u lok li l-ispettur jew l-ispetturi jistgħu jitolbu; u, jew

(ċ) xort'oħra tagħti lill-ispettur jew l-ispetturi kull assistenza f'dak li għandu x'jaqsam mal-investigazzjoni li l-imsemmija persuna tkun tista' raġjonevolment tagħti, u l-ispettur jew l-ispetturi involuti jistgħu jagħmlu kopji ta', jew estratti minn, kull dokument miġjuba quddiemhom skont il-paragrafu (a).

(6) Spettur li jkun qiegħed jeżerċita xi setgħat bis-saħħa ta' haħtra skont dan l-artikolu għandu, jekk ikun hekk meħtieġ, juri l-prova tal-awtorità tiegħu.

(7) L-ebda persuna m'għandha:

(a) mingħajr raġuni legittima tonqos milli tipproduċi xi dokument li jkun id-dmir tagħha li tipproduċi skont is-subartikolu (5);

(b) mingħajr raġuni legittima tonqos milli tattendi quddiem l-ispettur jew l-ispetturi mahtura skont is-subartikolu (1), meta tkun meħtieġa li tagħmel dan; jew

(ċ) mingħajr raġuni legittima tonqos milli twieġeb għal xi domanda li ssirilha mill-ispettur jew mill-ispetturi mahtura skont is-subartikolu (1) fir-rigward ta' persuna li tkun taħt investigazzjoni.

(8) Dikjarazzjoni magħmula minn persuna in konformità ma' xi rekwiżit impost bis-saħħa ta' dan l-artikolu tista' tingieb bhala prova kontriha."

51. L-artikolu 16 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 16 tal-Att prinċipali.

"Setgħa ta' dhul.

16. (1) Kwalunkwe funzjonarju, impjegat jew aġent tal-awtorità kompetenti, jew spettur mahtur skont l-artikolu 15(1), jista' wara li juri jekk mitlub, prova tal-awtorità li jkollu, jidhol f'post okkupat minn persuna li jkun ingħatalha avviż skont l-artikolu 14 jew li l-affarijiet tagħha jkunu qed jiġu mistħarrġa skont l-artikolu 15, sabiex jikseb l-informazzjoni jew id-dokumenti meħtieġa b'dak l-avviż, jew xort'oħra għall-finijiet tal-investigazzjoni, u sabiex jeżerċita dawk is-setgħat mogħtija bl-imsemmija artikoli.

(2) Fejn xi funzjonarju, impjegat jew aġent tal-awtorità kompetenti, jew spettur mahtur skont l-artikolu 15(1), ikollhom raġuni biżżejjed li jaħsbu illi, li kieku dak l-avviż kif imsemmi fis-subartikolu (1) kellu jkun notifikat, dan ma jkunx se jithares, jew li xi dokumenti li kien jirreferi għalih jistgħu jitneħħew, jiġu mbagħbsa jew meqrudin, tali persuna tista', wara li turi jekk tkun mitluba, prova tal-awtorità li jkollha, tidhol f'kull post imsemmi fis-subartikolu (1) bil-għan li tikseb minn hemm kull informazzjoni jew dokumenti speċifikati fl-istess awtorità, liema informazzjoni jew dokumenti setgħu kienu meħtieġa bis-saħħa ta' dak l-avviż imsemmi fis-subartikolu (1).

(3) Għall-finijiet ta' kull azzjoni meħuda skont id-dispożizzjonijiet ta' dan l-artikolu, l-awtorità kompetenti tista' titlob l-assistenza tal-Kummissarju tal-Pulizija, li jista' għal dan l-għan jeżerċita dawk is-setgħat vestiti fih għall-prevenzjoni ta' reati kriminali u għall-infurzar tal-liġi u l-ordni:

Iżda meta dħul bħal dak imsemmi f'dan l-artikolu jkun jinvolvi xi fond li jkun okkupat bħala residenza, tali dħul għandu jsir biss fil-preżenza ta' uffiċjal tal-Pulizija ta' grad ta' mhux anqas minn spettur u ma jistax isir bejn id-disa' ta' filgħaxija u l-ħamsa ta' filgħodu."

Zieda tal-artikolu 16A fl-Att prinċipali.

52. Minnufih wara l-artikolu 16 tal-Att prinċipali kif sostitwit, għandu jiżdied l-artikolu ġdid li ġej:

"Suspett ta' kontravvenzjonijiet..

16A. (1) Fejn l-awtorità kompetenti jkollha raġunijiet biżżejjed biex tissuspetta li xi persuna tkun kisret jew naqset milli tħares xi dispożizzjoni ta' dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu, hija tista' b'avviż bil-miktub, teħtieġ lil dik il-persuna jew lil xi persuna oħra li:

(a) tipprovdi f'dak il-post li jista' jiġi speċifikat fl-avviż, jew minnufih jew f'dak iż-żmien li jista' jiġi hekk speċifikat, tali informazzjoni li tista' tkun raġonevolment teħtieġ bil-għan li tinvestiga l-ksur suspettat jew in-nuqqas ta' konformità;

(b) iġġib, f'dak il-post li jista' jiġi speċifikat fl-avviż, (u) jew minnufih jew f'dak iż-żmien li jista' jiġi speċifikat, dawk id-dokumenti jew id-dokumenti ta' tali deskrizzjoni li jistgħu jiġu hemm speċifikati u li tista' raġjonevolment teħtieġ għal dak l-għan; u, jew

(ċ) tattendi f'dak il-post u l-ħin li jistgħu jiġu speċifikati fl-avviż, u twieġeb domandi rilevanti sabiex jiġi stabbilit jekk ikunx seħħ dak il-ksur jew in-nuqqas ta' konformità.

(2) L-awtorità kompetenti jew il-funzjonarju, l-impjegat jew l-aġent debitament awtorizzati tagħha jistgħu jagħmlu kopji ta' jew estratti minn kull dokument sottomess skont dan l-artikolu.

(3) Kull funzjonarju, impjegat jew aġent tal-awtorità kompetenti jista', bejn il-hamsa ta' filgħodu u d-disa' ta' filgħaxija, wara li juri jekk mitlub prova tal-awtorità li jkollu, jidhol f'xi fond okkupat minn persuna li tkun għet notifikata b'avviż skont is-subartikolu (1), bil-għan li jiksbu l-informazzjoni jew id-dokumenti meħtieġa bl-avviż, filwaqt li jagħmlu d-domandi msemmija fil-paragrafu (ċ) tas-subartikolu (1) u, jew jeżerċitaw is-setgħat mogħtija bis-subartikolu (2).

(4) L-ebda persuna m'għandha tonqos mingħajr raġuni legittima milli tħares xi rekwiżit impost fuqha skont dan l-artikolu jew bl-intenzjoni tfixxkel lil xi persuna fl-eżerċizzju tad-drittijiet mogħtijin lilha bis-subartikolu (3).

(5) Dikjarazzjoni li ssir minn persuna f'konformità ma' xi rekwiżit impost bis-saħħa ta' dan l-artikolu tista' tingieb bħala prova kontriha."

53. Minnufih wara l-artikolu 16 A kif miżjud fl-Att prinċipali, għandu jiżded dan l-artikolu għdid li ġej:

Żieda tal-artikolu 16B fl-Att prinċipali.

"Tfixkil.

16B. L-ebda persuna li tkun taf jew tissuspetta li tkun qegħda ssir jew li x'aktarx ser ssir xi investigazzjoni skont dan l-Att, jew dwar l-għemil suspettat ta' xi ksur skont dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin tahtu ma tista' tiffalsifika, taħbi, teqred jew xort'oħra tiddisponi minn, jew tikkawża jew tippermetti l-falsifikazzjoni, il-ħabi, il-qerda jew rimi ta' dokumenti li hija tkun taf jew tissuspetta li huma jew jistgħu jkunu rilevanti għal tali investigazzjoni, kemm-il darba ma għgibx prova li ma kellha ebda ħsieb li taħbi fatti żvelati b'dawk id-dokumenti minn persuni li jkunu qegħdin jagħmlu dik l-investigazzjoni."

54. L-artikolu 17 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 17 tal-Att prinċipali.

"Setgħa tal-awtorità kompetenti li tiehu kontroll ta' istituzzjonijiet finanzjarji.

17. (1) Jekk, kemm minn xi rapport magħmul skont l-artikolu 14 jew 15 jew xort'oħra, l-awtorità kompetenti jidhrilha li japplikaw kwalunkwe miċ-ċirkostanzi indikati fl-artikolu 6(1)), l-awtorità kompetenti tista', mingħajr preġudizzju għas-setgħat tal-awtorità kompetenti li timponi restrizzjonijiet jew tissospendi jew tħassar liċenza jew reġistrazzjoni skont id-dispożizzjonijiet tal-artikolu 6(1):

(a) tirrikjedi lill-istituzzjoni finanzjarja biex minnufih tiehu dawk il-passi li l-awtorità kompetenti tista' tqis meħtieġa biex tirrimedja jew tirratifika l-kwistjoni;

(b) taħtar persuna kompetenti biex tagħti pariri lill-istituzzjoni finanzjarja dwar it-tmexxija xierqa tan-negozju tagħha;

(ċ) taħtar persuna kompetenti biex tiehu f'idejha l-assi tal-istituzzjoni finanzjarja jew xi parti minnhom sabiex jiġu mħarsa l-interessi tal-integrità tas-sistema finanzjarja f'Malta;

(d) taħtar persuna kompetenti biex tiehu f'idejha n-negozju tal-istituzzjoni finanzjarja, jew li tkompli tmexxi dak in-negozju, jew biex twettaq dik il-funzjoni jew funzjonijiet oħra fir-rigward ta' dak in-negozju jew parti minnu, kif tista' tordna l-awtorità kompetenti;

(e) tirrikjedi lill-istituzzjoni finanzjarja tistralċja n-negozju tagħha jew tistralċja n-negozju tagħha f'Malta;

(f) taħtar persuna kompetenti biex taġixxi bħala stralċjarju bil-għan li tistralċja l-affarijiet tal-istituzzjoni finanzjarja; u, jew

(g) tistabbilixxi r-rimunerazzjoni li għandha tithallas mill-istituzzjoni finanzjarja lil kull persuna kompetenti maħtura skont dan is-subartikolu.

(2) Meta tirċievi rapport jew informazzjoni, riċevuti xort'oħra kif imsemmi fis-subartikolu (1), l-awtorità kompetenti għandha tgħarraf b'dan lill-Bank Ċentrali.

(3) Fejn persuna kompetenti tinħatar mill-awtorità kompetenti:

(a) skont is-subartikolu (1)(b), l-istituzzjoni finanzjarja għandha taġixxi f'konformità mal-avviż mogħti minn dik il-persuna, kemm-il darba u sakemm l-awtorità kompetenti ma tordnax xort'oħra;

(b) skont is-subartikolu (1)(ċ), l-istituzzjoni finanzjarja għandha tikkunsinna lil dik il-persuna l-assi kollha li hija tkun giet inkarigata li tiegħu hsieb u s-setgħat, il-funzjonijiet u d-dmirijiet kollha tal-istituzzjoni finanzjarja fir-rigward ta' dawk l-assi, sew jekk dawn jiġu eżerċitati mill-kumpannija waqt il-laqgħa ġenerali, jew mill-bord tad-diretturi, jew minn xi persuna oħra, inklużi r-rappreżentanti legali u ġudizzjarji tal-istituzzjoni finanzjarja, għandhom jiġu eżerċitati minnha u vestiti fiha bl-esklużjoni tal-istituzzjoni finanzjarja; u, jew

(ċ) skont is-subartikolu (1)(d), l-istituzzjoni finanzjarja għandha tgħaddi n-negozju tagħha fil-kontroll ta' tali persuna u għandha tipprovdiha dawk il-facilitajiet li hija tista' teħtieġ biex tmexxi dak in-negozju, jew biex twettaq il-funzjonijiet mogħtija lilha skont dak il-paragrafu, u s-setgħat, il-funzjonijiet u d-dmirijiet kollha tal-istituzzjoni finanzjarja, sew jekk dawn jiġu eżerċitati mill-kumpannija waqt il-laqgħa ġenerali jew mill-bord tad-diretturi, jew minn xi persuna oħra, inkluża r-rappreżentanza legali u ġudizzjarji tal-istituzzjoni finanzjarja fil-kwistjonijiet kollha, għandhom jiġu eżerċitati minnha u vestiti fiha bl-esklużjoni ta' kull persuna oħra.

(4) Fejn persuna tinħatar skont is-subartikolu (1)(ċ) jew (d):

(a) kull funzjoni, setgħa jew dmir li jiġu eżerċitati minn xi persuna oħra, inklużi l-kuratur ta' persuna falluta, jew xi persuna oħra maħtura permezz ta', jew skont xi liġi oħra, u li tkun relatata ma' xi attiv jew negozju li l-persuna maħtura skont xi wieħed mill-paragrafi msemmija preċedentement tkun qegħda tmexxi jew tikkontrolla, għandhom kemm-il darba u sakemm l-awtorità kompetenti ma tindikax mod ieħor, jew il-liġi espressament jew speċifikament ma tipprovdi xort'oħra, jieqfu milli jkunu eżerċitati;

(b) il-persuna mahtura skont xi wiehed mill-paragrafi msemmija preċedentement għandu jkollha, fir-rigward ta' dik il-proprjetà, soċjetajiet, ditti jew negozju ieħor li l-awtorità kompetenti tista' tispeċifika, u li l-istituzzjoni finanzjarja jkollha interess fihom, sew direttament sew indirettament, inkluż xi interess li jitnissel minn hlasijiet bil-quddiem, jew self magħmul, jew faċilitajiet ta' kreditu mogħtija, jew kull obligazzjoni li twettqet, dawk is-setgħat, il-funzjonijiet u d-dmirijiet, inklużi r-rappreżentanza legali u ġuridika, kif jista' jiġi dirett mill-awtorità kompetenti, u kull tali setgħa, funzjoni jew dmir għandhom jiġu eżerċitati minn u vestiti f'dik il-persuna, bl-esklużjoni ta' kull persuna oħra:

Iżda:

(i) L-awtorità kompetenti għandu jkollha s-setgħa li tordna li kull setgħa, funzjoni jew dmir jew waħda minnhom imsemmija preċedentement għandhom jiġu eżerċitati minn xi persuna oħra, u f'tali każ, b'effett minn dik id-data jew dati li l-awtorità kompetenti tista' tispeċifika u kemm-il darba u sakemm l-awtorità kompetenti ma tordnax xort'oħra, is-setgħat, il-funzjonijiet u d-dmirijiet li l-ordni tal-awtorità kompetenti tkun applikabbli għalihom, għandhom jiġu eżerċitati minn u vestiti f'dik il-persuna l-oħra mahtura għal dak l-għan, bl-esklużjoni tal-oħrajn kollha;

(ii) fejn l-awtorità kompetenti tkun tal-fehma li l-istituzzjoni finanzjarja m'għadx għandha interess kif imsemmi preċedentement, hija għandha tordna li kull setgħa, funzjoni u dmir eżerċitati skont dan il-paragrafu għandhomx jibqgħu jiġu hekk eżerċitati, iżda kwalunkwe ordni ta' din ix-xorta m'għandha taffettwa xejn minn dak li jkun sar, jew naqas milli jsir bis-saħħa ta', jew minħabba f'xi setgħa, funzjoni jew dmir imsemmijin preċedentement;

Kap. 13.

(iii) il-persuna mahtura skont xi wiehed mill-paragrafi msemmija hawn fuq għandu jkollha s-setgħa li teħtiegħ lil xi persuna oħra tipprovdilha dawk il-faċilitajiet li hija tista' tqis li jkunu meħtiegħa biex twettaq kwalunkwe setgħa, funzjoni jew dmir skont dan l-artikolu;

(iv) id-dispożizzjonijiet tal-liġi relatati mal-falliment u b'mod partikolari it-Taqsima III tal-Kodiċi tal-Kummerċ m'għandhomx ikunu applikabbli għal, u m'għandhomx joperaw fir-rigward ta' kwalunkwe proprjetà, soċjetà, ditta jew negozji oħra speċifikati mill-awtorità kompetenti skont il-paragrafu (b), kemm-il darba u sakemm, jew hlief u fil-limitu ta' xi indikazzjoni differenti min-naħa tal-awtorità kompetenti; u f'kull każ tali persuna mahtura kif imsemmi preċedentement għandha taġixxi, bla ħsara għal kull ordni tal-awtorità kompetenti mogħtija fl-interess tal-kredituri, daqslikieku dawk id-dispożizzjonijiet ma kienux jeżistu u bħallikieku ma tkun saret l-ebda dikjarazzjoni ta' falliment;

(v) persuna mahtura mill-awtorità kompetenti skont xi dispożizzjonijiet ta' dan l-artikolu għandha tippreżenta rapporti kull sitt xhur dwar l-attivitajiet tagħha u l-kontijiet annwali dwar kull transazzjoni mwettqa minnha fit-twettiq tal-funzjonijiet tagħha verifikati minn awditur indipendenti, lill-Ministru li għandu jqiegħed dawk ir-rapporti u l-kontijiet fuq il-mejda tal-Kamra tad-Deputati fi żmien hmistax-il ġurnata.

(5) Fejn persuna tiġi mahtura skont is-subartikolu (1)(f), tali persuna għandha tkun l-istralċjarju tal-kumpannija għall-finijiet kollha tal-liġi bl-eskluzjoni ta' kull persuna oħra.

(6) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu effettivi minkejja kwalunkwe dispożizzjoni oħra ta' xi liġi, u minkejja kull att, kuntratt, strument jew dokument ieħor ta' kull xorta.

(7) Id-dispożizzjonijiet preċedenti ta' dan l-artikolu li jvestu setgħat esklussivi ta' rappreżentanza fil-persuna maħtura mill-awtorità kompetenti għandhom japplikaw ukoll għal kull att jew proċeduri li jkun inbdew jew li ġew ippreżentati qabel ma tkun ġiet vestita dik ir-rappreżentanza kif imsemmi preċedement, u fir-rigward ta' kull tali att jew proċeduri, kull persuna oħra li taġixxi jew tagħmilha ta' waħda li tkun qegħda taġixxi, jew li dwarha tittiehed azzjoni f'dik il-kapaċità, m'għandhiex tibqa' parti fi, u għandha tiġi eskluża minn, kull tali att jew proċeduri.

(8) L-ebda persuna m'għandha b'xi mod tfixkel lill-persuna maħtura skont is-subartikolu (1) fit-twettiq ta' xi funzjoni, setgħa jew dmir tagħha skont dan l-artikolu."

Sostituzzjoni tal-intestatura 'UDITURI' tal-Att prinċipali.

55. Minnufih wara l-artikolu 17 tal-Att prinċipali, l-intestatura "UDITURI" tal-Att prinċipali, għandha tiġi sostitwita b'din li ġejja:

"KONTABILITÀ, VERIFIKA STATUTORJA U AWDITURI."

Żieda tal-artikolu 17A fl-Att prinċipali.

56. Minnufih wara l-artikolu 17 u l-intestatura sussegwenti tal-Att prinċipali kif sostitwiti, għandu jiżdied l-artikolu ġdid li ġejj:

"Kontabilità u verifika statutorja.

