

MALTA

ATT Nru LXXII tal-2021

ATT maħruġ b'liġi mill-Parlament ta' Malta.

**ATT biex ikompli jemenda diversi liġijiet
dwar is-servizzi finanzjarji.**

ACT No. LXXII of 2021

AN ACT enacted by the Parliament of Malta.

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

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

28 ta' Diċembru, 2021

ATT Nru LXXII tal-2021

ATT biex ikompli jemenda diversi ligijiet dwar is-servizzi finanzjarji.

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

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2021 li jemenda Diversi Ligijiet dwar is-Servizzi Finanzjarji (Emenda Nru 3). Titolu fil-qosor u bidu fis-sehh.

(2) L-artikolu 33 ta' dan l-Att għandu jidholl fis-sehh f'dik id-data li l-Ministru responsabbli għar-regolamentazzjoni tas-servizzi finanzjarji jista b'avviż fil-Gazzetta jistabbilixxi.

TAQSIMA I

**EMENDI GHALL-ATT DWAR L-AWTORITÀ
GHAS-SERVIZZI FINANZJARJI TA' MALTA**

2. Din it-Taqsima temenda l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, u għandha tinqara u tinftiehem haġa waħda mal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Emenda għall-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta. Kap. 330.

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Emenda tal-Ewwel Skeda li tinsab mal-Att prinċipali.

3. Is-subpartita (1) tal-partita 1 tal-Ewwel Skeda li tinsab mal-Att prinċipali għandha tiġi emendata b'dan li ġej:

(a) minnufih qabel it-tifsira "CRR" għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "CRD" tfisser 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-superviżjoni prudenzjali tal-istituzzjonijiet ta' kreditu, li temenda d-Direttiva 2002/87/KE u li tħassar id-Direttivi 2006/48/KE u 2006/49/KE, kif emendata minn żmien għal żmien, u li tinkludi kull miżura implimentattiva li tkun giet maħruġa jew li tista' tinħareġ taħtha;" u

(b) fit-tifsira "CRR", minflok il-kliem "fuq htigiet prudenzjali għal istituzzjonijiet u ditti ta' kreditu u li jemendaw" għandhom jidhlu l-kliem "dwar ir-rekwiziti prudenzjali għall-istituzzjonijiet ta' kreditu u li jemenda".

TAQSIMA II

EMENDI GĦALL-ATT DWAR SERVIZZI TA' INVESTIMENT

Emendi għall-Att dwar Servizzi ta' Investiment. Kap. 370.

4. Din it-Taqsima temenda l-Att dwar Servizzi ta' Investiment, u għandha tinqara u tinftiehem haġa waħda mal-Att dwar Servizzi ta' Investiment, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda tal-artikolu 2 tal-Att prinċipali.

5. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat b'dan li ġej:

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

(i) minnufih wara t-tifsira "awtorità regolatorja Ewropea" għandhom jiġu miżjuda dawn it-tifsiriet ġodda li ġejjin:

"bażi konsolidata" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (48) tal-Artikolu 4(1) tas-CRR;

"bażi subkonsolidata" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (49) tal-Artikolu 4(1) tas-CRR;"

(ii) it-tifsira "derivattivi tal-komoditajiet agrikola" għandha tiġi sostitwita b'din it-tifsira ġdida li ġejja:

" "derivattivi tal-komoditajiet agrikoli" tfisser kuntratti fir-rigward ta' derivattivi relatati ma' prodotti elenkati fl-Artikolu 1, u Anness I, tat-Taqsimiet I sa XX u XXIV/1, mar-Regolament (UE) Nru 1308/2013, kif ukoll ma' prodotti elenkati fl-Anness I mar-Regolament (UE) Nru 1379/2013 tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Diċembru 2013 dwar l-organizzazzjoni komuni tas-swieq fil-prodotti tas-sajd u tal-akwakultura, li jemenda r-Regolamenti tal-Kunsill (KE) Nru 1184/2006 u (KE) Nru 1224/2009 u li jhassar ir-Regolament tal-Kunsill (KE) Nru 104/2000, kif emendat minn żmien għal żmien;"

(iii) minnufih wara t-tifsira "detentur ta' licenza" għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "Direttiva 2002/87/KE" tfisser id-Direttiva 2002/87/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Diċembru 2002 dwar is-superviżjoni supplimentari ta' istituzzjonijiet ta' kreditu, dwar impriżi ta' assigurazzjoni u ditti tal-investment f'konglomerat finanzjarju u li temenda d-Direttivi tal-Kunsill 73/239/KEE, 79/267/KEE, 92/49/KEE, 92/96/KEE, 93/6/KEE u 93/22/KEE, u d-Direttivi 98/78/KE u 2000/12/KE tal-Parlament Ewropew u tal-Kunsill, kif emendata minn żmien għal żmien, u tinkludi kwalunkwe miżuri implimentattivi li jkunu ġew jew li jistgħu jiġu maħruġa taħtha;"

(iv) minnufih wara t-tifsira "Direttiva UCITS" għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "ditta ta' investment" tfisser ditta ta' investment kif imfissra fl-Artikolu 4(1) tal-MiFiD;"

(v) minnufih wara t-tifsira "dokument" jew "dokumentazzjoni" għandhom jiġu miżjuda dawn it-tifsiriet godda li ġejjin:

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- "EBA" tfisser l-Awtorità Bankarja Ewropea (European Banking Authority) imwaqqfa bir-Regolament (UE) Nru 1093/2010;
- L.S. 330.09. "entità ta' riżoluzzjoni" tfisser l-istess bħat-tifsira mogħtija lilha fis-subregolament (1) tar-regolament 2 tar-Regolamenti dwar Rkupru u Riżoluzzjoni;"
- (vi) minnufih wara t-tifsira "fthem ta' investment" għandhom jiġu miżjuda dawn it-tifsiriet godda li ġejjin:
- "grupp ta' ditti ta' investment" tfisser grupp ta' ditti ta' investment kif imfissra fil-punt (25) tal-Artikolu 4(1) tal-IFR;
- L.S. 330.09. "grupp ta' riżoluzzjoni" tfisser l-istess bħat-tifsira mogħtija lilha fis-subregolament (1) tar-regolament 2 tar-Regolamenti dwar Rkupru u Riżoluzzjoni;
- "holding company finanzjarja" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (20) tal-Artikolu 4(1) tas-CRR;
- L.S. 330.06. "holding company finanzjarja mħallta" tfisser l-istess bħat-tifsira mogħtija lilha fir-regolament 2 tar-Regolamenti dwar il-Konglomerati Finanzjarji;
- "holding company finanzjarja mħallta prinċipali" tfisser l-istess bħat-tifsira mogħtija lill-kliem "holding company finanzjarja mħallta prinċipali fi Stat Membru" fil-punt (32) tal-Artikolu 4(1) tas-CRR;
- "holding company finanzjarja mħallta prinċipali tal-UE" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (33) tal-Artikolu 4(1) tas-CRR;
- "holding company finanzjarja prinċipali" tfisser l-istess bħat-tifsira mogħtija lill-kliem "holding company finanzjarja prinċipali fi Stat Membru" fil-punt (30) tal-Artikolu 4(1) tas-CRR;

"holding company finanzjarja prinċipali tal-UE" tfisser l-istess bhat-tifsira mogħtija lilha fil-punt (31) tal-Artikolu 4(1) tas-CRR;

"holding company ta' attività mħallta" tfisser impriża prinċipali li ma tkunx holding company finanzjarja, holding company ta' investment, istituzzjoni ta' kreditu, ditta ta' investment, jew holding company finanzjarja mħallta fil-kuntest tat-tifsira tad-Direttiva 2002/87/KE, li jkollha s-sussidjarji tagħha jinkludu mill-inqas ditta ta' investment waħda;

"holding company ta' investment" tfisser holding company ta' investment kif imfissra fil-punt (23) tal-Artikolu 4(1) tal-IFR;

"IFD" tfisser id-Direttiva (UE) 2019/2034 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' Novembru 2019 dwar is-supervizjoni prudenzjali tad-ditti tal-investment u li temenda d-Direttivi 2002/87/KE, 2009/65/KE, 2011/61/UE, 2013/36/UE, 2014/59/UE u 2014/65/UE, kif emendati minn żmien għal żmien, u li tinkludi kull strument legali vinkolanti, linji gwida u miżuri oħra li jkunu nħarġu jew li jistgħu jinħarġu taħtha;

"IFR" tfisser ir-Regolament (UE) 2019/2033 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' Novembru 2019 dwar ir-rekwiżiti prudenzjali tad-ditti tal-investment u li jemenda r-Regolamenti (UE) Nru 1093/2010, (UE) Nru 575/2013, (UE) Nru 600/2014 u (UE) Nru 806/2014, kif emendati minn żmien għal żmien, u tinkludi kull strument legali vinkolanti, linji gwida u miżuri oħra li jkunu nħarġu jew li jistgħu jinħarġu taħtha";