17A. (1) Id-Direttiva 86/635/KEE, id-Direttiva 2013/34/UE u r-Regolament (KE) Nru 1606/2002 għandhom japplikaw, *mutatis mutandis*, għall-istituzzjonijiet finanzjarji.

(2) Kemm-il darba ma jkunux eżentati taħt id-Direttiva 2013/34/UE u, fejn applikabbli, id-Direttiva 86/635/KEE, il-kontijiet annwali u l-kontijiet konsolidati tal-istituzzjonijiet finanzjarji għandhom jiġu verifikati minn awdituri statutorji jew ditti ta' awdituri kif imfisser fid-Direttiva 2006/43/KE tal-Parlament Ewropew u tal-Kunsill tas-17 ta' Mejju 2006 dwar il-verifiki statutorji ta' kontijiet annwali u kontijiet konsolidati, li temenda d-Direttivi tal-Kunsill 78/660/KEE u 83/349/KEE u li tħassar id-Direttiva tal-Kunsill 84/253/KEE, kif emendati minn żmien għal żmien.

(3) L-istituzzjonijiet ta' pagamenti u l-istituzzjonijiet ta' flus elettronici għandhom jipprovdu lill-awtorità kompetenti informazzjoni dwar il-kontabilità separata għas-servizzi ta' pagament u għall-attivitajiet imsemmija fil-paragrafu 3(a), (b) u (ċ) tat-Tieni Skeda, li għandha tkun soġġetta għal rapport ta' awditur, kif jista' jiġi stipulat f'Regola dwar Istituzzjonijiet Finanzjarji.

(4) Ir-rapport ta' awditur imsemmi fis-subartikolu (3) għandu jithejja, fejn applikabbli, mill-awdituri statutorji jew minn ditta ta' awdituri."

57. Minnufih wara l-artikolu 17A fl-Att prinċipali kif miżjud, għandu jiżdied l-artikolu ġdid li ġej:

Żieda tal-artikolu 17B fl-Att prinċipali.

"Pubblikazzjon
i ta'
dikjarazzjonijiet
finanzjarji
verifikati.

17B. Kull istituzzjoni finanzjarja għandha, mhux aktar tard minn erba' xhur mill-għeluq tas-sena finanzjarja tagħha jew f'kull żmien ieħor kif jista' jiġi awtorizzat bil-miktub mill-awtorità kompetenti:

- (a) tgħaddi lill-awtorità kompetenti, u
- (b) tagħmel disponibbli għall-pubbliku, f'format stampat jew elettroniku,

kopja tad-dikjarazzjonijiet finanzjarji verifikati jew dikjarazzjonijiet finanzjarji kkonsolidati tagħha, kif applikabbli, abbozzat u ppubblikat b'tali mod li jista' jiġi speċifikat skont Regola dwar Istituzzjonijiet Finanzjarji."

58. L-artikolu 18 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 18 tal-Att prinċipali.

(a) is-subartikolu (1)(a) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) (a) Kull istituzzjoni finanzjarja għandha kull sena taħtar awditur statutorju approvat jew ditta ta' awdituri li jkollhom id-dmir jagħmlu verifika tal-kontijiet annwali u tal-kontijiet konsolidati tal-istituzzjoni finanzjarja skont l-artikolu 17A.";

(b) is-subartikolu 6 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(6) Jekk, fil-kariga tiegħu bħala awditur ta' istituzzjoni finanzjarja jew bħala riżultat ta' talba diretta mill-awtorità kompetenti taħt l-artikolu 14 jew 15, awditur isir jaf dwar kwistjoni li hija relatata ma', jew li tista' serjament taffettwa l-istabbiltà tal-istituzzjoni finanzjarja, jew fergħa jew uffiċċju f'Malta ta' istituzzjoni finanzjarja mhux inkorporata f'Malta, jew l-integrità tas-sistema finanzjarja f'Malta, huwa għandu minnufih jgħarraf lill-awtorità kompetenti permezz tal-amministrazzjoni tal-istituzzjoni finanzjarja jew, jekk iċ-ċirkostanzi jkunu hekk jiġġustifikaw, direttament lill-awtorità kompetenti.";

(ċ) minnufih wara is-subartikolu 6 tiegħu kif sostitwit, għandhom jiżdiedu l-artikoli godda li ġejjin:

"(6A) Fil-kapaċità tiegħu ta' awditur ta' istituzzjoni finanzjarja jew minhabba xi talba diretta mill-awtorità kompetenti, l-awditur għandu minnufih javża lill-awtorità kompetenti b'kull fatt jew deċiżjoni li tirrigwarda lil dik l-istituzzjoni finanzjarja li dak l-awditur ikun sar jaf bihom fil-qadi ta' dmirijietu, li jkunu jistgħu:

(a) jikkostitwixxu ksur materjali ta' dan l-Att jew kwalunkwe regolamenti jew Regoli maħruġin tahtu li jistipulaw il-kundizzjonijiet għall-ħruġ ta' liċenza jew għar-registrazzjoni jew li speċifikament jirregolaw l-attivitajiet ta' istituzzjonijiet finanzjarji;

(b) jaffettwaw il-funzjonament kontinwu tal-istituzzjoni finanzjarja; jew

(ċ) iwasslu għar-rifjut ta' ċertifikazzjoni tal-kontijiet jew għall-espressjoni ta' riżervi:

Iżda awditur għandu wkoll ikollu d-dmir jirrapporta kull fatt jew deċiżjoni li dak l-awditur isir jaf bihom fit-twettiq tal-kompiti tiegħu f'intrapriża li jkollha rabtiet mill-qrib li jirriżultaw minn relazzjoni ta' kontroll mal-istituzzjoni finanzjarja fejn ikun qiegħed iwettaq dak il-kompitu.

(6B) Kull żvelar in *bona fede* lill-awtorità kompetenti b'mod konformi mas-subartikolu (6A) m'għandux jikkostitwixxi ksur ta' xi restrizzjoni fuq l-iżvelar ta' informazzjoni imposta b'kuntratt jew b'xi dispożizzjoni leġiżlattiva, regolatorja jew amministrattiva u m'għandhiex tesponi lil tali persuni għal xi responsabbiltà. Kemm-il darba ma jkunx hemm raġunijiet konvinċenti għaliex dan m'għandux isir, tali żvelar għandu jsir kontemporanjament lill-bord tad-diretturi tal-istituzzjoni finanzjarja."

Sostituzzjoni tal-artikolu 19 tal-Att prinċipali.

59. L-artikolu 19 tal-Att prinċipali, għandu jiġi sostitwit b'dan li

ġej:

"Komunikazzjoni mill-awdituri u persuni oħra mal-awtorità kompetenti.

19. Ebda dmir, inkluż id-dmir tas-segretezza professjonali, li għalih:

(a) awditur ta' istituzzjoni finanzjarja jista' jkun soġġett, m'għandu jitqies li ġie miksur għar-raġuni li huwa jkun wassal in *bona fede* lill-awtorità kompetenti, sew jekk għax mitlub minnha sew jekk le, xi informazzjoni jew fehma fuq xi haġa li l-awditur ikun sar jaf biha fil-kapaċità tiegħu ta' awditur ta' dik l-istituzzjoni u li tkun rilevanti għall-funzjonijiet tal-awtorità kompetenti taħt id-dispożizzjonijiet ta' dan l-Att jew teħtieġ li tiġi komunikata bis-saħħa ta' dan l-Att jew kwalunkwe regolamenti u, jew Regoli maħruġin taħtu; u

(b) persuna maħtura biex tagħmel rapport taħt l-artikolu 14 jew 15 tista' tkun soġġetta, m'għandu jitqies li jkun ġie miksur għar-raġuni li dik il-persuna tkun in *bona fede* ikkomunikat lill-awtorità kompetenti xi haġa li jkollha x'taqsam man-negozju jew affarijiet tal-istituzzjoni finanzjarja li dwarha ikun sar ir-rapport."

60. L-artikolu 20 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 20 tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Mingħajr preġudizzju għas-subartikolu (1A) u abbażi ta' ftehim internazzjonali, jew meta jsir xi ftehim ta' reċiproċità, l-awtorità kompetenti tista', fil-każ ta' istituzzjoni finanzjarja, jew fergħa li topera f'Malta, li tkun kollha kemm hi jew parzjalment l-proprjetà ta' persuna barranija, jew fil-każ ta' istituzzjoni finanzjarja li tkun totalment jew parzjalment il-proprjetà ta' residenti Maltin u li tkun qegħda topera barra minn Malta, taqsam id-dmirijiet ta' sorveljanza tagħha ma' awtorità regolatorja barranija.";

(b) minnufih wara is-subartikolu (1) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(1A) L-awtorità kompetenti għandha tikkopera mal-awtoritajiet regolatorji Ewropej u, meta jkun xieraq mal-Bank Ċentrali Ewropew, mal-Bank Ċentrali u mal-Banek Ċentrali nazzjonali tal-Istati Membri l-oħra, l-EBA u l-awtoritajiet rilevanti oħra msemmija taħt il-liġi tal-Unjoni

C 3040

Ewropea jew il-ligi nazzjonali applikabbli għal fornituri ta' servizzi ta' pagament.";

(ċ) is-subartikolu (2) tiegħu, għandu jigi sostitwit b'dan li ġej:

"(2) L-awtorità kompetenti tista', barra minn hekk, tiskambja informazzjoni ma' dawn li ġejjin:

(a) awtoritajiet regolatorji barranin responsabbli għall-ħruġ ta' liċenza u, jew reġistrazzjoni, u għas-superviżjoni ta' istituzzjonijiet ta' pagamenti, istituzzjonijiet ta' flus elettronici u, jew fornituri ta' servizzi ta' informazzjoni dwar il-kontijiet, unikament għall-finijiet superviżorji u regolatorji tagħhom u, jew għal dawk l-għanijiet l-oħra li jistgħu jkunu speċifikament miftiehma mal-awtorità kompetenti;

(b) il-Bank Ċentrali Ewropew, il-banek ċentrali ta' Stati Membri oħra u l-Bank Ċentrali, fil-kapaċità tagħhom ta' awtoritajiet monetarji u ta' sorveljanza u, meta jkun xieraq, awtoritajiet pubbliċi oħra responsabbli għall-monitoraġġ ta' sistemi ta' pagament u pagament għas-saldu;

(ċ) awtoritajiet rilevanti oħra msemmija taħt id-Direttiva dwar is-Servizzi ta' Pagament, id-Direttiva 2015/849, u ligijiet tal-Unjoni Ewropea oħra applikabbli għal fornituri ta' servizzi ta' pagament bħal ma huma l-ligijiet applikabbli għal *money laundering* u l-finanzjament ta' terroriżmu; u, jew

(d) l-EBA, fil-kapaċità tagħha ta' kontributrici għall-funzjonament konsistenti u koerenti ta' sorveljanza ta' mekkaniżmi kif imsemmi fil-punt (a) tal-artikolu 1(5) tar-Regolament (UE) Nru 1093/2010.";

(d) is-subartikolu (4) tiegħu, għandu jigi sostitwit b'dan li ġej:

"(4) L-awtorità kompetenti għandha tavża lill-awtorità regolatorja Ewropea rilevanti kull meta tkun bi ħsiebha twettaq xi spezzjoni fuq il-post fit-territorju tal-imsemmija awtorità:

Iżda l-awtorità kompetenti tista' bi ftehim tiddelega lill-awtorità regolatorja Ewropeja rilevanti, il-kompitu li twettaq l-ispezzjonijiet fuq il-post tal-istituzzjoni involuta.";

(e) is-subartikolu 5 tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(5) L-awtorità kompetenti għandha wkoll, fuq talba bil-miktub, tiżvela lill-Bank Ċentrali Ewropew u, jew lill-Bank Ċentrali kull informazzjoni fil-pussess tal-awtorità kompetenti jew li hija jkollha aċċess għaliha, li tkun meħtieġa fil-qadi tad-dmirijiet tal-Bank Ċentrali Ewropew u, jew tal-Bank Ċentrali skont il-liġi."

61. Minnufih wara l-artikolu 20 tal-Att prinċipali, għandu jiżdied l-artikolu ġdid li ġej:

Żieda tal-artikolu 20A fl-Att prinċipali.

"Riżoluzzjoni ta' kunflitti bejn l-awtorità kompetenti u l-awtoritajiet regolatorji Ewropej.

20A. (1) Fejn l-awtorità kompetenti tqis illi, f'xi kwistjoni partikolari, il-kooperazzjoni transkonfini mal-awtoritajiet regolatorji Ewropej imsemmija fl-Artikoli 26, 28, 29, 30 jew 31 tad-Direttiva dwar is-Servizzi ta' Pagament ma tkunx konformi mal-kundizzjonijiet rilevanti stipulati f'dawk id-dispożizzjonijiet, hija tista' tirreferi l-kwistjoni lill-EBA u titlob l-assistenza tagħha skont l-Artikolu 19 tar-Regolament (UE) Nru 1093/2010.

(2) Fejn l-awtorità kompetenti tkun irriferiet il-kwistjoni lill-EBA u talbet l-assistenza tagħha skont is-subartikolu (1), jew fejn awtorità regolatorja Ewropeja tkun irriferiet il-kwistjoni lill-EBA u talbet l-assistenza tagħha skont l-Artikolu 27(1) tad-Direttiva dwar is-Servizzi ta' Pagament, hija għandha tiddiferixxi d-deċiżjoni tagħha sakemm ikun hemm riżoluzzjoni mill-EBA skont l-artikolu 19 tar-Regolament (UE) Nru 1093/2010."

62. Minnufih wara l-artikolu 20A tal-Att prinċipali kif sostitwit, għandu jiżdied dan l-artikolu ġdid li ġej:

Żieda tal-artikolu 20B fl-Att prinċipali.

C 3042

"Kollaborazzjo
ni mal-Bank
Ċentrali u mal-
Arbitru.

20B. Meta tkun qeghda tiżgura u tissorvelja konformità effettiva mad-dispożizzjonijiet ta' dan l-Att u ta' kull regolament u, jew Regoli maħruġa tahtu li jittrasponu d-Direttiva dwar is-Servizzi ta' Pagament, l-awtorità kompetenti għandha tikkollabora mill-qrib mal-Bank Ċentrali u mal-Arbitru kif jista' jkun meħtieġ, sabiex jiġi żgurat li kull awtorità tista' twettaq id-dmirijiet rispettivi tagħha b'mod effettiv."

Sostituzzjoni
tal-artikolu 21
tal-Att
prinċipali.

63. L-artikolu 62 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Appelli.

21. Persuna li tħoss ruħha aggravata b'xi direttiva, deċiżjoni u, jew miżura li tittiehed mill-awtorità kompetenti b'mod konformi mal-Att, u ma' kwalunkwe regolamenti u, jew Regoli maħruġin tahtu tista' tappella quddiem it-Tribunal f'dak iż-żmien u skont dawk il-kundizzjonijiet kif stabbiliti skont l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta."

Kap. 330.

Emenda tal-
artikolu 22 tal-
Att prinċipali.

64. L-artikolu 22 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) in-nota marginali tiegħu, għandha tiġi sostitwita b'dan li ġej:

"Reati kriminali."

(b) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) Kull persuna li:

(a) tonqos milli tħares xi direttiva maħruġa mill-awtorità kompetenti skont dan l-Att;

(b) mingħajr l-ebda skuża raġonevoli tibdel, trażzan, taħbi, teqred jew tirrifjuta li tipproduci xi dokument li tkun meħtieġa bil-liġi li tipproduci minn xi persuna skont dan l-Att u kwalunkwe regolamenti u, jew Regoli dwar Istituzzjonijiet Finanzjarji maħruġin tahtu;

(c) b'negligenza tipprovdi informazzjoni jew tagħmel dikjarazzjoni, wegħda jew previżjoni li tkun taf li hi żvijanti, falza jew qarrieqa, jew li taħbi b'mod diżonest xi fatti materjali;

(d) bi traskuraġni tipprowdi informazzjoni jew bi traskuraġni tagħmel (b'mod diżonest jew xort'oħra) dikjarazzjoni, wegħda jew previżjoni li tkun żvijanti, falza jew qarrieqa;

(e) tonqos milli tħares xi ordni legittima jew rekwiżit tat-Tribunal għas-Servizzi Finanzjarji; jew

(f) tikser jew tonqos milli tħares xi dispożizzjoni tal-artikoli 3(1), 3(1A), 9, 16A(4), 16B, 24A(b), 25(2) u (4),

tkun ħatja ta' reat kriminali.";

(c) is-subartikolu (2) tiegħu, għandu jiġi mħassar;

(d) is-subartikolu (4) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(4) Persuna li tkun ħatja ta' reat kriminali skont id-dispożizzjonijiet ta' dan l-artikolu, tista' teħel meta tinsab ħatja multa ta' mhux iżjed minn ħames mitt elf euro (€500,000) jew prigunerija ta' mhux iżjed minn tliet snin, jew dik il-multa u l-prigunerija flimkien.";

(e) is-subartikolu (5) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(5) L-ebda proċeduri kriminali għal reat kriminali kontra dan l-Att m'għandhom jinbdew mingħajr il-kunsens tal-Avukat Ġenerali.".

65. L-artikolu 23 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 23 tal-Att prinċipali.

"Pieni
amministrattivi
u l-
pubblikazzjoni
tagħhom.

Kap. 330.

23. (1) Mingħajr preġudizzju għall-proċeduri għat-
tħassir, sospensjoni jew restrizzjoni ta' liċenza jew
reġistrazzjoni, u għal kull setgħa oħra mogħtija lill-
awtorità kompetenti skont id-dispożizzjonijiet ta' dan l-
Att u kwalunkwe regolamenti u, jew Regoli mahruġin
taħtu jew skont id-dispożizzjonijiet tal-Att dwar l-
Awtorità għas-Servizzi Finanzjarji ta' Malta, fejn persuna
tonqos milli tħares xi kundizzjoni imposta fil-liċenza u,
jew fejn l-awtorità kompetenti tkun sodisfatta li l-kondotta
ta' persuna tkun tammonta għall-ksur ta' xi dispożizzjoni
ta' dan l-Att jew ta' kwalunkwe regolamenti u, jew Regoli
mahruġin taħtu, l-awtorità kompetenti tista', b'avviż bil-
miktub u mingħajr il-ħtieġa ta' l-ebda smiġh fil-qorti,
timponi fuq tali persuna piena amministrattiva li ma tistax
tkun iżjed minn mija u ħamsin elf euro (€150,000) għal
kull ksur jew nuqqas ta' konformità, kif jista' jkun il-każ,
bil-għan speċifiku li jintemm kull tali ksur jew il-kawża
għal tali ksur.

(1A) Kull piena amministrattiva imposta mill-awtorità
kompetenti skont is-subartikolu (1) għandha tkun waħda
effettiva, proporzjonata u ta' deterrent, u għandha tiġi
imposta skont dan l-artikolu.

(1B) Il-Ministru jista', bil-parir tal-awtorità
kompetenti, jagħmel regolamenti li jidhirlu meħtieġa biex
jipprovdi għall-istabbiliment u l-impożizzjoni ta' pieni
amministrattivi u miżuri amministrattivi oħra fuq id-
detenturi ta' liċenza jew fuq oħrajn li jistgħu jiġu
speċifikati fihom.