(vii) minnufih wara t-tifsira "irċevuti tad-depożiti" għandhom jiġu miżjudaw dawn it-tifsiriet godda li ġejjin:

" "istituzzjoni finanzjarja" tfisser istituzzjoni finanzjarja kif imfissra fil-punt (14) tal-Artikolu 4(1) tal-IFR;

"istituzzjoni prinċipali" tfisser l-istess bħat-tifsira mogħtija lill-kliem "istituzzjoni prinċipali fi Stat Membru" fil-punt (28) tal-Artikolu 4(1) tas-CRR;

"istituzzjoni prinċipali tal-UE" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (29) tal-Artikolu 4(1) tas-CRR;"

(viii) minnufih wara t-tifsira "klijent" għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

"konformità mat-test tal-kapital tal-grupp" tfisser konformità minn impriza prinċipali fi grupp ta' ditti ta' investment mal-htigiet tal-Artikolu 8 tal-IFR;"

(ix) minnufih wara t-tifsira "rabtiet mill-qrib" għandhom jiġu miżjuda dawn it-tifsiriet ġodda li ġejjin:

"Regolament (UE) Nru 1092/2010" tfisser Regolament (UE) Nru 1092/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 dwar is-sorveljanza makroprudenzjali tal-Unjoni tas-sistema finanzjarja u li jstabilixxi Bord Ewropew dwar ir-Riskju Sistemiku, kif emendat minn żmien għal żmien, u jinkludi kull miżura implimentattiva li tkun ġiet jew li tista' tiġi maħruġa tahtu;

"Regolament (UE) Nru 1093/2010" tfisser Regolament (UE) Nru 1093/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jstabilixxi Awtorità Superviżorja Ewropea (Awtorità Bankarja Ewropea) u li jemenda d-Deċiżjoni Nru 716/2009/KE u jħassar id-Deċiżjoni tal-Kummissjoni 2009/78/KE, kif emendat minn żmien għal żmien, u jinkludi kull miżura implimentattiva li tkun ġiet jew li tista' tiġi maħruġa tahtu;

"Regolament (UE) Nru 1094/2010" tfisser Regolament (UE) Nru 1094/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jistabbilixxi Awtorità Superviżorja Ewropea (Awtorità Ewropea tal-Assigurazzjoni u l-Pensjonijiet tax-Xogħol), u li jemenda d-Deċiżjoni Nru 716/2009/KE u li jhassar id-Deċiżjoni tal-Kummissjoni 2009/79/KE, kif emendat minn żmien għal żmien, u jinkludi kull miżura implimentattiva li tkun giet jew li tista' tiġi maħruġa tahtu;" u

(x) minnufih wara t-tifsira "strument" għandhom jiġu miżjuda dawn it-tifsiriet godda li ġejjin:

" "strument legali vinkolanti" tfisser kwalunkwe miżuri li japplikaw direttament, inklużi, iżda mhux biss, kwalunkwe standard tekniku implimentattiv, kwalunkwe standard tekniku regolatorju jew kwalunkwe miżuri simili, li jinħarġu taht il-liġijiet tal-Unjoni Ewropea;

"superviżur konsolidanti" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (41) tal-Artikolu 4(1) tas-CRR;" u

(b) minnufih wara s-subartikolu (1) tiegħu għandhom jiġu miżjuda dawn is-subartikoli godda li ġejjin:

"(1A) Għall-finijiet li jiġu applikati l-htigiet u s-setgħat superviżorji stipulati f'dan l-Att u f'kull regolamenti u Regoli dwar is-Servizzi ta' Investiment magħmulin jew maħruġin tahtu li jittrasponu s-CRD, f'kull strument legali vinkolanti maħruġ taht is-CRD, jew fis-CRR, fuq bażi konsolidata jew subkonsolidata skont dan l-Att u kull regolamenti u Regoli dwar is-Servizzi ta' Investiment magħmulin jew maħruġin tahtu li jittrasponu s-CRD, kull strument legali vinkolanti maħruġ taht is-CRD, u skont is-CRR, il-kliem "istituzzjoni", "istituzzjoni prinċipali", "istituzzjoni prinċipali tal-UE" u "impriza prinċipali" għandhom jinkludu wkoll:

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(a) holding companies finanzjarji u holding companies finanzjarji mħallta li jkollhom approvazzjoni skont l-artikolu 10ĊA ta' dan l-Att u, jew l-Artikolu 21a tas-CRD;

(b) istituzzjonijiet nominati kontrollati minn holding company finanzjarja prinċipali tal-UE, holding company finanzjarja mħallta prinċipali tal-UE, holding company finanzjarja prinċipali fi Stat Membru jew holding company finanzjarja mħallta prinċipali fi Stat Membru fejn il-prinċipali relevanti tkun eżentata skont l-artikolu 10ĊA(5) ta' dan l-Att u, jew l-Artikolu 21a(4) tas-CRD; u

(ċ) holding companies finanzjarji, holding companies finanzjarji mħallta jew istituzzjonijiet nominati skont l-artikolu 16AA(1)(f) ta' dan l-Att u, jew l-Artikolu 21a(6)(d) tas-CRD:

Iżda għall-finijiet ta' dan is-subartikolu:

(i) il-kelma "kontroll" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (37) tal-Artikolu 4(1) tas-CRR, u l-kelma "kontrollati" għandha tinftehem skont dan; u

(ii) il-kelma "istituzzjoni" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (3) tal-Artikolu 4(1) tas-CRR.

(1B) Referenza għall-"approvazzjoni" ta' holding companies finanzjarji jew holding companies finanzjarji mħallta f'dan l-Att u f'kull regolamenti u, jew Regoli dwar is-Servizzi ta' Investiment maħruġin taħtu, tfisser l-approvazzjoni mogħtija mill-awtorità kompetenti skont l-artikolu 10ĊA ta' dan l-Att jew approvazzjoni mogħtija permezz ta' deċiżjoni kongunta tal-awtorità kompetenti u ta' xi awtorità regulatorja Ewropea skont l-artikolu 10ĊA ta' dan l-Att u l-Artikolu 21a tas-CRD kif jista' jkun il-każ.

(1Ċ) Referenza għall-"eżenzjoni" ta' holding companies finanzjarji jew holding companies finanzjarji mħallta f'dan l-Att u f'kull regolamenti u, jew Regoli dwar is-Servizzi ta' Investiment mahruġin tahtu, tfisser eżenzjoni mogħtija mill-awtorità kompetenti skont l-artikolu 10ĊA ta' dan l-Att jew eżenzjoni mogħtija permezz ta' deċiżjoni kongunta tal-awtorità kompetenti u ta' xi awtorità regolatorja Ewropea skont l-artikolu 10ĊA ta' dan l-Att u l-Artikolu 21a tas-CRD, kif jista' jkun il-każ."

6. L-artikolu 2A tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2A tal-Att prinċipali.

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "tal-MiFIR u tad-Direttiva UCITS, u l-Kummissjoni" għandhom jidhlu l-kliem "tal-MiFIR, tad-Direttiva UCITS, tal-IFD u tal-IFR, u l-Kummissjoni" u minnufih wara għandu jizdied dan is-subartikolu ġdid li ġej:

"(2A) L-awtorità kompetenti għandu jkollha l-kompetenza, ir-rizorsi, il-kapaċità operattiva, is-setgħat u l-independenza meħtieġa biex twettaq il-funzjonijiet tagħha u teżercita s-setgħat li tagħtiha l-liġi."; u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "mid-MiFID, mill-MiFIR jew mid-Direttiva UCITS, l-awtorità kompetenti għandha:", għandhom jidhlu l-kliem "mill-MiFID, mill-MiFIR, mid-Direttiva UCITS, mill-IFD jew mill-IFR, l-awtorità kompetenti għandha:".

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

Emenda tal-artikolu 6 tal-Att prinċipali.

(a) minnufih wara l-paragrafu (e) tas-subartikolu (1) tiegħu għandu jizdied dan il-paragrafu ġdid li ġej:

"(f) tagħti liċenzja lil applikant li jkollu holding company ta' investiment jew holding company finanzjarja mħallta bhala l-kumpanija prinċipali tiegħu sakemm ma tkunx sodisfatta li l-membri tal-korp ta' governanza ta' dik il-kumpanija prinċipali jkollhom reputazzjoni tajba biżżejjed u jkollhom l-għarfien, il-kompetenzi u l-esperjenza biżżejjed biex iwettqu dmirijiethom b'mod effettiv, filwaqt li jittiehed inkunsiderazzjoni r-rwol speċifiku li għandha holding company ta' investiment jew holding company finanzjarja mħallta."; u

(b) is-subartikolu (5) tiegħu għandu jiġi emendat kif ġej:

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(i) minflok il-paragrafu (b) tiegħu għandu jidhol dan li ġej:

"(b) ċerti tipi ta' liċenzji;" u

(ċ) fil-paragrafu (ċ) tiegħu, minflok il-kliem "ċerti kategoriji ta' detenturi;" għandhom jidhlu l-kliem "ċerti tipi ta' detenturi ta' liċenzja;".