(2) Meta l-awtorità kompetenti timponi piena
amministrattiva fit-termini ta' dan l-artikolu, din għandha
tkun mingħajr preġudizzju għal kwalunkwe konsegwenza
oħra tal-att jew ommissjoni tal-ħati skont il-liġi ċivili jew
kriminali:

Iżda fil-każijiet kollha fejn l-awtorità kompetenti
timponi piena amministrattiva dwar xi ħaġa li tkun
twettqet jew li naqset milli titwettaq minn xi persuna u dak
l-att jew ommissjoni jikkostitwixxu wkoll reat kriminali,
ma jistgħux jittieħdu jew jitkoplew l-ebda proċeduri
kontra dik il-persuna għal tali reat kriminali.

Kap. 330.

(3) Id-dispożizzjonijiet tal-artikolu 16(4) tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta għandhom japplikaw *mutatis mutandis*, b'referenza għall-"avviż" li jinsab fih, li għandu jinftehem bħala referenza għall-avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu.

(4) L-awtorità kompetenti tista', kemm-il darba dak il-kxif ma jkunx serjament jipperikola s-swieq finanzjarji jew jikkağuna ħsara sproporzjonata lill-partijiet involuti, tippubblika kull piena amministrattiva imposta fit-termini ta' dan l-artikolu u, jew fit-termini ta' dan l-Att:

Iżda f'dawk il-każijiet fejn, fit-termini tal-artikolu 21, ikun gie ipprezentat appell mill-persuna li fuqha jkunu ġew imposti l-piena jew dawk il-pieni amministrattivi, l-awtorità kompetenti għandha, mingħajr l-ebda dewmien neċessarju, tippubblika wkoll fuq is-sit elettroniku uffiċjali tagħha u permezz ta' kull mezz ieħor ta' komunikazzjoni li tqis adegwat, l-informazzjoni fuq l-istat tal-appell u l-eżitu tiegħu."

66. Is-subartikolu (1) tal-artikolu 24 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 24 tal-Att prinċipali.

"24. (1) L-ebda persuna:

(a) li tkun giet dikjarata falluta b'sentenza jew li tkun għamlet akkordju mal-kredituri tagħha jew li kienet funzjonarju ta' istituzzjoni finanzjarja li kellha l-liċenza jew ir-registrazzjoni tagħha revokata skont l-artikolu 6(1) u li ma tkunx giet eżentata bil-miktub mill-awtorità kompetenti mid-dispożizzjoni ta' dan l-artikolu; jew".

67. Minnufih wara l-artikolu 24 tal-Att prinċipali kif emendat, għandu jiżdied dan l-artikolu ġdid li ġej:

Żieda tal-artikolu 24A fl-Att prinċipali.

"Dmirijiet tal-funzjonarji.

24A. Kull funzjonarju ta' istituzzjoni finanzjarja għandu jieħu passi raġjonevoli:

(a) biex jara li jkun hemm konformità mill-istituzzjoni finanzjarja mad-dispożizzjonijiet kollha ta' dan l-Att u kwalunkwe regolamenti u, jew Regoli maħruġin taħtu, u mal-kundizzjonijiet tal-liċenza jew registrazzjoni li jkollu; u

(b) biex jiżgura li ma tingħata l-ebda informazzjoni skorretta lill-awtorità kompetenti sew xjentement sew bħala riżultat ta' negligenza gravi."

C 3046

Emenda tal-artikolu 25 tal-Att prinċipali.

68. L-artikolu 25 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) L-ebda persuna, inklużi funzjonarji passati u preżenti ta' istituzzjoni finanzjarja jew ta' xi fergħa tagħha, u aġenti ta' istituzzjonijiet finanzjarji, m'għandhomx jikxfu informazzjoni relatata mal-affarijiet ta' dik l-istituzzjoni jew ta' klijent ta' dik l-istituzzjoni, li hija tkun kisbet fil-qadi tad-dmirijiet tagħha jew fl-eżerċizzju tal-funzjonijiet tagħha skont dan l-Att u kwalunkwe regolamenti u, jew Regoli mahruġin tahtu hlief:

(a) meta tkun awtorizzata tagħmel dan skont xi dispożizzjoni ta' dan l-Att;

(b) għall-qadi tad-dmirijiet tagħha jew għall-eżerċizzju tal-funzjonijiet tagħha;

(ċ) meta din tkun legalment meħtieġa tagħmel dan minn xi qorti jew skont xi dispożizzjoni ta' xi liġi.";

(b) is-subartikolu (3) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(3) Fejn funzjonarju ta' istituzzjoni finanzjarja jkollu għaliex jaħseb li xi transazzjoni jew transazzjoni proposta tkun tista' tinvolvi *money laundering* jew il-finanzjament ta' terroriżmu, huwa għandu jaġixxi b'mod konformi mal-obbligi ta' rappurtar u ma' obbligi oħra stabbiliti f'liġijiet kontra l-*money laundering* u l-ġlieda kontra l-finanzjament ta' terroriżmu, u dak l-iżvelar m'għandux jikkostitwixxi ksur ta' kunfidenzjalità.";

(ċ) is-subartikolu (4) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(4) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 20, persuni li jaħdmu jew li kienu jaħdmu mal-awtorità kompetenti, kif ukoll esperti li jaġixxu għan-nom tal-awtorità kompetenti, mingħajr preġudizzju għall-kazijiet li jaqgħu taht il-liġi kriminali, huma marbuta bid-dmir tas-segretezza professjonali. Dawk il-persuni u l-esperti m'għandhomx jikxfu informazzjoni miksuba

minn istituzzjonijiet finanzjarji fit-twettiq ta' dmirijiet superviżorji u dmirijiet oħra, li jkunu regolati bid-dmir tas-segretezza professjonali, kemmil darba dak l-iżvelar ta' informazzjoni ma jsirx f'forma sommarja jew kollettiva, biex ma tkunx tista' tingħaraf l-identità tal-istituzzjoni finanzjarja li dwarha tkun dik l-informazzjoni:

Iżda dawk l-uffiċjali, awdituri jew esperti jistgħu jikxfu tali informazzjoni għall-iskop tat-twettiq ta' dmirijiethom, jew l-eżerċizzju tal-funzjonijiet tagħhom, jew meta dawn ikunu legalment meħtieġa jagħmlu dan minn xi qorti jew skont xi dispożizzjoni ta' xi liġi.";

(d) is-subartikolu (5) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(5) Minkejja d-dispożizzjonijiet ta' kull liġi oħra, istituzzjoni finanzjarja tista', jekk iċ-ċirkostanzi jkunu hekk jiġġustifikaw, tikkomunika kull informazzjoni li jkollha fil-pussess tagħha u li tkun relatata mal-affarijiet ta' xi klient, lill-membri l-oħra tal-grupp li dik l-istituzzjoni finanzjarja tkun tiffirma parti minnu.";

(e) is-subartikolu (6) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(6) Għall-finijiet tas-subartikolu (5), it-terminu "grupp" għandu jinkludi kull korp ġuridiku registrat jew li jopera f'Malta jew f'ġurisdizzjoni barranija u li jiffirma parti mill-grupp, u li jkollu wkoll liċenza jew ikun xort'oħra awtorizzat skont il-liġijiet ta' Malta jew ta' dik il-ġurisdizzjoni biex iwettaq xi attività ekwivalenti għall-kummerċ bankarju, jew għall-ħruġ ta' flus elettronici, jew xi waħda mill-attivitajiet imsemmija fl-Iskeda li tinsab mal-Att dwar il-Kummerċ Bankarju.";

Kap. 371.

(f) minnufih wara is-subartikolu (7) tiegħu, għandhom jiżdiedu s-subartikoli godda li ġejjin:

"(8) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 20, kull skambju ta' informazzjoni bejn l-awtorità kompetenti u kull awtorità regolatorja Ewropea, il-Bank Ċentrali Ewropew, il-Bank Ċentrali, il-banek ċentrali nazzjonali ta' Stati Membri oħra, l-EBA jew kull awtorità rilevanti oħra msemmija taħt il-liġi tal-Unjoni

Ewropea jew il-liġi nazzjonali applikabbli għall-fornituri ta' servizzi ta' pagament skont l-artikolu 20(1A) u (2) għandu, bil-għan li jiżgura l-ħarsien tad-drittijiet individwali u tan-negozju, ikun ukoll soġġett għad-dmir tas-segretezza professjonali.

(9) Id-dispożizzjonijiet tas-subartikoli (4) u (8) huma applikabbli filwaqt li jittieħed kont, *mutatis mutandis*, tal-Artikoli 53 sa 61 tas-CRD."

Sostituzzjoni tal-intestatura 'ILMENTI TAL-KONSUMATURI'.

69. Minnufih wara l-artikolu 25 tal-Att prinċipali, l-intestatura "ILMENTI TAL-KONSUMATURI", għandha tiġi sostitwita bl-intestatura li ġejja:

"PROTEZZJONI U PRIVATEZZA TAD-DATA."

Thassir tal-artikolu 26 tal-Att prinċipali.

70. L-artikolu 26 tal-Att prinċipali, għandu jiġi mħassar.

Żieda tal-artikolu 26A fl-Att prinċipali.

71. Minnufih wara l-artikolu 26 tal-Att prinċipali kif imħassar, għandu jiżdied dan l-artikolu ġdid li ġej:

"Protezzjoni u privatezza tad-Data.

26A. (1) Istituzzjonijiet finanzjarji jistgħu, meta jkun hekk meħtieġ biex iħarsu l-prevenzjoni, l-investigazzjoni u l-kxif ta' frodi tal-pagament, jipproċessaw *data* personali.

(2) L-għoti ta' informazzjoni lil individwi dwar l-ipproċessar ta' *data* personali, u l-ipproċessar ta' tali *data* personali u kull proċessar ieħor ta' *data* għall-finijiet ta' dan l-Att, u ta' kwalunkwe regolamenti u, jew Regoli mahruġin tahtu, għandhom isiru skont kwalunkwe liġi applikabbli dwar il-protezzjoni u l-privatezza tad-*data*.

(3) L-istituzzjonijiet finanzjarji għandhom biss jaċċessaw, jipproċessaw u jzommu *data* personali li tkun meħtieġa għall-provvista tas-servizzi tagħhom bil-kunsens espliċitu ta' min jagħmel użu mis-servizzi tagħhom."

Sostituzzjoni tal-artikolu 27 tal-Att prinċipali.

72. L-artikolu 27 tal-Att prinċipali, għandu jiġi sostitwit b'dan li ġej:

"Għan. 27. L-għan ta' dan l-Att hu, parzjalment, li jimplimenta d-dispożizzjonijiet tad-Direttiva dwar is-Servizzi ta' Pagament, b'mod partikolari t-Titoli I, II, Kapitolu 4 tat-Titolu IV, l-Artikoli 95, 96, 100, 103 u 107 parzjalment, l-Artikoli 109, 111 u 115, u l-Annessi relattivi u tad-Direttiva dwar il-Flus Elettroniċi u għandu jiġi interpretat u applikat kif meħtieġ."

73. Minnufih wara l-artikolu 27 tal-Att prinċipali, għandu jiżdied l-artikolu ġdid li ġej:

Zieda tal-artikolu 28 fl-Att prinċipali.

"Dispożizzjonijiet et tranżitorji.

28. (1) L-istituzzjonijiet ta' pagament li jkunu ngħataw liċenza biex jipprovdu servizzi ta' pagament kif imsemmi fil-paragrafu (7) tal-Anness tad-Direttiva 2007/64/KE għandhom jibqgħu jzommu dik il-liċenza għall-provvistata' dawk is-servizzi ta' pagament li jitqiesu li jkunu servizzi ta' pagament kif imsemmi fil-paragrafu 2(ċ) tat-Tieni Skeda fejn, sat-13 ta' Jannar 2020, l-awtorità kompetenti jkollha l-prova li r-rekwiżiti stipulati fil-paragrafu (ċ) tal-artikolu 7 u fl-Artikolu 9 tad-Direttiva dwar is-Servizzi ta' Pagament ikunu sodisfatti.

(2) Persuni legali li, qabel it-12 ta' Jannar 2016, ikunu wettqu f'Malta attivitajiet ta' fornitur ta' servizzi ta' bidu ta' pagament u ta' fornitur ta' servizzi ta' informazzjoni dwar il-kontijiet m'għandhomx, sa tmintax-il xahar wara d-data ta' dħul fis-seħħ tal-istandards tekniċi regolatorji msemmija fl-Artikolu 98 tad-Direttiva dwar is-Servizzi ta' Pagament, ma jkunux projibiti milli jkomplu jwettqu dawk l-attivitajiet f'Malta skont il-qafas regolatorju applikabbli.

(3) Sakemm il-fornituri ta' servizzi ta' pagament li jiġġestixxu l-kont individwali jharsu l-istandards tekniċi regolatorji msemmija fis-subartikolu (2), il-fornituri ta' servizzi ta' pagament li jiġġestixxi l-kont, m'għandhomx jostakolaw jew jimpedixxu l-użu ta' servizzi ta' bidu ta' pagament jew servizzi ta' informazzjoni dwar kontijiet għall-kont li jkunu qegħdin jamministraw.

C 3050

(4) L-istituzzjonijiet finanzjarji li jkollhom pussess ta' liċenza meta dan l-Att jidhol fis-seħħ, ikunu meħtieġa li jinkludu dikjarazzjoni li l-istituzzjoni finanzjarja għandha liċenza jew hija reġistrata, kif jista' jkun il-każ, mill-awtorità kompetenti, flimkien mal-indirizz tal-awtorità kompetenti fi kwalunkwe forma jew mezz ta' attività għat-tqegħid fis-suq jew komunikazzjoni disseminata lill-pubbliku, permezz ta' kull xorta ta' mezz ta' komunikazzjoni sa tliet xhur wara d-dħul fis-seħħ ta' dan l-artikolu."

Emenda tal-Ewwel Skeda tal-Att prinċipali.

74. L-Ewwel Skeda annessa mal-Att prinċipali, għandha tiġi emendata kif ġej:

(a) fil-punt (1) tagħha, il-kliem, "transazzjonijiet kummerċjali inkluż *forfeiting*";", għandhom jiġu sostitwiti bil-kliem, "transazzjonijiet kummerċjali inkluż *forfaiting*";";

(b) fil-punt (4) tagħha, il-kliem, "Servizzi ta' pagament kif imfisser", għandhom jiġu sostitwiti bil-kliem "Servizzi ta' pagament stabbiliti";

(ċ) fil-punt (7)(e) tagħha, il-kliem, "strumenti li jistgħu jiġu trasferiti", għandhom jiġu sostitwiti bil-kliem "titoli li jistgħu jiġu trasferiti".

Emenda tat-Tieni Skeda tal-Att prinċipali.

75. It-Tieni Skeda annessa mal-Att prinċipali, għandha tiġi emendata kif ġej:

(a) L-għan tagħha, għandu jiġi sostitwit b'dan li ġej:

"Għan.

L-għan ta' din l-Iskeda hu li jiġi stabbilit il-qafas regolatorju li tahtu jistgħu jitwettqu s-servizzi ta' pagament kif imsemmi fl-Ewwel Skeda.";

(b) il-paragrafu (1) tagħha, għandu jiġi mħassar;

(ċ) il-paragrafu (2) tagħha, għandu jiġi sostitwit b'dan li ġej:

"Lista ta' attivitajiet.

2. Dawn l-attivitajiet li ġejjin għandhom jitqiesu bħala servizzi ta' pagament:

(a) servizzi li permezz tagħhom flus kontanti jkunu jistgħu jitqiegħdu f'kont ta' pagament kif ukoll l-operazzjonijiet kollha meħtieġa għat-tħaddim ta' kont ta' pagament;

(b) servizzi li permezz tagħhom ikunu jistgħu jiġu rtirati flus kontanti minn kont ta' pagament kif ukoll l-operazzjonijiet kollha meħtieġa biex jiġi operat kont ta' pagament;

(c) eżekuzzjoni ta' transazzjoni ta' pagamenti, inkluż it-trasferiment ta' flejjes fuq kont ta' pagament mal-fornitur ta' servizz ta' pagament tal-utent jew ma' xi fornitur ta' servizz ta' pagament ieħor:

(i) eżekuzzjoni ta' debiti diretti, inklużi debiti diretti ta' darba kull tant żmien;

(ii) eżekuzzjoni ta' transazzjonijiet ta' pagament b'karta ta' pagament jew tagħmir simili;

(iii) eżekuzzjoni ta' trasferimenti ta' kreditu, inklużi *standing orders*;

(d) eżekuzzjoni ta' transazzjoni ta' pagamenti fejn il-flejjes ikunu koperti b'linja ta' kreditu għal utenti ta' servizz ta' pagament:

(i) eżekuzzjoni ta' debiti diretti, inklużi debiti diretti ta' darba kull tant żmien;

(ii) eżekuzzjoni ta' transazzjonijiet ta' pagament b'karta ta' pagament jew tagħmir simili;

(iii) eżekuzzjoni ta' trasferimenti ta' kreditu, inklużi *standing orders*;

(e) ħruġ ta' strumenti ta' pagament u, jew akkwist ta' strumenti ta' pagament;

(f) rimessa ta' flus;

(g) servizzi ta' bidu ta' pagament;

(h) servizzi ta' informazzjoni dwar kontijiet.";

(d) is-subartikolu (3) tagħha, għandu jiġi sostitwit b'dan li ġej:

"3. Minbarra l-provvista ta' servizzi ta' pagament, l-istituzzjonijiet ta' pagament jistgħu jimpenjaw ruħhom f'dawn l-attivitajiet li ġejjin:

(a) il-provvista ta' servizzi operazzjonali u dawk anċillari li jkunu relatati mill-qrib, li jkunu jiżguraw l-eżekuzzjoni ta' transazzjonijiet ta' pagament, servizzi ta' kambju ta' munita barranija strettament dwar servizzi ta' pagament, attivitajiet għaż-żamma taht sigurtà, u l-ħażna u l-ipproċessar tad-*data*;

(b) l-operazzjoni ta' sistema ta' pagamenti mingħajr preġudizzju għall-Artikolu 35 tad-Direttiva dwar is-Servizzi ta' Pagament kif trasposta f'direttiva maħruġa mill-Bank Ċentrali skont l-Att dwar il-Bank Ċentrali ta' Malta;

(ċ) mingħajr preġudizzju għal kwalunkwe liġi applikabbli tal-Unjoni Ewropea jew liġi nazzjonali u mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 5(6), attivitajiet ta' negozju li ma jkunux jikkonsistu fil-provvista ta' servizzi ta' pagament;

(d) l-istituzzjonijiet ta' pagamenti jistgħu jikkonċedu kreditu fir-rigward tas-servizzi ta' pagament imsemmija fil-paragrafu (1)(d) jew (e) ta' din l-Iskeda unikament jekk jiġu sodisfatti dawn ir-rekwiżiti li ġejjin:

(i) il-kreditu jkun wieħed anċillari u jingħata esklużivament għal dak li għandu x'jaqsam mal-eżekuzzjoni ta' transazzjoni;

(ii) minkejja regoli nazzjonali dwar il-provvista ta' kreditu b'karti ta' kreditu, il-kreditu li jingħata għal dak li għandu x'jaqsam ma' pagament u eżegwit mal-att għandu jithallas lura fi żmien qasir li m'għandu fl-ebda każ ikun ta' iżjed minn tnax-il xahar;

(iii) tali kreditu ma jingħatax mill-flejjes li jiġu riċevuti jew li jinżammu bil-għan li tiġi eżegwita transazzjoni ta' pagament; u

(iv) il-fondi proprji tal-istituzzjoni ta' pagament ikunu adegwati f'kull waqt u għas-sodisfazzjon tal-awtorità ta' sorveljanza, fid-dawl tal-ammont ta' kreditu konċess."

(e) minnufih wara il-paragrafu (3) tagħha, għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"4. Meta istituzzjonijiet ta' pagamenti jimpenjaw ruħhom fil-provvista ta' xi servizz jew servizzi ta' pagament, dawn jistgħu biss iżommu kontijiet ta' pagamenti użati esklużivament għat-transazzjonijiet ta' pagament.

5. Kull fond riċevut minn istituzzjonijiet ta' pagament mingħand utenti ta' servizzi ta' pagament bil-għan li jiġu provduti servizzi ta' pagament m'għandux jikkostitwixxi depożitu jew fondi oħra li jistgħu jiġu mħallsa lura fil-kuntest tat-tifsir tal-artikolu 2 tal-Att dwar il-Kummerċ Bankarju, jew flus elettronici fil-kuntest tat-tifsir tal-artikolu 2."

Kap. 371.

76. Il-paragrafu (1) tat-Tielet Skeda tal-Att prinċipali, għandu jiġi mħassar.

Emenda tat-Tielet Skeda tal-Att prinċipali.

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu sabiex jittrasponi dan li ġej:

1. Id-Direttiva (UE) 2015/2366 tal-Parlament Ewropew u tal-Kunsill tal-25 ta' Novembru 2015 dwar is-servizzi ta' pagament fis-suq intern.;
2. L-Artikoli 10 u 25 tad-Direttiva 2014/92/UE tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Lulju 2014 dwar il-komparabbiltà tat-tariffi relatati mal-kontijiet tal-ħlas, il-bdil tal-kontijiet tal-ħlas u l-aċċess għall-kontijiet tal-ħlas b'karatteristiċi bażiċi dwar is-setgħat mogħtija lill-Ministru u li joħorgu mill-istess Direttiva; u
3. L-Artikolu 124 tad-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 li tistabbilixxi l-qafas għall-irkupru u r-riżoluzzjoni ta' istituzzjonijiet ta' kreditu u ditti ta' investiment li tħassar l-Artikolu 74(4) tad-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività ta' istituzzjonijiet ta' kreditu u s-superviżjoni prudenzjali ta' istituzzjonijiet ta' kreditu u ditti ta' investiment.

C 3054

**A BILL
entitled**

AN ACT to amend various financial services laws.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. **1.** The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2019.

**PART I
AMENDMENTS TO THE BANKING ACT**

Amendments to the Banking Act. Cap. 371. **2.** This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act. **3.** Sub-article (1) of article 2 of the principal Act, shall be amended as follows:

(a) immediately before the definition "Additional Tier 1 instruments", there shall be added the following new definitions:

Cap. 376. "account information service" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "account information service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376. "account servicing payment service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;"

(b) immediately after the definition "Additional Tier 1 instruments", there shall be added the following new definition:

" "Arbiter" means the Arbiter for Financial Services appointed under article 14 of the Arbiter for Financial Services Act;";

Cap. 555.

(c) immediately after the definition "EEA State", there shall be added the following new definition:

" "electronic money institution" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;";

Cap. 376.

(d) immediately after the definition "own funds", there shall be added the following new definition:

" "PAD" means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as may be amended from time to time and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;"; and

(e) immediately after the definition "parent undertaking", there shall be added the following new definitions:

" "payment account" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376.

"payment initiation service" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376.

"payment initiation service provider" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376.

"payment institution" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;

Cap. 376.

"payment service" means any business activity set out in the Second Schedule to the Financial Institutions Act;

Cap. 376.

C 3056

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, 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;"

Cap. 376.

"payment service user" shall have the same meaning as that assigned to it under article 2(1) of the Financial Institutions Act;"

Amendment of article 3 of the principal Act.

4. Sub-article (1) of article 3 of the principal Act, shall be amended as follows:

(a) in paragraph (e) thereof, for the words, "or EU Regulation.", there shall be substituted the words "or EU Regulation;"; and

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

"(f) transpose, implement and, or give effect to the requirements of the PAD, and in so doing may also establish or maintain measures alternative to those referred to in Article 10(2) to (6) of the PAD, provided that:

(i) it is clearly in the interest of the consumer;

(ii) there is no additional burden for the consumer; and

(iii) the switching as defined in Article 2(18) of the PAD is completed within, as a maximum, the same overall time-frame as that indicated in Article 10(2) to (6) of the PAD;

(g) set up a specific mechanism to ensure that consumers who do not have a payment account as defined in Article 2(3) of the PAD in their territory, and who have been denied access to such a payment account for which a fee is charged by credit institutions will have effective access to a payment account with basic features in terms of the PAD, free of charge."

5. Article 4 of the principal Act, shall be amended as follows: Amendment of article 4 of the principal Act.
- (a) in sub-article (7) thereof, for the words, "may make, amend or revoke Banking Rules as may be required for the purpose of implementing any guidelines, recommendations and individual decisions issued by the EBA under Articles 16, 17(3) and 18(3) of Regulation (EU) No. 1093/2010.", there shall be substituted the words, "may issue, amend or revoke Banking Rules for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the EBA, as may be required.";
- (b) in sub-article (8) thereof, for the words, "may make, amend or revoke Banking Rules as may be required for the purpose of implementing any opinions and recommendations issued by the ECB under Articles 127(4) and 132(1) of the Treaty on the Functioning of the European Union.", there shall be substituted the words "may issue, amend or revoke Banking Rules for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the ECB, as may be required."
6. In sub-article (3) of article 7 of the principal Act, for the words, "if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal.", there shall be substituted the words "if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal within the time-frames referred to in sub-article (2)". Amendment of article 7 of the principal Act.
7. In sub-article (5) of article 9 of the principal Act, for the words, "shall specify a period in which", there shall be substituted the words "shall specify a period, being a period not less than forty-eight hours and not longer than thirty calendar days, in which". Amendment of article 9 of the principal Act.
8. Sub-article (4) of article 17B of the principal Act, shall be deleted. Amendment of article 17B of the principal Act.
9. Article 19A of the principal Act, shall be amended as follows: Amendment of article 19A of the principal Act.
- (a) sub-article (1) thereof, shall be substituted by the following:
- "(1) Where a credit institution intends to outsource its material services or activities, it shall first inform the competent authority accordingly."; and
- (b) in sub-article (2) thereof, for the words, "the recognition of the outsourcing service provider", there shall be

substituted the words "the information to be submitted regarding the outsourcing service provider".

Addition of articles 19B, 19C and 19D to the principal Act.

10. Immediately after article 19A of the principal Act, there shall be added the following new articles:

"Access to accounts maintained with a credit institution.

19B. (1) Credit institutions shall grant payment institutions, electronic money institutions and account information service providers access to a credit institution's payment account services on an objective, non-discriminatory and proportionate basis.

(2) The access referred to in sub-article (1) shall be sufficiently extensive as to allow payment institutions, electronic money institutions and account information service providers to provide payment services in an unhindered and efficient manner.

(3) In the event that a credit institution does not allow a payment institution, an electronic money institution, or an account information service provider, to have access to the credit institution's payment account services, such institution shall provide the competent authority with duly motivated reasons for any such rejection.

(4) The competent authority shall, in case of an event as referred to in sub-article (3), notify the Central Bank of said event together with the reasons provided by the credit institution, without undue delay.

Management of operational and security risks.

19C. (1) Credit institutions shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks, relating to the payment services they provide. As part of that framework, credit institutions shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Credit institutions shall provide to the Central Bank on an annual basis or at shorter intervals, as may be determined by the competent authority in co-operation with the Central Bank, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) The competent authority shall co-operate with the Central Bank in the assessment and processing of documents referred to in sub-article (2).

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

Incident reporting.

19D. (1) In case of a major operational or security incident as referred to in article 19C and where Malta is the home Member State, credit institutions shall, without undue delay, notify the Central Bank. Upon receipt of such notification, the Central Bank shall promptly notify the competent authority.

(2) Where the incident has or may have an impact on the financial interests of its payment service users, the credit institution concerned shall, without undue delay, inform its payment service users of the incident and of all the measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receipt of the notification referred to in sub-article (1), the Central Bank shall, in co-operation with the competent authority, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

(4) The competent authority shall, in co-operation with the Central Bank, co-operate with the EBA and the ECB for the purposes of assessing the relevance of the incident and informing other relevant European Union and national authorities in accordance with Article 96(2) of the Payment Services Directive.

(5) Where the competent authority receives a notification of a major operational or security incident in accordance with sub-article (1), it shall where appropriate, upon the basis of that notification and in co-operation with the Central Bank, take all the necessary measures to protect the immediate safety of the financial system.

(6) Credit institutions shall, at least on an annual basis, provide to the Central Bank statistical data on fraud relating to different means of payment.

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

C 3060

(8) For the purposes of this article, the terms "home Member State" and "host Member State" shall have the same meaning as that assigned to them under article 2(1) of the Financial Institutions Act."

Cap. 376.

Amendment of article 23 of the principal Act.

11. In the marginal note to article 23 of the principal Act, for the words "Suspected offences", there shall be substituted the words "Suspected breaches."

Amendment of article 24 of the principal Act.

12. In paragraph (b) of article 24 of the principal Act, for the words, "into the suspected commission of any offence under this Act," there shall be substituted the words "into the suspected commission of any breach under this Act,".

Amendment of article 25 of the principal Act.

13. Immediately after the second proviso of sub-article (9) of article 25 of the principal Act, there shall be added the following new sub-articles:

"(9A)The competent authority shall communicate to the EBA the names of the authorities or bodies that may receive information as described in sub-articles (8) and (9).

(9B) In order to implement sub-article (9), the authorities or bodies referred to in sub-article (8), shall communicate to the competent authority which disclosed the information, the names and responsibilities of the persons to whom it is to be sent."

Amendment of article 29 of the principal Act.

14. Sub-article (8) of article 29 of the principal Act, shall be deleted.

Amendment of article 30 of the principal Act.

15. Paragraph (b) of article 30 of the principal Act, shall be substituted by the following:

"(b) make available to the public, in paper or in electronic form,".

Amendment of article 34 of the principal Act.

16. Article 34 of the principal Act, shall be amended as follows:

(a) the first proviso of sub-article (4) thereof, shall be substituted by the following:

"Provided that the said officers, auditors or experts may divulge such information for the purpose of the performance of their duties, or the exercise of their functions, only in summary and collective form as specified in sub-article (4), or when lawfully required to do so, by any court or under a provision of any law:";

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

"(8) The competent authority, when processing personal data for the purposes of the Act and any regulations and, or Banking Rules issued thereunder, shall do so in accordance with any applicable legislation on data protection."

17. Immediately after article 34 of the principal Act as amended, there shall be added the following new article:

Addition of article 34A to the principal Act.

"Data protection. 34A. (1) Credit institutions may, when necessary to safeguard the prevention, investigation and detection of payment fraud, process personal data.

(2) The provision of information to individuals about the processing of personal data, the processing of such personal data and any other processing of personal data for the purposes of this Act and any regulations and, or Rules issued thereunder shall be carried out in accordance with any applicable data protection legislation.

(3) Unless otherwise permitted under other provisions of this Act and under applicable legislation, credit institutions shall only access, process and retain personal data necessary for the provision of their services with the explicit consent of those making use of their services."

18. Immediately after article 36 of the principal Act, there shall be added the following new articles:

Addition of articles 37 and 38 to the principal Act.

"Complaints. 37. Any complaints made by any person making use of a payment service provided by a credit institution or by other interested third parties, including consumer associations within the meaning of the Consumer Affairs Act, in relation to any alleged infringements of the provisions of this Act transposing the Payment Services Directive by a credit institution licensed in terms of this Act, or an agent or a branch established in Malta under the right of establishment of a credit institution in another Member State, shall be submitted to the Arbiter in terms of the Arbiter for Financial Services Act.

Cap. 378.

Cap. 555.

C 3062

Transitory provisions relating to the Payment Services Directive.

38. (1) Credit institutions that before 12 January 2016, have performed in Malta activities of payment initiation service providers and account information service providers shall not until eighteen months after the date of entry into force of the regulatory technical standards referred to in Article 98 of the Payment Services Directive, be prohibited from continuing to perform such activities in Malta in accordance with the currently applicable regulatory framework.

(2) Until credit institutions acting as account servicing payment service providers comply with the regulatory technical standards referred to in Article 98 of the Payment Services Directive, such credit institutions shall not block or obstruct the use of payment initiation services or account information services for the accounts that they are servicing."

PART II AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

Amendments to the Financial Institutions Act. Cap. 376.

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

Substitution of article 2 of the principal Act.

20. Article 2 of the principal Act, shall be substituted by the following:

"Interpretation.

2. (1) In this Act, unless the context otherwise requires:

"account information service" means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

"account information service provider" means a payment service provider that has been registered in accordance with this Act or that holds an equivalent registration in another country in terms of the Payment Services Directive to provide solely account information services;

"account servicing payment service provider" means a payment service provider providing and maintaining a payment account for a payer;

"acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions that results in a transfer of funds to the payee;

"agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule, other than issuing electronic money;

Cap. 555. "Arbiter" means the Arbiter for Financial Services appointed under article 14 of the Arbiter for Financial Services Act;

"authentication" means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;

"average outstanding electronic money" means the average total amount of financial liabilities related to the electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month, and applied for that calendar month;

"body corporate" means a body of persons having a legal personality distinct from that of its members;

"branch" means a place of business other than the head office which is a part of a financial institution not having a legal personality and which carries out directly some or all of the transactions as licensed or registered, inherent in the business of a financial institution; all the places of business set up in Malta by a financial institution with a head office in another Member State shall be regarded as a single branch;

Cap. 204. "Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;

"close links" shall have the same meaning as that assigned to it in paragraph (38) of Article 4(1) of the CRR;

"Commission Delegated Regulation (EU) No 241/2014" means Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, as may be amended from time to time;

"Common Equity Tier 1 capital" shall have the same meaning as that assigned to it in Article 50 of the CRR;

Cap. 386. "company" means a limited liability company constituted in Malta in accordance with the Companies Act or any law which may from time to time be in force;

Cap. 330. "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

Cap. 204. "consumer" means a natural person who in payment service contracts covered by the provisions of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act is acting for purposes other than his or her trade, business or profession;

"control" in relation to a body corporate is the power to determine in any manner the financial and operating policies of the body corporate;

"controller" is a person who alone or together with others exercises control in relation to a body corporate;

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, 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;

"credit facility" means the lending of a sum of money by way of an advance, overdraft or loan, or any other line of credit, including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances, bills of exchange endorsed *pour aval* and financial leasing;

Cap. 371.

"credit institution" shall have the same meaning as that assigned to it in the Banking Act;

"credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider that holds the payer's payment account, based on an instruction given by the payer;

"CRR" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, 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;

"digital content" means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and that do not include in any way the use or consumption of physical goods or services;

"Directive 86/635/EEC" means Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, as 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;

"Directive 2002/21/EC" means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, 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;

"Directive 2004/39/EC" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, 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;

"Directive 2008/48/EC" means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as 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;

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, 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;

"Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"director" includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director; and in respect of a company registered or incorporated outside Malta, includes a member of a local board or agent or representative of that company;

"direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider, or to the payer's own payment service provider;

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

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993, and as amended by any subsequent acts;

"electronic communications network" means a network as defined in paragraph (a) of Article 2 of Directive 2002/21/EC;

"electronic communications service" means a service as defined in paragraph (c) of Article 2 of Directive 2002/21/EC;

"electronic money" means electronically, including magnetically stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and that is accepted by a person other than the financial institutions that issued the electronic money;

"Electronic Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, 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;

"electronic money institution" means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money;

"European regulatory authority" means a body that is in another Member State and is empowered by law or regulation to supervise payment institutions, electronic money institutions and, or account information service providers;

"European right" means the right of establishment and, or the freedom to provide services;

"financial institution" means any person who regularly or habitually undertakes the carrying out of any activity listed in the First Schedule for the account and at the risk of the person carrying out the activity and who is licensed or registered under this Act;

"Financial Institutions Rules" means a Rule issued by the competent authority to regulate financial institutions in terms of the powers under this Act, and "Rule" shall be read accordingly;

Cap. 330.

"Financial Services Tribunal" or "Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act;

"framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and that may contain the obligation and conditions for setting up a payment account;

Cap. 373.

"funding of terrorism" has the same meaning as that assigned to it by the Prevention of Money Laundering Act, as may be amended from time to time;

"funds" means banknotes and coins, scriptural money and electronic money;

"group" means a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU or undertakings as defined in Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014 that are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of the CRR;

Cap. 386.

"holding company" or "parent company" has the same meaning as that assigned to the term "parent company" in the Companies Act;

"home Member State" means either of the following:

(a) the Member State in which the registered office of the payment service provider is situated; or

(b) if the payment service provider has no registered office under its national law, the Member State in which its head office is situated;

"host Member State" means the Member State other than the home Member State in which a payment service provider has an agent or a branch, or provides payment services;

"initial capital" means paid up capital and reserves as defined in a Financial Institutions Rule;

"issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;

"licence" means a licence granted under this Act to provide any of the activities listed in the First Schedule;

"Member State" means a Member State of the European Union and includes an EEA State;

"the Minister" means the Minister responsible for the regulation of Financial Services;

Cap. 373. "money laundering" has the same meaning as that assigned to it by the Prevention of Money Laundering Act, as may be amended from time to time;

"money remittance" means a payment service where funds are received from a payer without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee and, or where such funds are received on behalf of and made available to the payee;

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

"outsourcing" means the use of a third party (the outsourcing service provider) by a financial institution to perform activities and, or operational functions that would normally be undertaken by the financial institution;

"outsourcing service provider" means a supplier of goods, services or facilities, and which may be an affiliated entity within a corporate group or an entity that is external to the group;

"overseas regulatory authority" means an authority that in a country or territory outside Malta exercises any function corresponding to the functions of the competent authority under this Act;

"own funds" means funds as defined in paragraph 118 of Article 4(1) of the CRR where at least 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 capital is equal to or less than one third of Tier 1 capital;

"PAD" means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as may be amended from time to time and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"payee" means a person who is the intended recipient of funds that have been the subject of a payment transaction;

"payer" means a person who holds a payment account and allows a payment order from that payment account or where there is no payment account, a person who gives a payment order;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment initiation service" means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

C 3072

"payment initiation service provider" means a payment service provider that has been licensed under this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive to provide payment initiation services;

"payment institution" means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive to provide and execute payment services throughout the European Union;

"payment instrument" means any personalised device and, or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;

"payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

"payment service" means any business activity set out in paragraph 2 of the Second Schedule;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, 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;

"payment service provider" means:

Cap. 371.