Emenda tal-artikolu 7 tal-Att prinċipali.

8. L-artikolu 7 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu:

(i) fil-paragrafu (f) tiegħu, minflok il-kliem "tad-detentur tal-liċenza; u" għandhom jidhlu l-kliem "tad-detentur tal-liċenzja; jew"; u

(ii) fil-paragrafu (g) tiegħu, minflok il-kliem "l-għoti ta' dik il-liċenza." għandhom jidhlu l-kliem "l-għoti ta' dik il-liċenzja;" u minnufih wara dan għandu jizdied dan il-proviso ġdid li ġej:

"Izda liċenzja għal servizzi ta' investiment għandha tiġi mħassra awtomatikament jekk id-detentur tal-liċenzja jiġi dikjarat fallut, jew jiġi stralċjat, jew jagħmel akkordju mal-kredituri tiegħu, jew jiġi xort'ohra xolt.";

(b) fil-paragrafu (f) tas-subartikolu (3) tiegħu, minflok il-kliem "tal-manager jew tat-trustee jew tal-kustodju tal-iskema, jew tal-ekwivalenti tagħhom." għandhom jidhlu l-kliem "tal-manager jew tat-trustee jew tal-kustodju tal-iskema, jew tal-ekwivalenti tagħhom:" u minnufih wara għandu jizdied dan il-proviso ġdid li ġej:

"Izda liċenzja ta' skema ta' investiment kollettiv għandha tiġi awtomatikament imħassra jekk id-detentur tal-liċenzja jiġi dikjarat fallut, jew jiġi stralċjat, jew jagħmel akkordju mal-kredituri tiegħu, jew jiġi xort'ohra xolt.";

(ċ) fis-subartikolu (4) tiegħu, minflok il-kliem "subartikolu (1)." għandhom jidhlu l-kliem "subartikolu (2).".

Żieda tal-artikolu 8A fl-Att prinċipali.

9. Minnufih wara l-artikolu 8 tal-Att prinċipali għandu jizdied

dan l-artikolu ġdid li ġej:

"Applikazzjoni tas-CRR għal ċerti ditti ta' investiment.

8A. (1) L-awtorità kompetenti tista' tiddeċiedi li tapplika r-rekwiżiti tas-CRR skont il-punt (ċ) tal-ewwel subparagrafu tal-Artikolu 1(2) tal-IFR għal ditta ta' investiment biex din tiġġestixxi xi attività elenkata fil-punti (3) u (6) tas-Sezzjoni A tal-Anness I mal-MiFID, meta l-valur totali tal-attiv konsolidat ta' dik id-ditta ta' investiment ikun daqs jew jeċċedi l-ħames biljun euro (€5,000,000,000), kalkolati bħala medja tat-tnax (12)-il xahar ta' qabel, u meta japplika xi kriterju jew aktar minn dawn li ġejjin:

(a) dik id-ditta ta' investiment tkun tiġġestixxi dawk l-attivitajiet fuq tali skala li l-falliment jew id-diffikultà tad-ditta ta' investiment jistgħu jwasslu għal riskju sistemiku;

(b) id-ditta ta' investiment tkun membru tal-ikklerjar kif imfisser fil-punt (3) tal-artikolu 4(1) tal-IFR; u, jew

(ċ) l-awtorità kompetenti tqis li jkun ġustifikabbli fil-kuntest tad-daqs, in-natura, l-iskala u l-komplessità tal-attivitajiet tad-ditta ta' investiment involuta, meta jiġi kkunsidrat il-prinċipju ta' proporzjonalità u wara li jiġu kkunsidrati xi fattur jew aktar minn dawn li ġejjin:

(i) l-importanza tad-ditta ta' investiment għall-ekonomija ta' Malta jew tal-Unjoni Ewropea;

(ii) x'sinifikat għandhom l-attivitajiet transkonfini tad-ditta ta' investiment;

(iii) l-interkonnnettività tad-ditta ta' investiment mas-sistema finanzjarja.

(2) Is-subartikolu (1) ma għandux japplika għal negozjanti ta' komoditajiet u ta' kwoti ta' emissjonijiet, impriži ta' investiment kollettiv jew impriži tal-assigurazzjoni.

(3) Meta l-awtorità kompetenti tiddeċiedi li tapplika r-rekwiżiti tas-CRR għal ditta ta' investiment skont is-subartikolu (1), għandha ssir superviżjoni fuq dik id-ditta ta' investiment dwar il-konformità tagħha mar-rekwiżiti prudenzjali taħt it-Titoli VII u VIII tas-CRD kif trasposti fil-liġi tal-pajjiż.

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(4) Meta l-awtorità kompetenti tiddeċiedi li tirrevoka xi deċiżjoni meħuda skont is-subartikolu (1), din għandha tgharraf lid-ditta ta' investment mingħajr dewmien:

Iżda deċiżjoni meħuda mill-awtorità kompetenti taħt is-subartikolu (1) ma għandhiex tibqa' tapplika meta ditta ta' investment ma tibqax konformi mal-limitu msemmi f'dak is-subartikolu, kalkolat matul perjodu ta' tmax-il xahar konsekuttiv.

(5) Għall-finijiet ta' dan l-artikolu, il-kliem "ditta ta' investment" ifisser ditta ta' investment li jkollha liċenzja taħt dan l-Att."

Emenda tal-artikolu 9 tal-Att prinċipali.

10. Fis-subartikolu (1) tal-artikolu 9 tal-Att prinċipali, minflok il-kliem "liċenzja għal servizzi ta' investment u l-manager" għandhom jidhlu l-kliem "liċenzja għal servizzi ta' investment, holding company ta' investment jew holding company finanzjarja mhallta u l-manager".

Emenda tal-artikolu 10A tal-Att prinċipali.

11. Fil-paragrafu (b) tas-subartikolu (6) tal-artikolu 10A tal-Att prinċipali, minflok il-kliem "is-CRD jew id-Direttiva dwar il-Likwidità." għandhom jidhlu l-kliem "is-CRD, l-IFD, jew id-Direttiva dwar il-Likwidità."

Żieda tal-artikolu 10ĊA mal-Att prinċipali.

12. Minnufih wara l-artikolu 10Ċ tal-Att prinċipali għandu jiġi miżjud dan l-artikolu ġdid li ġej:

"Approvazzjoni ta' holding companies finanzjarji u holding companies finanzjarji mhallta.

10ĊA. (1) Holding companies finanzjarji prinċipali, holding companies finanzjarji mhallta prinċipali, holding companies finanzjarji prinċipali tal-UE u holding companies finanzjarji mhallta prinċipali tal-UE, li jinsabu stabbiliti f'Malta jew f'xi Stat Membru ieħor jew fi Stat ŻEE u li jkollhom ditta ta' investment bħala sussidjarja, għandhom jiksbu l-approvazzjoni jew l-eżenzjoni, kif jista' jkun il-każ, mingħand l-awtorità kompetenti li għandha tmexxi, bħala s-superviżur konsolidanti, skont dan l-artikolu. Holding companies finanzjarji oħra jew holding companies finanzjarji mhallta oħra, stabbiliti f'Malta jew f'xi Stat Membru ieħor jew fi Stat ŻEE u li jkollhom ditta ta' investment bħala sussidjarja, għandhom jiksbu l-approvazzjoni jew l-eżenzjoni, kif jista' jkun il-każ, tal-awtorità kompetenti, li għandha tmexxi bħala s-superviżur konsolidanti, skont dan l-artikolu meta dawn ikunu meħtieġa jikkonformaw mas-CRD jew mas-CRR fuq bażi subkonsolidata:

Iżda skont l-artikolu 10D meta l-awtorità kompetenti ma tkunx is-superviżur konsolidanti, holding companies finanzjarji u holding companies finanzjarji mħallta stabbiliti f'Malta u li jkollhom ditta ta' investment bħala sussidjarja, għandhom jiksbu l-approvazzjoni jew l-eżenzjoni, kif jista' jkun il-każ, tas-superviżur konsolidanti li tiġi deċiża skont l-Artikolu 111 tas-CRD.