(a) credit institutions, including branches thereof as defined in article 2(1) of the Banking Act where such branches are located in the European Union, irrespective of whether the head offices of those branches are located within the European Union or in accordance with Article 47 of the CRD and national law, if they are located outside the European Union;

(b) electronic money institutions, being companies that have been granted authorisation under Title II of the Electronic Money Directive to issue electronic money, including branches thereof, in accordance with Article 8 of that Directive and national law, where such branches are located within the European Union and their head offices are located outside the European Union, in so far as the payment services provided by those branches are linked to the issuance of electronic money;

(c) post office giro institutions that are entitled under national law of any Member State to provide payment services;

(d) payment institutions;

(e) account information service providers;

(f) the ECB and national central banks when not acting in their capacity as monetary authority or other public authorities; or

(g) Member States or their regional or local authorities when not acting in their capacity as public authorities;

"payment service user" means a person making use of a payment service in the capacity of payer, payee or both;

"payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and, or settlement of payment transactions;

C 3074

"payment transaction" means an act, initiated by the payer or on his behalf by the payee, of placing, transferring, or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

"personalised security credentials" means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;

"qualifying shareholding" shall have the same meaning as that assigned to it in paragraph (36) of Article 4(1) of the CRR:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account:

Provided further that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis in terms of paragraph 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition;

"reconstruction" has the same meaning as that assigned to it by the Companies Act;

"registration" means a registration granted under this Act to provide solely account information services in terms of this Act;

Cap. 386.

"Regulation (EC) No 1606/2002" means Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, 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;

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

"subsidiary" shall have the same meaning as that assigned to "subsidiary undertaking" in the Companies Act;

Cap. 386.

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

"Tier 1 capital" shall have the same meaning as that assigned to in Article 25 of the CRR;

"Tier 2 capital" shall have the same meaning as that assigned to it in Article 71 of the CRR;

"trade bills" means bills of exchange and promissory notes.

(2) In case of any conflict between the English and the Maltese texts of this Act, the English text shall prevail.

(3) The provisions of this Act shall be without prejudice to the provisions of Directive 2008/48/EC as transposed in the Consumer Credit Regulations, other relevant European Union law or national measures regarding conditions for granting credit to consumers not harmonised by the Payment Services Directive that comply with European Union Law."

S.L. 378.12.

C 3076

Substitution of the heading 'Licensing Requirements of the principal Act.

21. Immediately after article 2 of the principal Act, the heading "LICENSING REQUIREMENTS" of the principal Act, shall be substituted by the following:

"LICENSING AND REGISTRATION REQUIREMENTS."

Substitution of article 3 of the principal Act.

22. Article 3 of the principal Act, shall be substituted by the following:

"Activities carried out by financial institutions.

3. (1) No activities listed under the First Schedule of this Act, other than account information services, shall be transacted regularly or habitually, in or from Malta, except by a company that is in possession of a licence granted under this Act by the competent authority:

Provided that the activities listed under the First Schedule of this Act, other than account information services, may also be transacted in or from Malta, by a legal person that is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive and the Electronic Money Directive.

(1A) No account information services shall be transacted regularly or habitually in or from Malta, except by a natural person or a company in possession of a registration granted under this Act by the competent authority:

Provided that account information services may also be transacted in or from Malta, by a natural or legal person in possession of a registration granted by another Member State under the Payment Services Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive:

Provided further that a financial institution licensed in terms of article 4(1) shall not require a registration in accordance with this sub-article, in order to provide account information services.

(2) For the purposes of sub-article (1) and subject to the provisions of sub-article (3), a person shall not be deemed to be a financial institution by reason of the fact that the person either:

(a) belongs to a group and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to companies which are not banks or financial institutions and that belong to the same group;

(b) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to other undertakings, which are not banks or financial institutions, and all such undertakings are controlled directly or indirectly by the same person;

(c) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or 10 thereof, to a person which is not a bank or financial institution, that directly or indirectly controls it; or

(d) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due:

Provided that for the purposes of this sub-article, a person shall be deemed to control an undertaking if such person:

(i) is a "parent company" as defined in article 2(2)(a) of the Companies Act; or

(ii) has all of the following characteristics:

(aa) power over the undertaking, based on the current ability to direct the relevant activities which significantly affect returns;

(bb) exposure, or right to variable returns from its involvement with the undertaking; and

(cc) the ability to use its power over the undertaking to affect the amount of the person's returns.

For the purposes of this sub-article:

"person" means a natural person or an undertaking; and

"undertaking" means a body corporate or incorporate which carries on a trade or business.

(2A) Sub-article (1) shall not apply to persons that carry out any of the following activities:

(a) payment transactions effected exclusively in cash directly by the payer to the payee, without any intermediary intervention;

(b) payment transactions effected by the payer to the payee through a commercial agent authorised by means of an agreement to negotiate or conclude the sale or purchase of goods or services, exclusively on behalf of the payer or the payee;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just prior to the execution of the payment transaction, by means of a payment for the purchase of goods or services;

(f) cash-to-cash currency exchange operations, where the funds are not held on a payment account;

(g) payment transactions based on any of the following documents drawn on the payment service provider with the scope of placing funds at the disposal of the payee:

(i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(ii) paper cheques similar to those referred to in sub-paragraph (i) and governed by the laws of Member States that are not a party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(iv) paper-based drafts similar to those referred to in sub-paragraph (iii) and governed by the laws of Member States that are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(v) paper-based vouchers;

(vi) paper-based travellers' cheques;

(vii) paper-based postal money orders as defined by the Universal Postal Union;

(h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and, or central banks and other participants of the system and payment service providers, without prejudice to Article 35 of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act;

Cap. 204.

(i) payment transactions related to securities asset servicing including dividends, income or other distributions, redemption or sale carried out by persons referred to in paragraph (h), by investment firms, credit institutions, collective investment undertakings, or asset management companies providing investment services and, or any other entities allowed to have the custody of financial instruments;

(j) services provided by technical service providers that support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;

(k) services based on specific payment instruments that can be used only in a limited way, provided they meet one of the following conditions:

C 3080

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer, or within a limited network of service providers under a direct commercial agreement with a professional issuer;

(ii) instruments that can be used only to acquire a very limited range of goods or services;

(iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes, to acquire specific goods or services from suppliers having a commercial agreement with the issuer:

Provided that, service providers carrying out either of the activities referred to in sub-paragraphs (i) and (ii) or both, for which the total value of payment transactions executed over the preceding twelve months exceeds the amount of one million euro (€1,000,000), shall send an annual notification to the competent authority containing a description of the services offered, specifying under which exclusion referred to in sub-paragraphs (i) and (ii), the activity is considered to be carried out:

Provided further that, on the basis of such a notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in this paragraph where the activity does not qualify as a limited network, and shall inform the service provider accordingly;

(1) payment transactions by a provider of electronic communication networks or services, provided in addition to electronic communication services for a subscriber to the network or service:

(i) for purchase of digital content and voice-based services regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) performed from or by means of an electronic device and charged to the related bill within the framework of a charitable activity, or for the purchase of tickets:

Provided that the value of any single payment transaction referred to in sub-paragraphs (i) and (ii) does not exceed fifty euro (€50), and:

- the cumulative value of payment transactions for an individual subscriber does not exceed three hundred euro (€300) per month; or

- where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed three hundred euro (€300) per month:

Provided further that, service providers carrying out an activity referred to in this paragraph shall send a notification to the competent authority and provide the competent authority with an annual audit opinion, testifying that the activity complies with the limits set out in this paragraph;

(m) payment transactions carried out between payment service providers, their agents or branches for their own account;

(n) payment transactions and related services between a parent undertaking and its subsidiary, or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider, other than an undertaking belonging to the same group; and, or

(o) cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issuers, that are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as referred to in the Second Schedule:

Provided that any person providing such cash withdrawal service shall abide by any requirements, as may be specified in a directive issued by the Central Bank under the Central Bank of Malta Act, transposing Article 3(o) of the Payment Services Directive.

(3) In the event of reasonable doubt as to whether an activity constitutes the business of a financial institution, or whether the business of a financial institution is being transacted or otherwise in or from Malta by any person, the matter shall be conclusively determined by the competent authority.

(3A) (a) A person that is neither a payment service provider, nor is explicitly excluded from the scope of this Act, shall be prohibited from providing payment services.

(b) Notwithstanding paragraph (a) of this sub-article, the competent authority shall inform the EBA of the services notified pursuant to paragraphs (k) and (l) of sub-article (2A), stating under which exclusion the activity is carried out.

(c) The description of the activity notified under paragraphs (k) and (l) of sub-article (2A), shall be made publicly available in the public register referred to in article 8D and the electronic central register developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive.

(4) The granting of a licence or registration as applicable, shall be subject to an annual fee, as the competent authority may determine from time to time.

(5) A licensed or registered financial institution may not take deposits or other repayable funds from the public within the meaning of the Banking Act.

Cap. 371.

(6) Where a person is already licensed under the Banking Act or the investment Services Act to carry out an activity listed in the First Schedule, such person shall not require a licence or registration for such an activity under this Act."

Cap. 371.
Cap. 370.

Substitution of article 3A of the principal Act.

23. Article 3A of the principal Act, shall be substituted by the following:

"Exemption for financial leasing of ships and aircrafts.

3A. (1) Notwithstanding the provisions of article 3, any entity whether established or operating in Malta or otherwise, carrying out the activity of financial leasing in or from Malta, and all related transactions involving:

Cap. 503. (a) an aircraft registered or to be registered in the National Aircraft Register as defined in the Aircraft Registration Act or registered in any other jurisdiction whatsoever and any aircraft engine; or

Cap. 234. (b) a ship registered or to be registered in the register as defined in the Merchant Shipping Act or registered in any other jurisdiction whatsoever, shall not require a licence from the competent authority for the purposes of this Act, where:

(i) such entity is owned and controlled, or is a subsidiary of, or exclusively funded by; and

(ii) any relevant financial leasing transaction, or the relevant underlying asset, being an aircraft, an aircraft engine, or a ship, is exclusively financed by persons or entities as described in Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, or persons or entities who are recognised as eligible counter-parties in accordance with Article 30 of such Directive 2014/65/EU:

Provided that in the interpretation and application of sub-paragraphs (i) and (ii) and in order to ensure compliance with their requirements, where the ownership of such entity as described in sub-paragraph (i), or of the entity financing the transaction indicated in sub-paragraph (ii), or its underlying assets is vested in a trustee, or is otherwise held by another intermediary on a fiduciary basis, the criteria described in Annex II of Directive 2014/65/EU shall apply by reference to the beneficial interests involved, and not to the said trustee or intermediary.

(2) The provisions of this article shall only apply to an entity where the business of such entity is limited to the financial leasing of aircrafts, aircraft engines, or ships as described in sub-article (1) and to activities that are ancillary thereto, to the exclusion of other types of assets and activities otherwise falling within the purposes of this Act."

24. Article 4 of the principal Act, shall be substituted by the Substitution of article 4 of the principal Act.

C 3084

following:

"Application for a licence or a registration.

4. (1) Any company with the intention of transacting regularly or habitually, activities listed under the First Schedule of this Act in or from Malta, other than account information services, shall before regularly or habitually transacting any such activities, apply in writing to the competent authority for a licence under this Act:

Provided that a legal person that is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive, may exercise its European rights in accordance with the provisions of the Payment Services Directive and the Electronic Money Directive.

(1A) Any natural person or company with the intention of transacting regularly or habitually, account information services shall, before regularly or habitually transacting any such services, apply in writing to the competent authority for a registration under this Act:

Provided that a natural or legal person that is in possession of a registration granted by another Member State under the Payment Services Directive, may exercise its European rights in accordance with the provisions of the Payment Services Directive.

(2) All applications for a licence or registration as applicable, shall be in such form and accompanied by such information and shall conform to such conditions as shall be prescribed from time to time by any Financial Institutions Rule, and an application may only be withdrawn, by written notice given to the competent authority at a time before the licence or registration being applied for has been granted or refused.

(3) The competent authority shall have the power to require any person to provide such information as it shall deem necessary, for the purposes of determining an application for a licence or a registration, as applicable.

(4) The competent authority shall only grant a licence or a registration if the information and evidence accompanying the application complies with all the requirements set out in the Financial Institutions Rule referred to in sub-article (2) and if the competent authority's overall assessment is favourable, after having scrutinised the application.

(5) The competent authority may, where relevant, before granting a licence or a registration, consult the Central Bank or other relevant public authorities.

(6) A licence to provide payment services or to issue electronic money and a registration to provide account information services, shall be valid in all Member States and shall allow the payment institution, the electronic money institution, or the account information service provider concerned, to provide the services that are covered by the licence or registration throughout the European Union, pursuant to a European right."

25. Article 5 of the principal Act, shall be substituted by the following:

Substitution of article 5 of the principal Act.

"Granting of a licence or a registration.

5. (1) No company shall be granted a licence in terms of this Act unless:

(a) its initial capital whether in euro or in any other currency acceptable to the competent authority are equal to such amount, as may be established by the competent authority in any Financial Institutions Rule and as may be appropriate for the activities to be undertaken by the applicant;

(b) there are at least two individuals, or any other number of individuals as may be otherwise determined by the competent authority, who will effectively direct the business of the financial institution from Malta;

(c) the competent authority is satisfied that the company has sound and prudent management and has robust governance arrangements that include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the company, as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

(d) the competent authority is satisfied that taking into account the need to ensure the sound and prudent management of the company, shareholders having a qualifying holding, controllers and all persons who will effectively direct the business of the financial institution are suitable persons to ensure its sound and prudent management;

(e) the competent authority is satisfied that, where there are close links between the company and another person or persons, such links do not prevent it from the effective exercise of its supervisory functions;

(f) the competent authority is satisfied that, where there are close links between the company and another person or persons, the laws, regulations or administrative provisions of a third country governing one or more persons with which the company has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions; and

(g) it satisfies any other conditions for the granting of a licence, as may be specified in a Financial Institutions Rule:

Provided that the company shall, after being licensed under this Act, inform the competent authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this sub-article on a continuous basis.

(1A) No natural person or company shall be granted a registration to carry out account information services unless:

(a) the competent authority is satisfied, where applicable, that qualifying shareholders, controllers and all persons who effectively direct the business of the account information service provider are suitable persons to ensure its sound and prudent management;

(b) the competent authority is satisfied that the natural person or company has sound and prudent management and has robust governance arrangements that include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the natural person or company, as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

(c) the competent authority is satisfied that, where there are close links between the natural persons or the company and another person or persons, such links do not prevent it from the effective exercise of its supervisory functions;

(d) the competent authority is satisfied that where there are close links between the natural person or the company and another person or persons, the laws, regulations or administrative provisions of a third country governing one or more persons with which the company has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions; and

(e) the natural person or company satisfies any other conditions for the granting of a registration as may be specified in a Financial Institutions Rule:

Provided that the natural person or company shall, after being registered under this Act, inform the competent authority forthwith of any change in circumstances concerning the application, and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this sub-article on a continuous basis.

(1B) A natural person or a company who applies for a licence or a registration as applicable in terms of this article, to provide payment initiation services and, or account information services, shall as a condition for the granting of its licence or registration, as applicable, also be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability. With respect to an applicant who intends to provide payment initiation services, the required professional indemnity insurance or other comparable guarantee against liability, shall be required to ensure that it can cover its liabilities as specified in Articles 73, 89, 90 and 92 of the Payment Services Directive, as transposed in directives issued by the Central Bank under the Central Bank of Malta Act. With respect to an applicant who intends to provide account information services, the required professional indemnity insurance or other comparable guarantee against its liability shall be required *vis-à-vis* the account servicing payment service provider or the payment service user resulting from the unauthorised or fraudulent access to, or the unauthorised or fraudulent use of payment account information:

Provided that the amount of the professional indemnity insurance or other comparable guarantee referred to in this sub-article shall be calculated in accordance with the method as may be established in a Financial Institutions Rule:

Provided further that any information required by the competent authority in order to calculate the amount of the professional indemnity insurance or other comparable guarantee required in terms of this sub-article shall be provided to the competent authority in terms of a Financial Institutions Rule.

(1C) Financial institutions required to hold a professional indemnity insurance or other comparable guarantee in accordance with sub-article (1B) shall review, and if necessary recalculate, the minimum monetary amount of their professional indemnity insurance or other comparable guarantee at least on an annual basis and as may be established in a Financial Institutions Rule.

(2) The competent authority shall determine each application for a licence or a registration within three months of receipt of the application or, in the event that the application does not comply with article 4(2) or additional information is required, within three months of compliance with the said sub-article or the submission of the information required, as the case may be, whichever is the later.

(3) The competent authority may grant or refuse to grant a licence or a registration applied for under this Act, and where it refuses an application, it shall inform the applicant in writing with the reasons for the refusal.

(4) (a) In granting a licence or a registration, the competent authority may subject a financial institution to such conditions as it may deem appropriate and having granted a licence, it may from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act, the competent authority may from time to time, issue and publish a Financial Institutions Rules in terms of article 13.

C 3090

(5) Where the competent authority for any reason fails to determine an application for a licence or a registration within the time prescribed under sub-article (2), such fact shall be deemed to constitute a refusal to grant a licence or a registration, as applicable.

(6) Where a licensed or registered financial institution provides any of the services referred to in the First Schedule and at the same time, intends to engage in activities other than those listed in the First Schedule, it shall not do so without the prior consent of the competent authority. The competent authority may require the establishment of a separate entity for the carrying out of the business for which the financial institution is licensed or registered, where the activities in which the financial institution is engaged or intends to engage and that are not listed in the First Schedule, impair or are likely to impair, either the financial soundness of the financial institution or the ability of the competent authority to monitor the financial institution's compliance with all obligations set out in this Act and any regulations and, or Rules issued thereunder.

(7) A financial institution licensed or registered in Malta shall have its head office and its registered office in Malta and shall carry out at least part of its licensable and, or registrable activities in Malta:

Provided that where a registered account information service provider is a natural person, such a natural person shall have its contact address in Malta."

Substitution of article 5A of the principal Act.

26. Article 5A of the principal Act, shall be substituted by the following:

"Own funds.

5A. (1) Without prejudice to the minimum level of the capital requirements as may be set out in a Financial Institutions Rule, the own funds of a financial institution, other than an account information service provider, shall not fall below the amount of initial capital as may be set out in a Financial Institutions Rule, or the amount of own funds as calculated in accordance with a Financial Institutions Rule issued by the competent authority, whichever is the higher.

(2) Notwithstanding the initial capital requirements, financial institutions providing any of the services listed in the Second or the Third Schedule, except for payment initiation services and account information services, shall hold at all times, own funds calculated in accordance with one or more, where applicable, of the methods as may be set out in a Financial Institutions Rule.

(2A) Where a payment institution or an electronic money institution belongs to the same group as another payment institution, electronic money institution, credit institution, investment firm, asset management company or insurance undertaking, or where a payment institution or an electronic money institution carries out activities other than providing payment services or issuing electronic money, as applicable, the multiple use of elements eligible for own funds shall be prohibited.

(2B) In the event that the conditions set out in Article 7 of the CRR are satisfied, the competent authority may choose not to apply sub-article (2) to payment institutions or electronic money institutions, that are included in the consolidated supervision of the parent credit institutions pursuant to the CRD.

(3) Where the amount of own funds of a financial institution, other than an account information service provider, falls below the amount established under sub-articles (1) and (2), the competent authority shall require the financial institution to take the necessary measures to restore the level of own funds within such period as the competent authority may determine:

Provided that if the level of own funds of a financial institution, other than an account information service provider, is not restored within the determined period, the competent authority may, in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 6."

27. Article 6 of the principal Act, shall be amended as follows:

Amendment of
article 6 of the
principal Act.

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

"Restriction, suspension and withdrawal of a licence or a registration.";

C 3092

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

"(1) The competent authority may withdraw, suspend or restrict a licence or registration issued to a financial institution where:

(a) the financial institution expressly renounces the licence or registration;

(b) the financial institution does not commence business pursuant to the licence or registration as applicable, within twelve months of its issue, or any later date as may be specified by the competent authority, or has ceased to engage in business for more than six months, or for such other period of time as may be determined by the competent authority;

(c) (i) the financial institution has obtained the licence or registration through false statements or any other irregular means; or

(ii) where any document or information accompanying an application for a licence or a registration or any information given in connection therewith is false in any material particular; or

(iii) where the financial institution conceals from, or fails to notify or submit to the competent authority, any document or information or change therein, which it was its duty to reveal or notify under this Act and any regulations and, or Rules issued thereunder;

(d) the financial institution no longer fulfils the conditions required for the granting of the licence or registration, or any conditions stipulated in any Financial Institutions Rule, or fails to inform the competent authority on major developments in this respect;

(e) the financial institution is declared bankrupt or goes into liquidation, or enters into a composition with its creditors or is otherwise dissolved;

(f) the financial institution has ceased to operate as a result of a merger with another financial institution;

(g) the financial institution is a branch of an institution incorporated outside Malta, and the overseas

regulatory authority in the country of incorporation, withdrew the authorisation or registration of the institution;

(h) the financial institution would constitute a threat to the stability of the payment system by continuing its payment services or electronic money;

(i) the financial institution fails or is likely to fail to comply with any of the provisions of this Act and any regulations or Financial Institutions Rules issued thereunder or with the conditions under which the licence or registration is granted or any directive as may be issued by the Authority;

(j) the financial institution has insufficient assets to cover its liabilities; or

(k) the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability or integrity of the financial system.";

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

"(2) Where the competent authority withdraws, suspends or restricts a licence or registration, it shall inform the financial institution of the reasons for the withdrawal, suspension or restriction of the licence or registration.";

(d) sub-article (3) thereof, shall be deleted;

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

"(4) Restrictions of a licence or a registration issued to a financial institution, that are imposed by the competent authority pursuant to sub-article (1), shall be such restrictions as the competent authority shall consider appropriate for the proper compliance by the financial institution with the provisions of this Act and any regulations and, or Rules issued thereunder, in addition to the conditions, if any, of its licence or registration and the protection of the integrity of the country's financial system, and may include:

C 3094

(a) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the First Schedule; or

(b) the requirement that the financial institution be permitted to undertake any transaction or transactions or any activity listed in the First Schedule only upon such terms and conditions, as the competent authority may prescribe.";

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

"(5A) Where the competent authority varies or removes any restrictions imposed under this article, it shall inform the financial institution of the reasons for the variation or removal of any such restrictions.";

(g) sub-article (6) thereof, shall be substituted by the following:

"(6) A licence granted to a branch of an institution incorporated outside Malta, may only be withdrawn after consultation with the overseas regulatory authority of the country of incorporation, unless the competent authority decides that the matter is urgent, or that there are circumstances which make such prior consultation inappropriate.";

(h) sub-article (7) thereof, shall be substituted by the following:

"(7) Upon the restriction or withdrawal of a licence or a registration of a financial institution incorporated in Malta, the competent authority shall inform the overseas regulatory authorities of the country in which the financial institution or its subsidiaries are carrying on any activity under the First Schedule or any other activity as the competent authority may deem complementary to the institution's activities in Malta.";

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

"(8) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make

public any restriction imposed under this article.";

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

"(9) The competent authority shall publish any withdrawal or suspension of a licence or registration, including in the public register referred to in article 8D, and in the electronic central register, developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive."

28. Article 7 of the principal Act, shall be substituted by the following:

Substitution of article 7 of the principal Act.

"Notification of any variation, restriction, suspension or withdrawal of a licence or registration.

7. (1) Where the competent authority proposes:

(a) to vary any condition to which the licence or registration is subject, or to impose a condition thereon; or

(b) to withdraw, suspend or restrict, a licence or registration or to vary any restriction thereon,

it shall serve written notice of its intention on the financial institution and shall specify the grounds upon which the competent authority intends to take such action.

(2) Every notice given under sub-article (1), shall state that the financial institution concerned may, within such reasonable period after service thereof as may be stated in the notice, being a period of not less than forty-eight hours and not more than thirty days, make representations in writing to the competent authority giving reasons why such action should not be taken, and the competent authority shall consider any such representations before arriving to a final decision.

(3) Unless the competent authority considers that the matter is urgent, it shall not impose or vary any restriction or condition, or withdraw or suspend a licence or a registration before the expiry of the period as set out in sub-article (2).

(4) The competent authority shall, as soon as practicable, notify its final decision in writing to any financial institutions to whom notice has been served under sub-article (1)."

29. Article 7A of the principal Act, shall be substituted by the

Substitution of article 7A of the principal Act.

C 3096

following:

"Changes in information.

7A. A financial institution licensed or registered under this Act shall provide the competent authority with particulars of any changes in the information provided under this Act and any regulations and, or Rules issued thereunder, as soon as such financial institution becomes aware of such change."

Addition of articles 7B and 7C to the principal Act.

30. Immediately after article 7A of the principal Act as substituted, there shall be added the following new articles:

"Power to issue directives.

Cap. 330.

7B. (1) Without prejudice to any of the powers conferred under this Act, the competent authority may in order to carry out the functions and duties prescribed by the Malta Financial Services Authority Act and by this Act and any regulations and, or Rules issued thereunder, whenever it deems necessary, give by notice in writing such directives as it may deem appropriate in the circumstances.

(2) Any person to whom a notice is given in accordance with sub-article (1), shall comply therewith and give effect to any such directive within the time and in the manner stated in the directive.

(3) The power to give directives under this article shall include the power to vary, alter, add or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

Information to be provided to customers or potential customers.

7C. A financial institution licensed or registered under this Act shall provide its customers or potential customers, including in any form or medium of marketing activity or communication disseminated to the public by means of all types of media, with a statement of the fact that the financial institution is licensed or registered, as applicable by the competent authority, together with the address of the competent authority."

31. Immediately after article 7C of the principal Act as added, the heading "OBLIGATIONS OF LICENCE HOLDERS AND OTHERS" of the principal Act, shall be substituted by the following:

Substitution of the heading 'Obligations of Licence Holders and Others' of the principal Act.

"OBLIGATIONS OF FINANCIAL AND OTHER INSTITUTIONS."

32. Article 8 of the principal Act, shall be amended as follows:

Amendment of article 8 of the principal Act.

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

"Opening of branches and subsidiaries.";

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

"(1) A financial institution, other than those exercising a European right, shall inform the competent authority in writing, before opening a new branch in Malta.";

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

"(2) A financial institution intending to open a branch or an office outside Malta to provide any of the activities listed in the First Schedule, with the exception of activities 4 or 10 thereof, and a financial institution intending to open a branch or office in a third country in order to provide any of the activities listed in the First Schedule, shall require the prior written approval of the competent authority.";

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

"(2A) A financial institution intending to provide the activities listed in the Second or Third Schedules in another Member State in exercise of a European right, shall inform the competent authority in accordance with the procedure set out in Article 28 of the Payment Services Directive.

Opening of subsidiaries.

(2B) A financial institution intending to set up or acquire a subsidiary in or outside Malta shall require the prior written approval of the competent authority.";

(e) sub-articles (3) to (6) thereof, shall be deleted;

C 3098

(f) immediately after sub-article (6) thereof, there shall be added the following new sub-article:

"Information to customers and potential customers. (7) Financial institutions shall ensure that branches acting on their behalf inform their customers and potential customers of this fact."

Substitution of article 8A of the principal Act.

33. Article 8A of the principal Act, shall be substituted by the following:

"Agency Distribution arrangements.

8A. (1) A financial institution intending to provide any of the activities referred to in the Schedules to this Act through an agent or, in the case of an electronic money institution intending to appoint a distributor to distribute or redeem electronic money, shall communicate the following information to the competent authority:

(a) the name and address of the agent and, or distributor;

(b) a description of the internal control mechanisms that will be used by the agent in order to comply with the obligations in relation to money laundering and the funding of terrorism under any anti-money laundering and combatting the funding of terrorism legislation;

(c) the identity of directors and persons responsible for the management of the agent to be used in the provision of the activities referred to in the Schedules to this Act, and for agents other than payment service providers, evidence that they are fit and proper persons;

(d) the activities referred to in the Schedules to this Act that are carried out by the financial institution and for which the agent is mandated; and

(e) where applicable, the unique identification code or number of the agent or distributor:

Provided that a person who is appointed as agent of a financial institution shall only act as agent in respect of those activities for which the financial institution to which he will act as agent, is licensed or registered under this Act.

(1A) In the event of material changes to the particulars communicated to the competent authority at the initial notification pursuant to paragraph (b) of sub-article (1), the financial institution concerned shall provide the competent authority with the updated information without delay.

(2) An electronic money institution shall not issue electronic money through agents:

Provided that an electronic money institution may, subject to such conditions as may be established by the competent authority, distribute and redeem electronic money through agents and, or distributors.

(3) The competent authority may subject the person who will be appointed as agent to any of the obligations imposed on the financial institution under this Act.

(4) The competent authority shall, within two months of receipt of the information referred to in sub-article (1), communicate to the financial institution whether the agent has been entered in the public register referred to in article 8D:

Provided that, if the competent authority is not satisfied that the information provided is correct, it shall take further action to verify the information before entering the agent in the register:

Provided further that, if after taking action to verify the information, the competent authority is not satisfied that the information provided pursuant to sub-article (1) is correct, it shall refuse to enter the agent in the public register referred to in article 8D and shall inform the financial institution without undue delay.

(4A) An agent may only commence providing the relevant activities upon entry in the public register referred to in article 8D.

(4B) Where a payment institution or an electronic money institution intends to provide payment services in another Member State by engaging an agent or establishing a branch, it shall also follow the procedures set out in Article 28 of the Payment Services Directive.

(5) Where a financial institution licensed or holding an equivalent authorisation in another Member State carries out the activities listed in any of the Schedules in Malta through a branch or by engaging an agent or distributor, the financial institution shall follow the procedures established in any Financial Institutions Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch, agent or distributor, money laundering or the funding of terrorism, is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or the funding of terrorism, it shall inform the Member State in which the financial institution is established, and may refuse to register the branch or agent, or may withdraw the registration of the branch or agent.

(6) Financial institutions shall, without undue delay and in accordance with the procedure provided for in sub-articles (4) and (4A), communicate to the competent authority any changes regarding the use of agents or distributors, including additional agents or distributors.

(7) A financial institution intending to provide its activities through an agent in a third country, shall require the prior written approval of the competent authority.

Information to customers and potential customers.

(8) Financial institutions shall ensure that agents or distributors acting on their behalf inform their customers and potential customers of this fact."

Substitution of article 8B of the principal Act.

34. Article 8B of the principal Act, shall be substituted by the following:

"Outsourcing of operational functions.

8B. (1) Where a financial institution intends to outsource operational functions of its services it shall inform the competent authority accordingly:

Provided that the outsourcing of important operational functions, including IT systems, shall not be undertaken in such a way as to impair materially the quality of the financial institution's internal control and the competent authority's ability to monitor and retrace the financial institution's compliance with all of the obligations established in this Act and any regulations and, or Rules made thereunder.

(2) For the purpose of sub-article (1), an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a financial institution with the requirements of its licence or registration, its other obligations under this Act or any regulations and, or Rules issued thereunder, its financial performance, or the soundness or continuity of its services:

Provided that financial institutions that outsource important operational functions, shall comply with the following conditions:

(a) the outsourcing shall not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the financial institution towards any person making use of its services under this Act and any regulations and, or Rules issued thereunder shall not be altered;

(c) the conditions with which the financial institution must comply with in order to be licensed and remain so in accordance with this Act and any of the regulations and, or Rules issued thereunder, shall not be undermined; and

(d) none of the other conditions subject to which the financial institution's licence or registration was granted shall be removed or modified.

(2A) Financial institutions shall, without undue delay, communicate to the competent authority any changes regarding the use of entities to which activities are outsourced.

(3) The competent authority may issue a Financial Institutions Rule, laying down the requirements for outsourcing service providers and the provision of such outsourced services."

35. Article 8C of the principal Act, shall be substituted by the following:

Substitution of article 8C of the principal Act.

"Liability.

8C. (1) Where financial institutions rely on third parties for the performance of operational functions, those financial institutions shall take reasonable steps to ensure that the requirements of this Act and any regulations and, or Rules issued thereunder are complied with.

C 3102

(2) Financial institutions shall remain fully liable for any acts of their employees, or any agent, branch or entity to whom or to which activities may have been outsourced."

Substitution of article 8D of the principal Act.

36. Article 8D of the principal Act, shall be substituted by the following:

"Public register.

8D. (1) The competent authority shall establish and maintain a public register in which the following are entered:

(a) financial institutions licensed or registered in terms of this Act;

(b) agents of financial institutions in Malta or in another Member State;

(c) branches of financial institutions, established in or outside Malta, if those branches provide services in another Member State;

(d) branches in Malta of payment institutions authorised in another Member State;

(e) branches in Malta of account information service providers authorised in another Member State;

(f) account information service providers registered under this Act exercising their European right to provide services in another Member State;

(g) account information service providers authorised in another Member State exercising their European right to provide services in Malta;

(h) the institutions referred to in paragraphs (4) to (23) of Article 2(5) of the CRD that are entitled under national law to provide payment services;

(i) branches in Malta of electronic money institutions authorised in another Member State;

(j) payment institutions and electronic money institutions licensed under this Act exercising their European right to provide services in another Member State;

(k) payment institutions and electronic money institutions authorised in another Member State exercising their European right to provide services in Malta;

(l) service providers carrying out services based on specific payment instruments that can be used only in a limited way, provided they satisfy any of the following conditions:

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer, or within a limited network of service providers under direct commercial agreement with a professional issuer;

(ii) instruments that can be used only to acquire a very limited range of goods or services; and

(m) service providers carrying out payment transactions by a provider of electronic communication networks or services provided in addition to electronic communication services for a subscriber to the network or service:

(i) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) performed from or by means of an electronic device and charged to the related bill within the framework of a charitable activity, or for the purchase of tickets.

(2) The register referred to in sub-article (1) shall identify the services for which the financial institution is licensed or registered and it shall be publicly available for consultation, accessible online and updated without delay.

(3) Payment institutions shall be listed in the register separately from account information service providers.

(4) The competent authority shall enter in the public register any withdrawal of a licence or registration.

(5) The competent authority shall notify the EBA of the reasons for the withdrawal of any licence or registration.

C 3104

(6) The competent authority shall, without delay, notify the EBA of the information entered in the public register.

(7) The competent authority shall be responsible for the accuracy of the information specified in sub-article (6) and for keeping that information updated."

Substitution of article 8E of the principal Act.

37. Article 8E of the principal Act, shall be substituted by the following:

"Opening of branches having their head office outside the European Union.

8E. (1) In the assessment of an application for the opening of a branch by an electronic money institution having its head office outside the European Union, the competent authority may not apply provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the European Union.

(2) The competent authority shall notify the European Commission of all authorisations for branches of electronic money institutions having their head office outside the European Union as stated in sub-article (1)."

Substitution of article 8F of the principal Act.

38. Article 8F of the principal Act, shall be substituted by the following:

"Issuance and redeemability of electronic money.

8F. (1) Electronic money institutions shall issue electronic money at par value on the receipt of funds.

(2) Upon request by the electronic money holder, electronic money institutions shall redeem at any moment and at par value, the monetary value of the electronic money held without delay.

(3) For the better carrying out of the provisions of this article and to better transpose the provisions of the Electronic Money Directive, the competent authority may, from time to time, issue, amend or revoke Financial Institutions Rules that shall be binding on electronic money institutions as specified therein."

Addition of article 8G to the principal Act.

39. Immediately after article 8F of the principal Act as

substituted, there shall be added the following new article:

"Record-keeping. 8G. Without prejudice to any anti-money laundering or combating the funding of terrorism legislation, or other relevant European Union Law, financial institutions other than account information service providers, shall keep all appropriate records for the purposes of this Act and any regulations and, or Rules issued thereunder for at least five years."

40. Article 9 of the principal Act, shall be substituted by the following:

Substitution of article 9 of the principal Act.

"Notification of new or variation in participation or control.

9. (1) If -

(a) any person takes or intends to take any action to acquire or dispose, directly or indirectly of a qualifying shareholding in a financial institution, or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights, or of the share capital held by that person in that financial institution reaches, exceeds or falls below twenty per centum, thirty per centum or fifty per centum, or so that the financial institution becomes or ceases to be the subsidiary of such person; or

(b) any financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital, or effect any material change in voting rights, without obtaining the prior approval of the competent authority or, if after having obtained such approval it subsequently appears to the competent authority that any of these actions, or the influence exercised by the person who intends to take such action, is operating or is likely to operate to the detriment of the prudent and sound management of the financial institution, without prejudice to the provisions of article 22, the competent authority shall express its opposition and shall have the power to take appropriate measures to rectify the situation.

(1A) The appropriate measures referred to in sub-article (1) may include:

(i) restraining the person or financial institution from taking or continuing the action;

(ii) declaring the action to be null and void;

(iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(iv) restraining the person or financial institution from exercising any rights which the 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;

(v) restraining the person or financial institution from taking any similar action, or any other action within the categories set out in paragraphs (a) and (b) of sub-article (1); and, or

(vi) suspending the exercise of the voting rights attached to the shares held by the shareholders or members of the financial institution in question.

(2) If as a result of an acquisition of shares in a financial institution, the financial institution in which a person proposes to acquire the shareholding would become a subsidiary or be subject to the control of the person acquiring those shares, it shall be within the discretion of the competent authority to consider whether any request made by such person for the approval of the competent authority under the provisions of this article, constitutes a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act and any regulations and, or Rules issued thereunder.

(3) Sub-article (1) shall apply whether or not, any of the relevant shares are listed on a regulated market in terms of the Financial Markets Act, or on an equivalent market in a third country.

(4) (a) Where a person intends to take any action as set out in sub-article (1)(a) or (b), such person shall notify the competent authority in writing of any such decision in advance, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may, by a Financial Institutions Rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person.

(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the said authority shall, regardless of any other administrative penalty or other supervisory measure that may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast, or the possibility of annulling those votes.

(c) Where a person fails to comply with the obligation to provide prior information in accordance with paragraph (a) of this sub-article, the competent authority shall have the power to take appropriate measures in accordance with sub-article (1A).

(5) (a) A financial institution shall notify to the competent authority in writing, the full particulars of any person who is proposed to become a controller or director of the financial institution or any person who is proposed to cease to be a controller or director of the financial institution.

(b) If the competent authority is of the opinion that any person who is or is proposed to become a controller or director of a financial institution is not a suitable person to be a controller or director, the competent authority may make an order requiring such a person to cease to be a controller or director, or restraining such a person from becoming a controller or director.