(2) Għall-finijiet ta' ksib ta' approvazzjoni jew eżenzjoni, kif jista' jkun il-każ, skont is-subartikolu (1), il-holding companies finanzjarji u l-holding companies finanzjarji mħallta hemm imsemmija għandhom jipprovdu, meta:

(a) l-awtorità kompetenti ma tkunx is-superviżur konsolidanti imma l-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita f'Malta; jew

(b) il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita fi Stat Membru jew fi Stat ŻEE li ma jkunx Malta u l-awtorità kompetenti tkun is-superviżur konsolidanti,

dan it-tagħrif li ġej lill-awtorità kompetenti:

(a) l-organizzazzjoni strutturali tal-grupp li l-holding company finanzjarja jew il-holding company finanzjarja mħallta, kif jista' jkun il-każ, tkun tiffirma parti minnu, flimkien ma' indikazzjoni ċara ta' min ikunu s-sussidjarji tiegħu u, meta jkun japplika, l-impriżi prinċipali, u l-lokazzjoni u xorta ta' attività li kull waħda mill-entitajiet fi hdan il-grupp tkun tmexxi;

(b) tagħrif dwar in-nomina ta' mill-inqas żewġ persuni li jkunu effettivament imexxu l-holding company finanzjarja jew il-holding company finanzjarja mħallta, kif jista' jkun il-każ, u konformità mal-htigiet dwar il-kwalifika ta' diretturi stipulati fir-Regoli dwar is-Servizzi ta' Investment;

(c) l-organizzazzjoni interna u t-tqassim ta' ħidmiet fi hdan il-grupp;

(d) kull tagħrif ieħor li jista' jkun meħtieġ biex isiru l-valutazzjonijiet imsemmija fis-subartikoli (3) u (4) skont ma tista' teħtieġ l-awtorità kompetenti.

(3) Kull applikazzjoni għal approvazzjoni jew eżenzjoni, kif jista' jkun il-każ, skont dan l-artikolu għandha jkollha dik l-għamla u tkun imsieħba b'dak it-tagħrif u għandha tkun taqbel ma' kull tali hteġa li tista' tiġi stabbilita, minn żmien għal żmien, b'Regoli dwar is-Servizzi ta' Investiment.

(4) Tista' tingħata approvazzjoni lil holding company finanzjarja jew holding company finanzjarja mħallta, kif jista' jkun il-każ, skont dan l-artikolu biss fejn jiġu sodisfatti dawn il-kondizzjonijiet kollha li ġejjin:

(a) l-arranġamenti interni u t-tqassim ta' hidmiet fi hdan il-grupp ikunu adegwati għall-fini li jitharsu l-htigiet imposti b'dan l-Att u kull regolamenti magħmulin u Regoli dwar is-Servizzi ta' Investiment mahruġin tahtu li jittrasponu s-CRD u mis-CRR fuq bażi konsolidata jew subkonsolidata u li jkunu, b'mod partikolari, effettivi sabiex:

(i) jikkordinaw is-sussidjarji kollha tal-holding company finanzjarja jew tal-holding company finanzjarja mħallta, kif jista' jkun il-każ, inkluż, meta jkun meħtieġ, permezz ta' tqassim ta' hidmiet adegwat fost istituzzjonijiet sussidjarji;

(ii) jipprevjenu jew jimmaniġġaw il-kunflitti li jinqalgħu fi hdan il-grupp; u

(iii) jinfurzaw fil-grupp il-politiki komuni għall-grupp kollu stabbiliti mill-holding company finanzjarja prinċipali jew holding company finanzjarja mħallta prinċipali;

(b) l-organizzazzjoni strutturali tal-grupp li l-holding company finanzjarja jew holding company finanzjarja mħallta, kif jista' jkun il-każ, tkun tiffirma parti minnu ma tkunx ixxejjel jew xort'oħra tipprevjeni milli ssir superviżjoni effettiva tal-istituzzjonijiet sussidjarji jew istituzzjonijiet prinċipali f'dak li jolqot lill-individwu, lill-obbligazzjonijiet konsolidati u, meta jkun adatt daww subkonsolidati li huma soġġetti għalihom:

Iżda l-valutazzjoni ta' dan il-kriterju għandha tqis, b'mod partikolari:

(i) il-pożizzjoni tal-holding company finanzjarja jew tal-holding company finanzjarja mħallta, kif jista' jkun il-każ, fi grupp b'hafna saffi;

(ii) l-istruttura tal-kapital azzjonarju; u

(iii) ir-rwol tal-holding company finanzjarja jew holding company finanzjarja mħallta, kif jista' jkun il-każ, fi hdan il-grupp;

(ċ) jitharsu l-htigiet dwar il-kwalifika ta' diretturi stipulati fir-Regoli dwar is-Servizzi ta' Investment.

(5) Tista' tinghata eżenzjoni lil holding company finanzjarja jew lil holding company finanzjarja mħallta, kif jista' jkun il-każ, skont dan l-artikolu biss fejn jiġu sodisfatti dawn il-kondizzjonijiet kollha li ġejjin:

(a) l-attività prinċipali tal-holding company finanzjarja tkun dik li takkwista parteċipazzjoni f'sussidjarji jew, fil-każ ta' holding company finanzjarja mħallta, l-attività prinċipali tagħha fir-rigward ta' istituzzjonijiet jew ta' istituzzjonijiet finanzjarji tkun dik li takkwista parteċipazzjoni f'sussidjarji;

(b) il-holding company finanzjarja jew holding company finanzjarja mħallta, kif jista' jkun il-każ, ma tkun giet nominata bħala entità ta' riżoluzzjoni f'ebda wiehed mill-gruppi ta' riżoluzzjoni tal-grupp skont l-istrateġija ta' riżoluzzjoni deċiża mill-awtorità tar-riżoluzzjoni rilevanti skont il-BRRD;

(ċ) tiġi nominata istituzzjoni ta' kreditu sussidjarja responsabbli biex tiżgura li l-grupp ikun jikkonforma mal-htigiet prudenzjali fuq bażi konsolidata u li jinghataw kull mezz meħtieġ u awtorità legali biex jitwettqu dawk l-obbligazzjonijiet b'mod effettiv;

(d) il-holding company finanzjarja jew holding company finanzjarja mħallta, kif jista' jkun il-każ, ma tindaħalx fit-tehid ta' deċiżjonijiet ta' xorta manigerjali, operattiva jew finanzjarja li jolqtu lill-grupp jew lis-sussidjarji tiegħu li jkunu istituzzjonijiet jew istituzzjonijiet finanzjarji;

(e) ma jkun hemm ebda xkiel għas-superviżjoni effettiva tal-grupp fuq bażi konsolidata:

Iżda meta holding companies finanzjarji jew holding companies finanzjarji mhallta jkunu eżentati minn approvazzjoni skont dan is-subartikolu, dawn m'għandhomx jiġu esklużi mill-perimetru ta' konsolidazzjoni kif stipulat fid-dispożizzjonijiet ta' dan l-Att u ta' kwalunkwe regolamenti magħmulin u Regoli dwar is-Servizzi ta' Investiment maħruġin tahtu li jittrasponu s-CRD u fis-CRR.

(6) Meta l-awtorità kompetenti tkun is-superviżur konsolidanti, din għandha tara li jkun hemm konformità mal-kondizzjonijiet imsemmija fis-subartikolu (4) jew, meta jkun japplika, is-subartikolu (5) fuq bażi kontinwa.

(7) (a) Holding companies finanzjarji u holding companies finanzjarji mhallta għandhom jipprovdu lill-awtorità kompetenti, meta din tkun qiegħda taġixxi bħala s-superviżur konsolidanti, bit-tagħrif meħtieġ biex issir sorveljanza fuq bażi kontinwa tal-organizzazzjoni strutturali tal-grupp u konformità mal-kondizzjonijiet imsemmija fis-subartikolu (4).

(b) Holding companies finanzjarji u holding companies finanzjarji mhallta li jkunu eżentati skont is-subartikolu (5) għandhom jipprovdu lill-awtorità kompetenti, meta din tkun qiegħda taġixxi bħala s-superviżur konsolidanti, bit-tagħrif meħtieġ għall-għemil ta' sorveljanza fuq bażi kontinwa tal-organizzazzjoni strutturali tal-grupp u konformità mal-kondizzjonijiet imsemmija fis-subartikolu (5).

(ċ) L-awtorità kompetenti għandha tikkondividi t-tagħrif li tkun irċeviet skont dan is-subartikolu mal-awtorità regolatorja Ewropea fejn tkun stabbilita l-holding company finanzjarja jew il-holding company finanzjarja mhallta, kif jista' jkun il-każ.