The competent authority may also issue, amend or revoke any Financial Institutions Rule as may be required in order to better implement the provisions of this article."

41. Article 10A of the principal Act, shall be substituted by the

Substitution of
article 10A of
the principal
Act.

C 3108

following:

"Prohibition of interest.

10A. The granting of interest or of any other benefit related to the length of time during which an electronic money institution holds electronic money shall be prohibited."

Substitution of article 10B of the principal Act.

42. Article 10B of the principal Act, shall be substituted by the following:

"Safeguarding requirements.

10B. (1) A payment institution providing payment services as referred to in paragraphs 2(a) to (f) of the Second Schedule and an electronic money institution shall safeguard all funds received from any person making use of its services, or received through another payment service provider for the execution of payment transactions, or in exchange for electronic money that has been issued.

(2) For the better carrying out of the provisions of this Act on safeguarding requirements, the competent authority may from time to time, issue, amend or revoke any Financial Institutions Rule which shall be binding on financial institutions as specified therein."

Substitution of article 11 of the principal Act.

43. Article 11 of the principal Act, shall be substituted by the following:

"Financial institutions unable to meet obligations.

11. Notwithstanding any investigation provided for in this Act:

(a) where a financial institution considers that it has failed to comply with, or that it is likely to fail to comply with any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the competent authority and the Central Bank in writing;

(b) where the competent authority becomes aware that a financial institution has failed to comply with, or that it is likely to fail to comply with any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the Central Bank in writing;

(c) where the Central Bank becomes aware that a financial institution has failed to comply with, or that it is likely to fail to comply with, any of the provisions of this Act and any regulations and, or Financial Institutions Rules issued thereunder, or with the conditions under which the licence or registration was granted, it shall forthwith inform the competent authority in writing."

44. Immediately after article 11 of the principal Act as substituted, there shall be added the following new article:

Addition of article 11A of the principal Act.

"Management of operational and security risks.

11A.(1) Payment institutions, electronic money institutions and account information service providers shall establish a framework with appropriate mitigation measures and control mechanisms, to manage the operational and security risks relating to the payment services they provide. As part of that framework, payment institutions, electronic money institutions and account information service providers, shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Payment institutions, electronic money institutions and account information service providers shall provide to the Central Bank on an annual basis or at shorter intervals as may be determined by the competent authority in co-operation with the Central Bank, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide, and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) The competent authority shall co-operate with the Central Bank in the assessment and processing of documents referred to in sub-article (2).

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

45. Immediately after article 11A of the principal Act as added, there shall be added the following new article:

Addition of article 11B to the principal Act.

C 3110

"Incident reporting.

11B. (1) In the case of a major operational or security incident and where Malta is the home Member State, payment institutions, electronic money institutions and account information service providers shall notify the Central Bank, without undue delay. Upon receipt of such notification, the Central Bank shall promptly notify the competent authority.

(2) Where the incident has or may have an impact on the financial interests of its payment service users, the payment institution, electronic money institution or the account information service provider concerned shall, without undue delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receipt of the notification referred to in sub-article (1), the Central Bank shall, in co-operation with the competent authority, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

(4) The competent authority shall in cooperation with the Central Bank, cooperate with the EBA and the ECB for the purpose of assessing the relevance of the incident to other relevant European Union and national authorities in accordance with Article 96(2) of the Payment Services Directive.

(5) Where the competent authority receives a notification of a major operational or security incident in accordance with sub-article (1), it shall where appropriate upon the basis of that notification and in cooperation with the Central Bank, take all of the necessary measures to protect the immediate safety of the financial system.

(6) Payment institutions, electronic money institutions and account information service providers shall, at least on an annual basis, provide to the Central Bank statistical data on fraud relating to different means of payment.

(7) The competent authority may issue, amend or revoke any Financial Institutions Rule, as may be required, in order to better implement the provisions of this article."

Substitution of article 12 of the principal Act.

46. Article 12 of the principal Act, shall be substituted by the

following:

"Powers and duties
of the Minister.

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

(a) amend any of the Schedules to this Act;

(b) exempt any person from any one or more provisions of this Act, including an exemption from requiring a licence or a registration under this Act, subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(c) transpose, implement and give effect to the requirements of the Electronic Money Directive and the Payment Services Directive:

Provided that, when any of the options referred to in Article 107(1) of the Payment Services Directive are made use of, the Minister shall inform the European Commission of the use of any such options as well as of any subsequent changes thereof;

(d) transpose, implement and give effect to the provisions, requirements, obligations and commitments relating to the regulation of payment institutions and electronic money institutions arising out of membership in, affiliation or relationship with international or regional organisations, or groupings of countries, or arising out of any treaty, convention or other international agreement whether bilateral, regional or multilateral to which Malta is a party;

(e) provide that any other law or any provision thereof, shall not apply to matters falling under the regulations and in particular, may exempt activities as may be designated from the application of any article or provision of the Civil Code;

C 3112

(f) transpose, implement and, or give effect to the requirements of the PAD, and in so doing may also establish or maintain measures alternative to those referred to in Article 10(2) to (6) of the PAD:

Provided that:

(i) it is clearly in the interest of the consumer;

(ii) there is no additional burden for the consumer; and

(iii) the switching as defined in Article 2(18) of the PAD is completed within, as a maximum, the same overall time-frame as that indicated in Article 10(2) to (6) of the PAD;

(g) set up a specific mechanism to ensure that consumers who do not have a payment account as defined in Article 2(3) of the PAD in their territory, and who have been denied access to such a payment account for which a fee is charged by credit institutions, will have effective access to a payment account with basic features in terms of the PAD, free of charge; and, or

(h) 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, but not limited to licence holders as may be specified therein; any such regulations strictly related to transposition or implementation as aforesaid, may contain provisions which are inconsistent with the provisions of this Act or 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, the provisions in any such regulations shall prevail.

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

(3) Where regulations have been issued in terms of this article the competent authority may issue, amend or revoke any Financial Institutions Rule within the meaning of this Act to better carry out and implement the provisions of the regulations."

47. Article 13 of the principal Act, shall be amended as follows:

Amendment of
article 13 of the
principal Act.

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

"(1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and any regulations and, or Rules issued thereunder and to ensure that financial institutions carrying out business in or from Malta comply with this Act, any regulations and, or Rules issued thereunder and with the conditions of their licence or registration. In carrying out such functions, the competent authority shall ensure that the controls exercised for checking continued compliance in terms of this Act, and any regulations and, or Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed. The said functions consist, *inter alia*, of the following:

(a) to require the financial institution in terms of article 14, to provide any information needed to monitor compliance specifying the purpose of the request as appropriate and the time limit by which the information is to be provided;

(b) to carry out on-site inspections at the financial institution, at any agent or branch thereof providing services under the responsibility of the financial institution, or at any entity to which activities are outsourced;

(c) to withdraw, suspend or restrict any licence or registration pursuant to article 6; and

(d) to issue non-binding recommendations

and guidelines, Rules within the meaning of this article and binding administrative provisions in terms of this Act and any regulations and, or Rules issued thereunder.";

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

"(1A) Notwithstanding the requirements of article 5A(1), (2A) and (2) and Articles 7 and 9 of the Payment Services Directive, the competent authority may take steps as referred to in sub-article (1), to ensure sufficient capital for the activities carried out by a financial institution and, or to ensure compliance with Article 5(1B), in particular where the activities of a financial institution other than those listed in the Schedules impair or are likely to impair the financial soundness of the financial institution concerned.

Cap. 330.

(1B) Without prejudice to the procedures for the withdrawal of a licence or a registration, or to article 22, or to national provisions of criminal law and to any other power granted to the competent authority under the provisions of this Act and any regulations and, or Rules issued thereunder or under the provisions of the Malta Financial Services Authority Act, where the competent authority is satisfied that a financial institution's conduct amounts to a breach of any of the provisions of this Act or any regulations and, or Rules issued thereunder, or of any directive, restriction and, or suspension imposed, or of any other request or order made by the competent authority pursuant to the provisions of this Act or any regulations and, or Rules issued thereunder, or the Malta Financial Services Authority Act, or a licence condition, or a condition required for the granting of a licence or a registration; the competent authority may, adopt or impose on any such financial institution and, or on those who effectively control the business of such financial institution, any measures as it may deem appropriate aimed specifically at ending observed breaches or the causes of such breaches.

(1C) The competent authority shall possess all powers and adequate resources necessary for the performance of its duties and shall guarantee independence from economic bodies and avoid conflicts of interest.";

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

"(2) The competent authority may issue, amend or revoke any Financial Institutions Rule as may be required for carrying into effect any of the provisions of this Act and any regulations and, or Financial Institution Rules issued thereunder. The said Rules may establish additional requirements and conditions in relation to activities of financial institutions, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters, as the competent authority may consider appropriate.";

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

"(2A) The competent authority may issue, amend or revoke any Financial Institutions Rule as may be required for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the EBA, as may be required.

(2B) A Financial Institutions Rule shall be binding on financial institutions and others as may be specified therein.";

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

"(3) A Financial Institutions Rule and any amendment or revocation thereof shall be officially communicated to all financial institutions and the competent authority shall make copies thereof available to the public, upon request.";

(f) sub-article (5) thereof, shall be deleted;

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

"(6) The competent authority shall, as soon as possible, notify the European Commission that it has been designated in part, to ensure and monitor the effective compliance with the Payment Services Directive. The competent authority shall inform the European

C 3116

Commission of the provisions of the Payment Services Directive for which it is responsible. The competent authority that has been designated in part, to ensure and monitor effective compliance with the Payment Services Directive, shall immediately notify the European Commission of any subsequent change concerning its designation and competence.

(7) Nothing in this Act shall be taken to imply that the competent authority is required to supervise activities of financial institutions other than for the provision of the services listed in the Schedules to this Act.

(8) The powers, functions and duties conferred upon the competent authority in this Act and any regulations and, or Rules issued thereunder transposing Title II of the Payment Services Directive, shall be vested in the competent authority when the competent authority is the home Member State.

(9) The competent authority shall ensure that financial institutions do not derogate to the detriment of their customers, from the provisions of this Act and any regulations and, or Rules issued thereunder, except where explicitly provided for therein:

Provided that financial institutions may, without prejudice to article 10, decide to grant more favourable terms to their customers."

Addition of article 13A to the principal Act.

48. Immediately after article 13 of the principal Act as amended, there shall be added the following new article:

"Reasons and communication.

S.L. 376.05.

13A. Any measure taken by the competent authority, or by the competent authority in collaboration with the Central Bank as applicable, pursuant to the European Passport Rights for Financial Institutions Regulations and article 23(1) involving administrative penalties or restrictions on the exercise of a European right shall be properly justified and communicated to the payment institution, the electronic money institution or the account information service provider concerned."

Amendment of article 14 of the principal Act.

49. Article 14 of the principal Act, shall amended as follows:

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

"(1) A financial institution shall submit to the competent authority such information and documentation as the competent authority may require either on a periodic and, or on an *ad hoc* basis, in the discharge of its duties under this Act and any regulations and, or Rules issued thereunder or any other law, and the competent authority may enquire into and ask for clarification of any information submitted.";

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

"(2) All periodic information and documentation required under sub-article (1) shall be submitted in such form and at such periods as the competent authority may from time to time, prescribe by any Financial Institutions Rules and, or at such periods as the competent authority may require in writing.";

(c) sub-article (3) thereof, shall be deleted;

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

"(4) The provisions of this article shall also apply to all branches, agencies or offices in Malta of a financial institution which are not incorporated in Malta.";

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

"(5) A financial institution shall submit to the Central Bank such information as the said Bank may require in the discharge of its duties and the Central Bank may enquire into and ask for clarifications on any information so submitted.";

(f) sub-article (6) thereof, shall be substituted by the following:

"(6) The competent authority may, by notice in writing, require a financial institution or any of its officers to do all or any of the following:

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require and of such description as may be so

specified in the notice;

(b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify; and, or

(c) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation as the competent authority may reasonably require, for the performance of its functions under this Act and any regulations and, or Rules issued thereunder.";

(g) sub-article (7) thereof, shall be substituted by the following:

"(7) The competent authority may retain copies of any documents submitted in terms of this article.".

Amendment of article 15 of the principal Act.

50. Article 15 of the principal Act, shall be amended as follows:

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

"(1) The competent authority may, whenever it deems necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs, nature, conduct or state of a financial institution's business or any particular aspect of it, or to report on the ownership or control of the financial institution.";

(b) immediately after sub-article 3 thereof, the following new sub-articles shall be added:

"(4) Any investigation being carried out pursuant to sub-articles (1) and (2) shall be notified in writing to the person under investigation.

(5) It shall be the duty of every person who is or was an officer, employee, agent, or auditor of a person under investigation in terms of this Act and any regulations and, or Rules issued thereunder, or any person appointed to draw up a report in respect of that person under this Act and any regulations and, or Rules issued thereunder and any person who has a qualifying shareholding in, or is a controller the said person under investigation:

(a) to produce to the inspector or inspectors appointed under sub-article (1), within such time and at such place as may be required by the inspector or inspectors concerned, all the documents relating to the person under investigation which are in his custody or power;

(b) to attend before the inspector or inspectors at such time and place as the inspector or inspectors may require; and, or

(c) otherwise to give to the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give, and the inspector or inspectors concerned may retain copies of or extracts from, any documents produced to them under paragraph (a).

(6) An inspector exercising powers by virtue of an appointment under this article shall, if so required, produce evidence of his authority.

(7) No person shall:

(a) without any lawful excuse fail to produce any document which it is his duty to produce under sub-article (5);

(b) without any lawful excuse fail to attend before an inspector or inspectors appointed under sub-article (1), when required to do so; or

(c) without any lawful excuse fail to answer any question which is put to him by an inspector or inspectors appointed under sub-article (1) with respect to any person who is under investigation.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this article may be used as evidence against him."

51. Article 16 of the principal Act, shall be substituted by the following:

Substitution of article 16 of the principal Act.

C 3120

"Right of entry.

16. (1) Any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), may on producing evidence of his authority, if required to do so, enter into premises occupied by a person on whom a notice has been served under article 14, or whose affairs are being investigated under article 15, for the purpose of obtaining the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), has reasonable cause to believe, that if such notice as is referred to in sub-article (1) were served, it would not be complied with, or that any documents to which it could relate would be removed, tampered with or destroyed, such person may on producing evidence of his authority, if required to do so, enter into any premises referred to in sub-article (1) for the purpose of obtaining any information or documents specified in the authority, being information or documents that could have been required under such notice, as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of criminal offences and the enforcement of law and order:

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 not take place between nine in the evening and five in the morning."

Addition of article 16A to the principal Act.

52. Immediately after article 16 of the principal Act as substituted, there shall be added the following new article:

"Suspected breaches.

16A. (1) Where the competent authority has reasonable grounds for suspecting that a person has contravened or has failed to comply with any of the provisions of this Act and any regulations and, or Rules issued thereunder, it may by notice in writing, require that person or any other person:

(a) to provide at such place as may be specified in the notice, and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected contravention or failure to comply;

(b) to produce, at such place as may be specified in the notice, and either forthwith or at such time as may be so specified, such documents or documents of such description as may be specified therein, which it may reasonably require for that purpose; and, or

(c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention or failure to comply has occurred.

(2) The competent authority or their duly authorised officer, employee or agent may retain copies of or extracts from any documents submitted in terms of this article.

(3) Any officer, employee or agent of the competent authority may between five (5) o'clock in the morning and nine (9) o'clock at night, on producing if required, evidence of his authority, enter into any premises occupied by a person on whom a notice has been served under sub-article (1), for the purpose of obtaining the information or the documents required by the notice, asking the questions referred to in paragraph (c) of sub-article (1) and, or exercising the powers conferred by sub-article (2).

(4) No person shall without any lawful excuse fail to comply with a requirement imposed on him under this article or intentionally obstruct a person in the exercise of the rights conferred by sub-article (3).

(5) A statement made by a person in compliance with a requirement imposed by virtue of this article may be used as evidence against him."

C 3122

Addition of article 16B to the principal Act.

53. Immediately after article 16A as added to the principal Act, there shall be added the following new article:

"Obstruction.

16B. No person who knows or suspects that an investigation is being or is likely to be carried out under this Act, or an investigation is being or is likely to be carried out into the suspected commission of any breach under this Act and any regulations and, or Rules issued thereunder may falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of documents that he knows or suspects are, or would be relevant to such an investigation, unless he proves that he had no intention of concealing facts disclosed by such documents from persons carrying out such an investigation."

Substitution of article 17 of the principal Act.

54. Article 17 of the principal Act, shall be substituted by the following:

"Power of the competent authority to take control of financial institutions.

17. (1) If, whether from any report made under article 14 or 15 or otherwise, it appears to the competent authority, that any of the circumstances indicated in article 6(1) apply, the competent authority may, without prejudice to the powers of the said authority to impose restrictions, or to withdraw or suspend a licence or a registration under the provisions of article 6(1):

(a) require the financial institution forthwith to take such steps as the competent authority may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to advise the financial institution in the proper conduct of its business;

(c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;

(d) appoint a competent person to take over the business of the financial institution, either to carry on that business, or to carry out such other function or functions in respect of such business or part thereof, as the competent authority may direct;

(e) require the financial institution to wind up its business or to wind up its business in Malta;

(f) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the financial institution; and, or

(g) determine the remuneration to be paid by the financial institution to any competent person appointed under this sub-article.

(2) Upon receipt of a report or information otherwise received as is mentioned in sub-article (1), the competent authority shall inform the Central Bank.

(3) Where a competent person is appointed by the competent authority:

(a) under sub-article (1)(b), the financial institution shall act in accordance with the advice given by such person, unless and until the competent authority otherwise directs;

(b) under sub-article (1)(c), the financial institution shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the financial institution in respect of those assets, whether exercisable by the company in the general meeting, or by the board of directors, or by any other person, including the legal and judicial representation of the financial institution, shall be exercisable by and vest in him to the exclusion of the financial institution; and, or

(c) under sub-article (1)(d), the financial institution shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business, or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the financial institution, whether exercisable by the company in the general meeting or by the board of directors, or by any other person, including the legal and judicial representation of the financial institution in all matters shall be exercisable by and vest in him, to the exclusion of any other person.

(4) Where a person is appointed under sub-article (1)(c) or (d):

C 3124

(a) any function, power or duty exercisable by any other person, including the curator of a bankrupt, or any other person appointed by or under any other law and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall unless or until the competent authority otherwise directs, or an express provision of the law specifically provides otherwise, cease to be so exercisable;

(b) the person appointed under either of the paragraphs aforesaid shall in respect of such property, partnerships, firms or other business as the competent authority may specify, and in which the financial institution has an interest, whether directly or indirectly, including any interest arising from advances or loans made, or credit facilities given, or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the competent authority may direct, and any such power, function or duty shall be exercisable by and vest in such person, to the exclusion of any other person:

Provided that:

(i) the competent authority shall have the power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the competent authority may specify and unless and until the competent authority otherwise directs, the powers, functions and duties to which the direction of the competent authority applies shall be exercisable by and vest in such other person appointed for the purpose, to the exclusion of all others;

(ii) where the competent authority is of the opinion that the financial institution has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done, or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;

(iii) the person appointed under either of the paragraphs aforesaid, shall have the power to require any other person to provide him with such facilities as he may deem necessary, to carry out any of the powers, functions or duties under this article;

(iv) the provision of law relating to bankruptcy and in particular Part III of the Commercial Code shall cease to apply to, and shall cease to operate in respect of any property, partnership, firm or other business specified by the competent authority under paragraph (b), unless and until, or except to the extent that the competent authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the competent authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;

(v) any person appointed by the competent authority under any of the provisions of this article shall submit six monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions audited by an independent auditor, to the Minister who will place such reports and accounts on the table of the House of Representatives within fifteen days.