(8) Meta l-awtorità kompetenti tkun is-superviżur konsolidanti u din tkun stabbiliet li l-kondizzjonijiet stipulati fis-subartikolu (5) ma jkunux għadhom jitharsu, il-holding company finanzjarja jew holding company finanzjarja mhallta, kif jista' jkun il-każ, għandha tikseb approvazzjoni skont dan l-artikolu.

(9) Għall-fini ta' teħid ta' deċiżjonijiet dwar l-approvazzjoni jew l-eżenzjoni minn approvazzjoni, kif jista' jkun il-każ, imsemmija fis-subartikoli (4), (5) u (8) u, jew fis-subartikoli (3), (4) jew (7) tal-Artikolu 21a tas-CRD, meta:

(i) l-awtorità kompetenti ma tkunx is-superviżur konsolidanti imma l-holding company finanzjarja jew il-holding company finanzjarja mħallta, kif jista' jkun il-każ, tkun stabbilita f'Malta; jew

(ii) il-holding company finanzjarja jew il-holding company finanzjarja mħallta, kif jista' jkun il-każ, tkun stabbilita fi Stat Membru jew fi Stat ŻEE li ma jkunx Malta u l-awtorità kompetenti tkun is-superviżur konsolidanti,

l-awtorità kompetenti għandha tikkopera flimkien mal-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala superviżur konsolidanti jew mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, f'konsultazzjoni sħiħa.

(10) Meta l-awtorità kompetenti tkun is-superviżur konsolidanti, din għandha thejji valutazzjoni dwar l-affarijiet imsemmija fis-subartikoli (4), (5) u (8), skont ma japplika, u għandha tgħaddi dik il-valutazzjoni lill-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn tkun stabbilita l-holding company finanzjarja jew il-holding company finanzjarja mħallta, kif jista' jkun il-każ.

(11) L-awtorità kompetenti, sew jekk tkun qiegħda taġixxi bħala superviżur konsolidanti sew jekk tkun qiegħda tirċievi l-valutazzjoni msemmija fl-Artikolu 21a(8) tas-CRD mingħand l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, għandha tagħmel dak kollu li tista' tagħmel biex tasal għal deċiżjoni kongunta dwar l-approvazzjoni jew l-eżenzjoni mill-approvazzjoni, kif jista' jkun il-każ, imsemmija fis-subartikoli (4), (5) u (8) u, jew fis-subartikoli (3), (4) u (7) tal-Artikolu 21a tas-CRD, flimkien mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita jew mal-awtorità regolatorja Ewropea li

tkun qiegħda taġixxi bħala s-superviżur konsolidanti, kif jista' jkun il-każ, fi żmien xahrejn minn meta tiġi riċevuta dik il-valutazzjoni:

Iżda d-deċiżjoni kongunta għandha tkun debitament dokumentata u motivata u meta l-awtorità kompetenti tkun is-superviżur konsolidanti, din għandha tikkomunika d-deċiżjoni kongunta lill-holding company finanzjarja jew lill-holding company finanzjarja mħallta, kif jista' jkun il-każ.

(12) Fil-każ ta' nuqqas ta' qbil bejn l-awtorità kompetenti u l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti jew l-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, l-awtorità kompetenti għandha tastjeni milli tgħaddi għad-deċiżjoni kongunta msemija fis-subartikolu (11) u għandha tirreferi l-kwistjoni lill-EBA skont l-Artikolu 19 tar-Regolament (UE) Nru 1093/2010. F'każijiet bħal dawk, l-awtorità kompetenti għandha tadotta deċiżjoni kongunta mal-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti jew mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, b'mod konformi mad-deċiżjoni tal-EBA:

Iżda l-kwistjoni m'għandhiex tintbagħat lill-EBA wara li jgħaddi ż-żmien ta' xahrejn imsemmi fis-subartikolu (11) jew wara li tkun ittiegħdet deċiżjoni kongunta.

(13) Fil-każ ta' holding companies finanzjarji mħallta, meta l-kordinatur mahtur skont l-Artikolu 10 tad-Direttiva 2002/87/KE ma jkun la l-awtorità kompetenti, la l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, u lanqas l-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja mħallta tkun stabbilita, il-qbil ta' dak il-kordinatur għandu jkun meħtieġ għall-finijiet tad-deċiżjonijiet jew deċiżjonijiet kongunti msemija fis-subartikoli (4), (5) u (8) u, jew is-subartikoli (3), (4) u (7) tal-Artikolu 21a tas-CRD, kif dawn jistgħu jkunu japplikaw. Meta jkun meħtieġ il-qbil tal-kordinatur, l-awtorità kompetenti għandha tirreferi kull nuqqas ta' qbil lill-Awtorità

Supervizorja Ewropea relevanti, jiġifieri, lill-EBA jew lill-Awtorità Supervizorja Ewropea (Awtorità Ewropea tal-Assigurazzjoni u tal-Pensjonijiet tax-Xogħol) (EIOPA - European Insurance and Occupational Pensions Authority), stabbilita bir-Regolament (UE) Nru 1094/2010, li għandha tiegħu d-deċiżjoni tagħha fi żmien xahar minn meta tirċievi t-talba għal konsultazzjoni. Kull deċiżjoni meħuda skont dan il-paragrafu għandha tkun mingħajr preġudizzju għall-obbligazzjonijiet taht id-Direttiva 2002/87/KE jew id-Direttiva dwar is-Solvenza II.

(14) Meta l-approvazzjoni ta' holding company finanzjarja jew ta' holding company finanzjarja mħallta, kif jista' jkun il-każ, tiġi miċhuda skont dan l-artikolu u l-awtorità kompetenti tkun is-supervizur konsolidanti, l-awtorità kompetenti għandha tavża lill-applikant bid-deċiżjoni u l-motivazzjonijiet relattivi fi żmien erba' xhur minn meta tiġi riċevuta l-applikazzjoni, jew fejn l-applikazzjoni tkun inkompleta, fi żmien erba' xhur minn meta jiġi riċevut it-tagħrif sħiħ meħtieġ biex tittiehed id-deċiżjoni. Flimkien maċ-ċhid jistgħu jiġu adottati, meta jkun meħtieġ, il-miżuri msemmija fl-artikolu 16AA:

Iżda d-deċiżjoni li approvazzjoni tingħata jew tiġi miċhuda għandha, f'kull każ, tittiehed fi żmien sitt xhur minn meta tiġi riċevuta l-applikazzjoni.

(15) Għall-finijiet ta' dan l-artikolu:

(a) il-frażi "istituzzjoni finanzjarja" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (26) tal-Artikolu 4(1) tas-CRR;

(b) il-kelma "grupp" tfisser grupp kif imfissra fil-punt (138) tal-Artikolu 4(1) tas-CRR;

(ċ) il-kelma "istituzzjoni" tfisser istituzzjoni kif imfissra fil-punt (3) tal-Artikolu 4(1) tas-CRR;

(d) il-frażi "ditta ta' investment" tfisser ditta ta' investment kif imfissra fil-punt (2) tal-Artikolu 4(1) tas-CRR;

(e) il-frażi "impriza prinċipali" tfisser impriza prinċipali kif imfissra fil-punt (15) tal-Artikolu 4(1) tas-CRR;

(f) il-frażi "awtorità tar-riżoluzzjoni" tfisser awtorità nominata minn Stat Membru jew minn Stat ŻEE skont l-Artikolu 3 tal-BRRD;

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(g) il-kelma "sussidjarja" tfisser sussidjarja kif imfissra fil-punt (16) tal-Artikolu 4(1) tas-CRR.

(16) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 10."

Emenda tal-artikolu 12 tal-Att prinċipali.

13. Is-subartikolu (1) tal-artikolu 12 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tiegħu, minflok il-kliem "detenturi ta' liċenza jew xi kategoriji tagħhom kif jista' jiġi speċifikat," għandhom jidhlu l-kliem "detenturi ta' liċenzja jew xi tipi tagħhom kif jista' jiġi speċifikat,";

(b) fil-paragrafu (k) tiegħu, minflok il-kliem "tad-Direttiva AIFM, ral-BRRD, tas-CRD, tad-MiFID, tal-MiFIR u tad-Direttiva UCITS;" għandhom jidhlu l-kliem "tad-Direttiva AIFM, tal-BRRD, tas-CRR, tas-CRD, tal-MiFID, tal-MiFIR, tad-Direttiva UCITS, tal-IFD, u tal-IFR;" u

(ċ) fil-paragrafu (l) tiegħu, minflok il-kliem "tas-CRD u tas-CRR, skont ma tista' tiġi" għandhom jidhlu l-kliem "tas-CRD, tas-CRR, tal-IFD u tal-IFR, skont ma tista' tiġi".

Emenda tal-artikolu 13 tal-Att prinċipali.

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

(a) minflok is-subartikolu (1) tiegħu għandu jidhlo dan li ġej:

"(1) Mingħajr preġudizzju għal xi setgħa li għandha l-awtorità kompetenti li toħroġ minn xi liġi oħra, l-awtorità kompetenti għandu jkollha s-setgħa li titlob informazzjoni mingħand:

(a) persuna li tkun jew li kienet qiegħda ttipprovdi, jew li tidher li tkun jew li kienet qiegħda ttipprovdi, xi servizz ta' investiment;

(b) skema ta' investiment kollettiv;

(ċ) persuna li tkun jew li kienet qiegħda tiġġestixxi, jew li tidher li tkun jew li kienet qiegħda tiġġestixxi attivitajiet li jkollhom x'jaqsmu ma' xi skema bħal dik;

(d) persuna li tkun ħarġet, jew li tidher li tkun ħarġet riklam li jinkwadra fid-dispożizzjonijiet tal-

artikolu 11(1);

(e) awditur ta' detentur tal-licenzja; jew

(f) xi persuna oħra li tidher li jkollha tagħrif relevanti.";

(b) minnufih wara s-subartikolu (1) tiegħu, kif sostitwit, għandhom jiddiedu dawn is-subartikoli godda li ġejjin:

"(1A) Mingħajr preġudizzju għas-subartikolu (1), l-awtorità kompetenti għandu jkollha s-setgħa li titlob informazzjoni mingħand:

(a) ditti ta' investiment stabbiliti f'Malta;

(b) holding companies ta' investiment stabbiliti f'Malta;

(c) holding companies finanzjarji mħallta stabbiliti f'Malta u l-kumpaniji sussidjarji tagħhom;

(d) holding companies ta' attività mħallta stabbiliti f'Malta;

(e) persuni li jappartjenu għall-entitajiet imsemmija fil-punti (a) sa (d);

(f) terzi persuni li l-entitajiet imsemmija fil-punti (a) sa (d) jkunu esternalizzawhom funzjonijiet jew attivitajiet operattivi.

(1B) Mingħajr preġudizzju għall-ġeneralità tas-subartikoli (1) u (1A), l-awtorità kompetenti tista', b'avviż bil-miktub, teħtieġ lil xi persuna msemmija f'dawk is-subartikoli li twettaq dan kollu jew xi haġa minn dan li ġej:

(a) li tipprovdi lill-awtorità kompetenti, fiż-żmien meta u f'dak il-lok u b'dak il-mod li din tista' tispeçifika, dik l-informazzjoni u dokumentazzjoni li tista' tkun teħtieġ, inkluża s-setgħa li teħtieġ reġistrazzjonijiet telefoniçi eżistenti u tat-traffiku ta' data eżistenti, dwar xi tali servizz, skema jew riklam bħal dawk imsemmija, jew dwar xi persuna li d-detentur tal-licenzja jkollu rabtiet fil-qrib magħha fil-kuntest tat-tifsira tal-artikolu 6;

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(b) li tipprovdi lill-awtorità kompetenti kull informazzjoni jew dokumentazzjoni msemmija hawn qabel verifikati b'dak il-mod li din tista' tispeċifika;

(ċ) li tattendi quddiem l-awtorità kompetenti, jew quddiem xi persuna mahtura minnha, fiż-żmien meta u f'dak il-lok li din tista' tispeċifika, biex twieġeb għal mistoqsijiet u tipprovdi informazzjoni u dokumentazzjoni dwar tali servizz, skema jew riklam bħal dawk imsemmija."; u

(ċ) minflok is-subartikolu (2) tiegħu għandu jidhul dan li ġej:

"(2) L-awtorità kompetenti tista' teżamina u tagħmel kopji jew estratti ta' dokumenti fornuti jew provduti taht dan l-artikolu."

Emenda tal-artikolu 14 tal-Att prinċipali.

15. Fis-subartikolu (1) tal-artikolu 14 tal-Att prinċipali, minflok il-kliem "msemmija fil-paragrafi tal-artikolu 13(1)(i) sa (iv)." għandhom jidhlu l-kliem "msemmija fl-artikolu 13(1)(a) sa (d) u (1A)."

Emenda tal-artikolu 15 tal-Att prinċipali.

16. Fil-paragrafu (g) tas-subartikolu (2) tal-artikolu 15 tal-Att prinċipali, minflok il-kliem "tad-Direttiva AIFM, tal-BRRD, tas-CRD, tal-MiFID, tal-MiFIR u tad-Direttiva UCITS;" għandhom jidhlu l-kliem "tad-Direttiva AIFM, tal-BRRD, tas-CRD, tal-MiFID, tad-Direttiva UCITS, u tal-IFD;"

Emenda tal-artikolu 16 tal-Att prinċipali.

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

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "sabiex minn hemm jikseb it-tagħrif" għandhom jidhlu l-kliem "sabiex minn hemm jikseb u, jew jivverifika l-informazzjoni"; u

(b) minnufih wara s-subartikolu (2) tiegħu għandu jiżdied dan is-subartikolu ġdid li ġej:

"(2A) Mingħajr preġudizzju għas-subartikoli (1) u (2), meta uffiċjal, impjegat jew aġent tal-awtorità kompetenti juri, jekk mitlub, prova tal-awtorità li jkollu, dan jista' jidhul go fond li jkun okkupat minn persuna li tkun giet notifikata b'avviż taht l-artikolu 13 u minn xi persuna oħra li tkun inkluża fis-supervizjoni ta' konformità mat-test tal-kapital tal-grupp, meta l-awtorità kompetenti tkun is-supervizur tal-grupp, sabiex tagħmel spezzjon:

Iżda d-dritt ta' aċċess li jista' jiġi eżerċitat taht

dan is-subartikolu fir-rigward ta' kull persuna inkluża fis-superviżjoni ta' konformità mat-test tal-kapital tal-grupp meta l-awtorità kompetenti tkun is-superviżur tal-grupp, għandu jkun soġġett għal avviz li jingħata bil-quddiem lil awtoritajiet kompetenti oħra li jkunu involuti."

18. Minnufih wara l-artikolu 16A tal-Att prinċipali għandu jiġi miżjud dan l-artikolu gdid li ġej:

Żieda tal-artikolu 16AA mal-Att prinċipali.

"Mizuri superviżorji relatati ma' holding companies finanzjarji u ma' holding companies finanzjarji mhallta.

16AA. (1) Mingħajr preġudizzju għal kull setgħa oħra li għandha l-awtorità kompetenti taht dan l-Att jew kull liġi oħra, meta l-awtorità kompetenti tkun is-superviżur konsolidanti u tkun stabbiliet li l-kondizzjonijiet stipulati fl-artikolu 10D(4) ma jkunux tħarsu jew ma jkunux baqgħu jitharsu, l-awtorità kompetenti għandha tadotta l-mizuri superviżorji adatti li jiżguraw jew iregġgħu lura, kif jista' jkun il-każ, il-kontinwità u l-integrità ta' superviżjoni konsolidata u tiżgura konformità mal-htigiet stipulati f'dan l-Att u fi kwalunkwe regolamenti magħmulin u Regoli dwar is-Servizzi ta' Investiment maħruġin tahtu li jittrasponu s-CRD, fi strumenti legali vinkolanti maħruġin taht is-CRD, u fis-CRR, fuq bażi konsolidata. Fil-każ ta' holding company finanzjarja mhallta, il-mizuri superviżorji applikati mill-awtorità kompetenti bhala s-superviżur konsolidanti għandhom, b'mod partikolari, iqisu l-effetti fuq il-konglomerat finanzjarju. Il-mizuri superviżorji msemmija f'dan is-subartikolu għandhom jinkludu:

- (a) l-irtirar tal-approvazzjoni mogħtija lil holding company finanzjarja jew holding company finanzjarja mhallta skont l-artikolu 10D;
- (b) is-sospensjoni milli jiġu eżerċitati l-jeddijiet ta' votazzjoni assenjati għall-partecipazzjonijiet tal-istituzzjonijiet sussidjarji miżmuma mill-holding company finanzjarja jew mill-holding company finanzjarja mhallta;
- (c) il-ħruġ ta' mizuri amministrattivi jew penali amministrattivi, skont dan l-Att u kwalunkwe regolamenti magħmulin jew Regoli dwar is-Servizzi ta' Investiment maħruġin tahtu, kontra l-holding company finanzjarja, il-holding company finanzjarja mhallta jew id-diretturi u managers, bla ħsara għad-dispożizzjonijiet tal-liġi nazzjonali li jittrasponu l-Artikoli 65 sa 72 tas-CRD;

(d) il-ħruġ ta' istruzzjonijiet jew direzzjonijiet lill-holding company finanzjarja jew holding company finanzjarja mħallta, biex tittrasferixxi lill-azzjonisti tagħha l-partecipazzjonijiet fl-istituzzjonijiet sussidjarji tagħha;