C 3126

(5) Where a person is appointed under sub-article (1)(f), such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(6) The provisions of this article shall have effect notwithstanding any other provision of any enactment, and notwithstanding any deed, contract, instrument or other document whatsoever.

(7) The foregoing provisions of this article vesting exclusive powers of representation in a person appointed by the competent authority thereunder shall apply also to any act or proceedings commenced or instituted before such representation is vested as aforesaid, and in respect of any such act or proceedings, any other person acting or purporting to act, or in respect of whom action is taken in that capacity shall cease to be a party to and shall be excluded from, any such act or proceedings.

(8) No person shall in any way obstruct a person appointed under sub-article (1) in the performance of any of his functions, powers or duties under this article."

Substitution of the heading 'Auditors' of the principal Act.

55. Immediately after article 17 of the principal Act, the heading "AUDITORS", shall be substituted by the following:

"ACCOUNTING, STATUTORY AUDIT AND AUDITORS."

Addition of article 17A to the principal Act.

56. Immediately after article 17 and the subsequent heading of the principal Act as substituted, there shall be added the following new article.

"Accounting and statutory audit.

17A. (1) Directive 86/635/EEC, Directive 2013/34/EU and Regulation (EC) No 1606/2002 shall, *mutatis mutandis*, apply to financial institutions.

(2) Unless exempted under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC, the annual accounts and consolidated accounts of financial institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, as amended from time to time.

(3) Payment institutions and electronic money institutions shall provide to the competent authority separate accounting information for payment services and for the activities referred to in paragraph 3(a), (b) and (c) of the Second Schedule, that shall be subject to an auditor's report, as may be stipulated in a Financial Institutions Rule.

(4) The auditor's report referred to in sub-article (3) shall be prepared, where applicable, by the statutory auditors or an audit firm."

57. Immediately after article 17A as added to the principal Act, there shall be added the following new article:

Addition of article 17B to the principal Act.

"Publication of audited financial statements.

17B. Every financial institution shall, not later than four months from the closing of its financial year or at any other time as may be authorised in writing by the competent authority:

- (a) forward to the competent authority, and
- (b) make available to the public, in paper or in electronic form,

a copy of its audited financial statements or consolidated financial statements, as may be applicable, drawn up and published in such manner as may be specified in accordance with a Financial Institutions Rule."

58. Article 18 of the principal Act, shall be amended as follows:

Amendment of article 18 of the principal Act.

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

"(1) (a) Every financial institution shall each year appoint an approved statutory auditor or audit firm whose duty shall be to audit the annual accounts and consolidated accounts of the financial institution in accordance with article 17A.";

(b) sub-article 6 thereof, shall be substituted by the following:

"(6) If, in his capacity as an auditor of a financial institution, or due to a direct request by the competent authority under article 14 or 15, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the

financial institution, or a branch or office in Malta of a financial institution not incorporated in Malta, or the integrity of the financial system in Malta, he shall immediately inform the competent authority through the financial institution's management, or if circumstances so warrant, inform directly the competent authority.";

(c) immediately after sub-article 6 as substituted, there shall be added the following new sub-articles:

"(6A) In his capacity as an auditor of a financial institution, or due to a direct request by the competent authority, an auditor shall promptly notify the competent authority of any fact or decision concerning that financial institution of which that auditor has become aware while carrying out his tasks, that is liable to:

(a) constitute a material breach of this Act and of any regulations and, or Rules issued thereunder which set out the licensing or registration conditions, or which specifically govern the activities of financial institutions;

(b) affect the ongoing functioning of the financial institution; or

(c) lead to refusal to certify the accounts or to the expression of reservations:

Provided that an auditor shall also have the duty to report any fact or decision of which that auditor becomes aware in the course of carrying out his tasks, in an undertaking having close links resulting from a control relationship with the financial institution within which he is carrying out that task.

(6B) Any disclosure in good faith to the competent authority pursuant to sub-article (6A) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not expose such persons to any liability. Unless there are compelling reasons not to do so, such disclosure shall be made simultaneously to the board of directors of the financial institution.

59. Article 19 of the principal Act, shall be substituted by the following:

Substitution of article 19 of the principal Act.

"Communication by auditors and other persons with the competent authority.

19. No duty, including professional secrecy, to which:

(a) an auditor of a financial institution may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that institution and that is relevant to any functions of the competent authority under the provisions of this Act, or is required to be communicated by virtue of this Act and, or any regulations or Rules issued thereunder; and

(b) a person appointed to make a report under article 14 or 15 may be subject, shall be regarded as contravened by reason of communicating in good faith to the competent authority any matter which relates to the business or affairs of the financial institution in relation to which the report is made."

60. Article 20 of the principal Act, shall be amended as follows:

Amendment of article 20 of the principal Act.

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

"(1) Without prejudice to sub-article (1A) and on the basis of international agreements or upon reciprocity agreements, the competent authority may in the case of, a financial institution or branch operating in Malta, which is totally or partially owned by a foreign person, or in the case of a financial institution totally or partially owned by Maltese residents that is operating abroad, share its supervisory duties with an overseas regulatory authority.";

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

"(1A) The competent authority shall co-operate with European regulatory authorities and, where appropriate with the ECB, the Central Bank and the national central banks of the other Member states, the EBA and other

C 3130

relevant authorities designated under European Union, or national law applicable to payment service providers.";

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

"(2) The competent authority may, further exchange information with the following:

(a) overseas regulatory authorities responsible for the licensing and, or registration, and for the supervision of payment institutions, electronic money institutions and, or account information service providers, solely for their supervisory and regulatory purposes and, or for such other purposes as may be specifically agreed upon with the competent authority;

(b) the ECB, other Member States' central banks and the Central Bank, in their capacity as monetary and oversight authorities and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) other relevant authorities designated under the Payment Services Directive, Directive 2015/849, and other European Union law applicable to payment service providers, such as laws applicable to money laundering and funding of terrorism; and, or

(d) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in paragraph (a) of Article 1(5) of Regulation (EU) No 1093/2010.

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

"(4) The competent authority shall notify the relevant European regulatory authority whenever it intends to carry out an on-site inspection in the territory of the latter:

Provided that the competent authority may upon agreement delegate to the relevant European regulatory authority, the task of carrying out on-site

inspections of the institution concerned.";

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

"(5) The competent authority shall further, upon a request in writing, disclose to the ECB and, or to the Central Bank any information in the possession of or accessible to the competent authority that is required for the discharge of the duties of the ECB and, or the Central Bank under the law."

61. Immediately after article 20 of the principal Act, there shall be added the following new article:

Addition of article 20A to the principal Act.

"Settlement of disagreements between the competent authority and European regulatory authorities.

20A. (1) Where the competent authority considers that in a particular matter, cross-border co-operation with European regulatory authorities referred to in Articles 26, 28, 29, 30 or 31 of the Payment Services Directive does not comply with the relevant conditions set out in those provisions, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where the competent authority has referred the matter to the EBA and requested its assistance in accordance with sub-article (1), or where a European regulatory authority has referred a matter to the EBA and requested its assistance in accordance with Article 27(1) of the Payment Services Directive, it shall defer its decision pending resolution by the EBA under Article 19 of Regulation (EU) No 1093/2010."

62. Immediately after article 20A of the principal Act as substituted, there shall be added the following new article:

Addition of article 20B to the principal Act.

"Collaboration with the Central Bank and the Arbiter.

20B. In ensuring and monitoring effective compliance with the provisions of this Act and any regulations and, or Rules issued thereunder transposing the Payment Services Directive, the competent authority shall collaborate closely with the Central Bank and with the Arbiter as may be required, in order to ensure that every authority may discharge its respective duties effectively."

63. Article 21 of the principal Act, shall be substituted with the following:

Substitution of Article 21 of the principal Act.

"Appeals. 21. Any person who is aggrieved by a directive, decision and, or measure taken by the competent authority pursuant to the Act and any regulations or Rules issued thereunder, may appeal to the Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act."

Cap. 330.

Amendment of article 22 of the principal Act.

64. Article 22 of the principal Act, shall be amended as follows:

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

"Criminal offences.";

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

"(1) Any person who:

(a) fails to comply with any directive issued by the competent authority under this Act;

(b) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act and any regulations and, or Rules issued thereunder;

(c) furnishes information or makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts;

(d) recklessly furnishes information or recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive; or

(e) fails to comply with any lawful order or requirement of the Financial Services Tribunal; or

(f) contravenes or fails to comply with any of the provisions of articles 3(1), 3(1A), 9, 16A(4), 16B, 24A(b), 25(2) and (4),

shall be guilty of a criminal offence.";

(c) sub-article (2) thereof, shall be deleted;

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

"(4) A person guilty of a criminal offence under the provisions of this article, shall be liable on conviction to a fine (*multa*) not exceeding five hundred thousand euro (€500,000) or to a term of imprisonment not exceeding three years, or to both such fine and imprisonment.";

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

"(5) No criminal proceedings for a criminal offence against this Act shall be commenced without the consent of the Attorney General.".

65. Article 23 of the principal Act, shall be substituted by the following:

Substitution of article 23 of the principal Act.

"Administrative penalties and their publication.

Cap. 330.

23. (1) Without prejudice to the procedures for the withdrawal, suspension or restriction of a licence or a registration and to any other power granted to the competent authority under the provisions of this Act and any regulations and, or Rules issued thereunder, or under the provisions of the Malta Financial Services Authority Act, where any person fails to comply with any of the conditions imposed in a licence and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act and of any regulations and, or Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be, aimed specifically at ending such breaches or the causes of such breaches.

(1A) Any administrative penalty imposed by the competent authority under sub-article (1) shall be effective, proportionate and dissuasive, and shall be imposed in accordance with this article.

(1B) The Minister may, acting on the advice of the competent authority, make regulations as shall be deemed appropriate to provide for the establishment and imposition of administrative penalties and other administrative measures on licence holders or others as may be specified therein.

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

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

Cap. 330.

(3) The provisions of article 16(4) of the Malta Financial Services Authority Act shall, *mutatis mutandis*, apply with reference to a "notice" therein being construed as a reference to a notice as referred to in sub-article (1) of this article.

(4) The competent authority may, unless such disclosure would seriously jeopardise the financial markets, or cause disproportionate damage to the parties involved, publish any administrative penalty imposed in terms of this article and, or in terms of this Act:

Provided that in cases where, in terms of article 21, an appeal has been filed by the person on whom such administrative penalty or penalties have been imposed, the competent authority shall, without undue delay, also publish on its official website and through any other means it considers appropriate, information on the status of the appeal and the outcome thereof."

Amendment of article 24 of the principal Act.

66. Sub-article 1 of article 24 of the principal Act, shall be substituted by the following:

"(1) No person:

(a) who has been adjudged bankrupt, or has made a composition with his creditors, or has been an officer of a financial institution which has had its licence or

registration withdrawn under article 6(1) and who has not been exempted in writing by the competent authority from the provision of this article; or".

67. Immediately after article 24 of the principal Act as amended, there shall be added the following new article:

Addition of article 24A to the principal Act.

"Duties of officers. 24A. Every officer of a financial institution shall take all reasonable steps:

- (a) to secure compliance by the financial institution with all of the provisions of this Act and any regulations and, or Rules issued thereunder, and with the conditions of its licence or registration; and
- (b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence."

68. Article 25 of the principal Act, shall be amended as follows:

Amendment of article 25 of the principal Act.

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

"(2) No person, including past and present officers of a financial institution or of a branch thereof, and agents of a financial institution, shall disclose any information relating to the affairs of that institution or of a customer of that institution which he has acquired in the performance of his duties or in the exercise of his functions under this Act and any regulations and, or Rules issued thereunder except:

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of his duties or in the exercise of his functions;
- (c) when lawfully required to do so by any court or under a provision of any law."

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

"(3) Where an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in any anti-money laundering and combatting the funding of terrorism legislation and

C 3136

such disclosure shall not constitute a breach of confidentiality.";

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

"(4) Without prejudice to the provisions of article 20, persons who work or who have worked for the competent authority, as well as experts acting on behalf of the competent authority, without prejudice to cases falling within the ambit of criminal law, are bound by the duty of professional secrecy. The said persons and experts shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties and which is governed by the duty of professional secrecy, unless such disclosure of information be done in summary or collective form, so as not to enable the identity of the financial institution, to whom such information relates, to be ascertained:

Provided that the said officers, auditors or experts may divulge such information, for the purpose of the performance of their duties, or the exercise of their functions, or when lawfully required to do so by any court or under a provision of any law.";

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

"(5) Notwithstanding the provisions of any other law, a financial institution may, if circumstances so warrant, communicate any information which is in its possession and which relates to the affairs of a customer, to other members of the group of which that financial institution forms part.";

(e) sub-article 6 thereof, shall be substituted by the following:

"(6) For the purposes of sub-article (5), the term "group" shall include anybody corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group, and that is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction to carry out any activity equivalent to the business of banking, or of the issuing of electronic money, or any of the activities referred to in the Schedule to the Banking

Act.";

(f) immediately after sub-article 7 thereof, the following new sub-articles shall be added:

"(8) Without prejudice to the provisions of article 20, any exchange of information between the competent authority and any European regulatory authority, the ECB, the Central Bank, national central banks of other Member States, the EBA or any other relevant authorities designated under European Union or national law applicable to payment services providers in accordance with article 20(1A) and (2) shall, in order to ensure the protection of individual and business rights, also be subject to the obligation of professional secrecy.

(9) The provisions of sub-articles (4) and (8) shall be applied taking into account, *mutatis mutandis*, Articles 53 to 61 of the CRD."

69. Immediately after article 25 of the principal Act, the heading "CONSUMER COMPLAINTS" of the principal Act, shall be substituted by the following heading:

Substitution of the heading 'Consumer Complaints' of the principal Act.

"DATA PROTECTION."

70. Article 26 of the principal Act, shall be deleted.

Deletion of article 26 of the principal Act.

71. Immediately after article 26 of the principal Act as deleted, there shall be added the following new article:

Addition of article 26A to the principal Act.

"Data protection. 26A. (1) Financial institutions may when necessary to safeguard the prevention, investigation and detection of payment fraud, process personal data.

(2) The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of data for the purposes of this Act and any regulations and, or Rules issued thereunder, shall be carried out in accordance with any applicable data protection legislation.

(3) Financial institutions shall only access, process and retain personal data necessary for the provision of their services with the explicit consent of those making use of their services."

C 3138

Substitution of article 27 of the principal Act.

72. Article 27 of the principal Act, shall be substituted by the following:

"Objective.

27. The objective of this Act is, in part, to implement the provisions of the Payment Services Directive, in particular Titles I, II, Chapter 4 of Title IV, Articles 95, 96, 100, 103 and 107 in part, Articles 109, 111 and 115, and the Annexes thereof and of the Electronic Money Directive and shall be interpreted and applied accordingly."

Addition of article 28 to the principal Act.

73. Immediately after article 27 of the principal Act, there shall be added the following new article:

"Transitory provisions.

28. (1) Payment institutions that have been granted a licence to provide payment services as referred to in paragraph (7) of the Annex of Directive 2007/64/EC shall retain that licence for the provision of those payment services which are considered to be payment services as referred to in paragraph 2(c) of the Second Schedule where, by 13 January 2020, the competent authority has evidence that the requirements set out in paragraph (c) of Articles 7 and 9 of the Payment Services Directive are satisfied.

(2) Legal persons that, before 12 January 2016, have performed in Malta activities of payment initiation service providers and account information service providers, shall until eighteen months after the date of entry into force of the regulatory technical standards referred to in Article 98 of the Payment Services Directive, not be prohibited from continuing to perform such activities in Malta in accordance with the applicable regulatory framework.

(3) Until individual account servicing payment service providers comply with the regulatory technical standards referred to in sub-article (2), account servicing payment service providers shall not block or obstruct the use of payment initiation services or account information services for the account that they are servicing.

(4) Financial institutions in possession of a licence on the entry into force of this Act are required to include a statement that the financial institution is licensed or registered, as applicable, by the competent authority, together with the address of the competent authority in any form or medium of marketing activity or communication disseminated to the public, by any other means considered appropriate within three months after the entry into force of this article."

74. The First Schedule to the principal Act, shall be amended as follows:

Amendment of the First Schedule to the principal Act.

(a) in item (1) thereof, for the words, "commercial transactions including forfeiting);", there shall be substituted the words "commercial transactions including forfeiting);";

(b) in item (4) thereof, for the words, "Payment services as defined", there shall be substituted the words, "Payment services set out";

(c) in item (7)(e) thereof, for the words, "transferable instruments", there shall be substituted the words, "transferable securities".

75. The Second Schedule annexed to the principal Act, shall be amended as follows:

Amendment of the Second Schedule to the principal Act.

(a) the objective thereof, shall be substituted by the following:

"Objective. The purpose of this Schedule is to set out the regulatory framework under which payment services as referred to in the First Schedule, may be carried out.";

(b) paragraph (1) thereof, shall be deleted;

(c) paragraph (2) thereof, shall be substituted by the following:

"List of Activities. 2. The following activities shall be considered payment services:

(a) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;

C 3140

(b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

(c) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(d) Execution of payment transactions where the funds are covered by a credit line for a payment service user:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(e) Issuing of payment instruments and, or acquiring of payment instruments;

(f) Money remittance;

(g) Payment initiation services; and

(h) Account information services.";

(d) paragraph (3) thereof, shall be substituted by the following:

"3. Apart from the provision of payment services, payment institutions may engage in the following activities:

(a) The provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services strictly in relation to payment services, safekeeping activities, and storage and processing of data;

Cap. 204.

(b) The operation of payment systems, without prejudice to Article 35 of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act;

(b) The operation of payment systems, without prejudice to Article 35 of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act;

(c) Without prejudice to any applicable European Union or national law, and without prejudice to the provisions of article 5(6), business activities other than the provision of payment services;

(d) Payment institutions may grant credit related to payment services referred to in paragraph (1)(d) or (e) of this Schedule only if the following requirements are met:

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction;

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months; and

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

(iv) the own funds of the payment institution are at all times and, to the satisfaction of the competent authority, appropriate in view of the overall amount of credit granted.";

(e) immediately after paragraph (3) thereof, there shall be added the following new paragraphs:

"4. When payment institutions engage in the provision of one or more payment services, they may only hold payment accounts used exclusively for payment transactions.

C 3142

5. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2."

Cap. 371.

Amendment of the Third Schedule to the principal Act.

76. Paragraph (1) of the Third Schedule to the principal Act, shall be deleted.

Objects and Reasons

The object of this Bill is to transpose the following:

1. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.
2. Articles 10 and 25 of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features as regards powers given to the Minister emanating from the said Directive; and
3. Article 124 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms which repeals Article 74(4) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.