(e) il-ħruġ ta' direttiva lil holding company finanzjarja jew lil holding company finanzjarja mħallta skont l-artikolu 15;

(f) in-nomina temporanja ta' holding company finanzjarja, holding company finanzjarja mħallta jew istituzzjoni fi ħdan il-grupp oħra bħala responsabbli biex tiġi żgurata konformità mal-htigiet stipulati f'dan l-Att u, jew fi kwalunkwe regolamenti magħmulin u, jew Regoli dwar is-Servizzi ta' Investiment maħruġin taħtu li jittrasponu s-CRD, fis-CRD u, jew fis-CRR fuq bażi konsolidata;

(g) ir-restrizzjoni jew projbizzjoni ta' tqassim jew ħlas ta' mgħax lil azzjonisti;

(h) il-ħtieġa li holding companies finanzjarji jew holding companies finanzjarji mħallta jiżvestu lilhom infushom, jew inaqqsu, il-partecipazzjonijiet tagħhom f'istituzzjonijiet jew entitajiet oħra fis-settur finanzjarju;

(i) il-ħtieġa li holding companies finanzjarji jew holding companies finanzjarji mħallta jipprezentaw pjan dwar kif se jerggħu, mingħajr dewmien, jikkonformaw ruħhom;

(j) ir-restrizzjoni ta' xi persuna fi ħdan holding companies finanzjarji jew holding companies finanzjarji mħallta u, jew holding companies finanzjarji jew holding companies finanzjarji mħallta milli tiegħu, jew tkompli tiegħu, xi azzjoni li kaġun tagħha ma jitharsux jew ma jkunux baqgħu jitharsu l-kondizzjonijiet stipulati fl-artikolu 10D(4);

(k) il-ħtieġa li xi persuna fi ħdan holding companies finanzjarji jew holding companies finanzjarji mħallta u, jew holding companies finanzjarji jew holding companies finanzjarji mħallta tadotta dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi restawrata l-pożizzjoni li kienet teżisti minnufih qabel ma tkun ittieħdet xi azzjoni, li kaġun tagħha ma jitharsux jew ma jkunux baqgħu jitharsu l-kondizzjonijiet stipulati fl-artikolu 10D(4);

(l) ir-restrizzjoni ta' xi persuna fi ħdan holding companies finanzjarji jew holding companies finanzjarji mħallta u, jew holding companies finanzjarji jew holding companies finanzjarji mħallta milli teżercita dawk il-jeddijiet konferiti lilhom minn xi azzjoni leġittima, li kaġun tagħhom ma jitharsux jew ma jkunux baqgħu jitharsu l-kondizzjonijiet stipulati fl-artikolu 10D(4), inkluż il-jedd li jirċievu xi hlas jew li jeżercitaw xi jeddijiet ta' votazzjoni marbutin mal-azzjonijiet akkwistati;

(m) kull miżura taħt l-artikolu 15A:

Izda fl-eżerċizzju tas-setgħat tagħha, taħt l-artikolu 15A, id-dispożizzjonijiet tal-imsemmi artikolu għandhom ikunu japplikaw *mutatis mutandis*, u izda wkoll kull referenza għal "detentur tal-liċenzja" għandha titqies bħala referenza għal "holding company finanzjarja" u, jew "holding company finanzjarja mħallta", skont ma jkun applikabbli.

(2) Meta l-awtorità kompetenti tkun biġisiebha tirtira approvazzjoni skont is-subartikolu (1)(a), din għandha tinnotifika l-intenzjoni tagħha bil-miktub lill-holding company finanzjarja jew lill-holding company finanzjarja mħallta; dik in-notifika għandha tispeċifika l-motivi għaliex l-awtorità kompetenti tkun biġisiebha tiegħu tali azzjoni u għandha tispeċifika żmien, li jkun perjodu ta' mhux inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin jum kalendarji, li matulu l-holding company finanzjarja jew il-holding company finanzjarja mħallta jkollha jedd tressaq ilmenti quddiem l-awtorità kompetenti dwar ir-raġuni għaliex m'għandhiex tittieħed tali azzjoni. Sakemm l-awtorità kompetenti ma tiddeċidix li l-kwistjoni tkun waħda urġenti, hija m'għandhiex tirtira approvazzjoni qabel ma jiskadi tali perjodu.

(3) Għall-fini li jittieħdu deċiżjonijiet dwar il-miżuri superviżorji msemmija fis-subartikolu (1), meta l-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita fi Stat Membru jew fi Stat ŻEE li ma jkunx Malta u l-awtorità kompetenti tkun is-superviżur konsolidanti, l-awtorità kompetenti għandha tikkollabora mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, f'konsultazzjoni sħiħa.

(4) Meta l-awtorità kompetenti ma tkunx is-superviżur konsolidanti imma l-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita f'Malta, l-awtorità kompetenti għandha tikkollabora, għall-finijiet li tiegħu deċiżjonijiet dwar il-miżuri superviżorji msemmija fl-Artikolu 21a(6) tas-CRD, mal-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, f'konsultazzjoni sħiħa.

(5) Meta l-awtorità kompetenti tkun is-superviżur konsolidanti u meta l-holding company finanzjarja jew il-holding company finanzjarja mħallta ma tkunx stabbilita f'Malta, l-awtorità kompetenti għandha thejji valutazzjoni dwar l-affarijiet imsemmija fis-subartikolu (1), u għandha tgħaddi dik il-valutazzjoni lill-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita.

(6) L-awtorità kompetenti, sew jekk tkun qiegħda taġixxi bħala s-superviżur konsolidanti sew jekk tkun qiegħda tirċievi l-valutazzjoni msemmija fl-Artikolu 21a(8) tas-CRD mingħand l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, għandha tagħmel minn kollox biex sakemm tista' skont il-poteri tagħha tasal għal deċiżjoni kongunta dwar il-miżuri msemmija fis-subartikolu (1) ta' dan l-artikolu u, jew fl-Artikolu 21a(6) tas-CRD, mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita jew mal-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, kif jista' jkun il-każ, fi żmien xahrejn (2) minn meta tirċievi dik il-valutazzjoni:

Iżda d-deċiżjoni kongunta għandha tkun debitament dokumentata u motivata u meta l-awtorità kompetenti tkun is-superviżur konsolidanti, din għandha tikkomunika d-deċiżjoni kongunta lill-holding company finanzjarja jew lill-holding company finanzjarja mħallta.

(7) Fil-każ ta' nuqqas ta' qbil bejn l-awtorità kompetenti u l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti jew mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, l-awtorità kompetenti għandha tastjani milli tiegħu d-deċiżjoni kongunta msemmija fis-subartikolu (6) u għandha tirreferi l-kwistjoni lill-EBA skont l-Artikolu 19 tar-Regolament (UE) Nru 1093/2010. F'każijiet bħal dawk, l-awtorità kompetenti għandha tadotta deċiżjoni kongunta mal-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti jew mal-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja jew il-holding company finanzjarja mħallta tkun stabbilita, kif jista' jkun il-każ, b'mod konformi mad-deċiżjoni tal-EBA:

Iżda m'għandhiex issir referenza tal-kwistjoni lill-EBA wara li jgħaddi ż-żmien ta' xahrejn imsemmi fis-subartikolu (6) jew wara li tkun ittiegħdet deċiżjoni kongunta.

(8) Fil-każ ta' holding companies finanzjarji mħallta, meta l-kordinatur mahtur skont l-Artikolu 10 tad-Direttiva 2002/87/KE ma jkun la l-awtorità kompetenti, la l-awtorità regolatorja Ewropea li tkun qiegħda taġixxi bħala s-superviżur konsolidanti, u lanqas l-awtorità regolatorja Ewropea fl-Istat Membru jew Stat ŻEE fejn il-holding company finanzjarja mħallta tkun stabbilita, għandu jkun meħtieġ il-qbil ta' dak il-kordinatur għall-finijiet tad-deċiżjonijiet jew deċiżjonijiet kongunti msemmija fis-subartikolu (1) ta' dan l-artikolu u, jew fl-Artikolu 21a(6) tas-CRD, skont ma jkun japplika. Meta jkun meħtieġ il-qbil tal-kordinatur, l-awtorità kompetenti għandha tirreferi kull nuqqas ta' qbil lill-Awtorità Superviżorja Ewropea relevanti, jġigifieri, lill-EBA jew lill-Awtorità Superviżorja Ewropea (Awtorità Ewropea tal-Assigurazzjoni u tal-Pensjonijiet tax-Xogħol) (EIOPA -

European Insurance and Occupational Pensions Authority), stabbilita bir-Regolament (UE) Nru 1094/2010, li għandha tasal għad-deċiżjoni tagħha fi żmien xahar minn meta tircievi t-talba għal konsultazzjoni. Kull deċiżjoni li tittiehed skont dan is-subartikolu għandha tittiehed mingħajr preġudizzju għall-obbligazzjonijiet taht id-Direttiva 2002/87/KE jew id-Direttiva dwar is-Solvenza II.

(9) Għall-finijiet ta' dan l-artikolu:

(a) il-kelma "grupp" tfisser grupp kif imfissra fil-punt (138) tal-Artikolu 4(1) tas-CRR;

(b) il-kelma "istituzzjoni" tfisser istituzzjoni kif imfissra fil-punt (3) tal-Artikolu 4(1) tas-CRR;

(c) il-kelma "partecipazzjoni" tfisser l-istess bħat-tifsira mogħtija lilha fil-punt (35) tal-Artikolu 4(1) tas-CRR; u

(d) il-kelma "sussidjarja" tfisser sussidjarja kif imfissra fil-punt (16) tal-Artikolu 4(1) tas-CRR."

Emenda tal-artikolu 16B tal-Att prinċipali.

19. Fl-artikolu 16B tal-Att prinċipali, minflok il-kliem "id-Direttiva MiFID u d-Direttiva UCITS, inklużi", għandhom jidhlu l-kliem "il-MiFID, id-Direttiva UCITS, u l-IFD, inklużi".

Emenda ta' subtitolu fl-Att prinċipali.

20. Minnufih wara l-artikolu 16B, kif emendat, minflok is-subtitolu "KO-OPERAZZJONI MA' AWTORITAJIET REGOLATORJI EWROPEJ U MA' KORPI OĦRA" għandu jidhlo is-subtitolu "KOOPERAZZJONI MA' AWTORITAJIET REGOLATORJI U MA' KORPI OĦRA".

Emenda tal-artikolu 17 tal-Att prinċipali.

21. L-artikolu 17 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minnufih wara s-subartikolu (1) tiegħu għandu jizdied dan is-subartikolu ġdid li ġej:

"(1A) L-awtorità kompetenti għandha tikkoopera ma' awtoritajiet regolatorji jew korpi lokali oħra li jkunu wkoll responsabbli għas-superviżjoni ta' istituzzjonijiet ta' kreditu u istituzzjonijiet finanzjarji u għandha tiskambja ma' dawk l-awtoritajiet regolatorji jew korpi lokali, mingħajr dewmien, kull informazzjoni li tkun essenzjali jew rilevanti biex jeżerċitaw il-funzjonijiet tagħhom.";

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "il-MiFIR u d-Direttiva UCITS." għandhom jidhlu l-kliem "il-MiFIR, id-Direttiva UCITS, l-IFD u l-IFR.", minflok il-kliem "id-Direttiva

MiFID u d-Direttiva UCITS, l-awtorità kompetenti tista' tuża" għandhom jidhlu l-kliem "il-MiFID, id-Direttiva UCITS u l-IFD, l-awtorità kompetenti tista' tuża" u minnufih wara l-proviso tiegħu għandu jizjed dan is-subartikolu gdid li ġej:

"(2A) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (2), l-awtorità kompetenti għandha, għall-finijiet ta' dmirijietha skont l-IFR u l-IFD kif trasposti fil-liġi tal-pajjiż, tiskambja informazzjoni dwar ditti ta' investment ma' awtoritajiet regolatorji Ewropej mingħajr dewmien, inkluż dan li ġej:

(a) informazzjoni dwar il-ġestjoni u l-istruttura tas-sjeda tad-ditta ta' investment;

(b) informazzjoni dwar konformità ma' rekwiżiti ta' fondi proprji mid-ditta ta' investment;

(ċ) informazzjoni dwar konformità marrekwiżiti ta' riskju ta' konċentrazzjoni u rekwiżiti ta' likwidità tad-ditta ta' investment;

(d) informazzjoni dwar il-proċeduri amministrattivi u ta' kontabilità u mekkaniżmi ta' kontroll intern tad-ditta ta' investment; u

(e) xi fatturi rilevanti oħra li jistgħu jinfluwenzaw ir-riskju kkawżat mid-ditta ta' investment:

Iżda għall-finijiet ta' dan is-subartikolu l-kliem "ditta ta' investment" ifisser ditta ta' investment li jkollha liċenzja taht dan l-Att.";

(ċ) fil-paragrafu (f) tas-subartikolu (7) tiegħu, minflok il-kliem "l-MiFIR.", għandhom jidhlu l-kliem "l-MiFIR; jew" u minnufih wara għandu jizjed dan il-paragrafu gdid li ġej:

"(g) biex jissorveljaw ir-regoli prudenzjali stabbiliti fl-IFD u fl-IFR.";

(d) fis-subartikolu (9) tiegħu, minflok il-kliem "tal-BRRD, tas-CRD u tas-CRR, kif jista' jiġi preskritt." għandhom jidhlu l-kliem "tal-BRRD, tas-CRD, tas-CRR, tal-IFD u tal-IFR, kif jista' jiġi preskritt.";

(e) fis-subartikolu (10) tiegħu, minflok il-kliem "tad-Direttiva AIFM, tas-CRD, tas-CRR, tal-MiFID, tal-MiFIR jew

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tad-Direttiva UCITS jkunu qegħdin" għandhom jidhlu l-kliem "tad-Direttiva AIFM, tas-CRD, tas-CRR, tal-MiFID, tal-MiFIR, tad-Direttiva UCITS, tal-IFD u tal-IFR jkunu qegħdin"; u

(f) fis-subartikolu (12) tiegħu, minflok il-kliem "tad-Direttiva AIGM, tas-CRD, tas-CRR, tal-MiFID, tal-MiFIR jew tad-Direttiva UCITS, ikunu qegħdin" għandhom jidhlu l-kliem "tad-Direttiva AIGM, tas-CRD, tas-CRR, tal-MiFID, tal-MiFIR, tad-Direttiva UCITS, tal-IFD jew tal-IFR jkunu qegħdin".

Emenda tal-
artikolu 17A tal-
Att prinċipali.

22. L-artikolu 17A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok in-nota marginali tiegħu għandha tidhol din li ġejja:

"Kooperazzjoni fil-funzjonijiet ta' sorveljanza, verifiki, kontrolli fuq il-post, spezzjonijiet u investigazzjonijiet."; u

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

"(4) Mingħajr preġudizzju għal xi dispożizzjoni oħra ta' dan l-Att, l-awtorità kompetenti tista' teħtieġ il-kooperazzjoni ta' xi awtorità regolatorja Ewropea biex tivverifika informazzjoni dwar ditti ta' investiment, holding companies ta' investiment, holding companies finanzjarji mħallta, istituzzjonijiet finanzjarji, impriżi ta' servizzi anċillari, holding companies ta' attività mħallta jew sussidjarji, inklużi sussidjarji li jkunu kumpaniji tal-assigurazzjoni, li jkunu jinsabu fit-territorju tal-awtorità regolatorja Ewropea konċernata.

(5) Mingħajr preġudizzju għal xi dispożizzjoni oħra ta' dan l-Att, awtorità regolatorja Ewropea tista' teħtieġ il-kooperazzjoni tal-awtorità kompetenti biex tivverifika informazzjoni dwar ditti ta' investiment, holding companies ta' investiment, holding companies finanzjarji mħallta, istituzzjonijiet finanzjarji, impriżi ta' servizzi anċillari, holding companies ta' attività mħallta jew sussidjarji, inklużi sussidjarji li jkunu kumpaniji tal-assigurazzjoni, li jkunu jinsabu f'Malta.

(6) Meta awtorità regolatorja Ewropea tagħmel talba skont is-subartikolu (2), l-awtorità kompetenti għandha, fil-limiti tas-setgħat li għandha:

(a) twettaq il-verifika hi nnifisha;

(b) tippermetti lill-awtorità regolatorja Ewropea li tkun għamlet dik it-talba twettaq tali verifika;

(ċ) titlob lil xi awditur jew espert iwettaq dik il-verifika b'mod imparzjali u jirrapporta r-rizultanzi minnufih:

Izda għall-finijiet tal-paragrafi (a) u (ċ), l-awtorità regolatorja Ewropea li tkun għamlet it-talba għandha tithalla tiegħu sehem fil-verifika.

(7) Meta Kumpanija ta' Investiment Ewropew tiġġestixxi l-attivitàjiet tagħha minn xi fergħa f'Malta, l-awtorità regolatorja Ewropea tal-Istat Membru domestiku tista', wara li tgħarraf lill-awtorità kompetenti, tiġġestixxi, kemm hi nnifisha kif ukoll permezz ta' intermedjarji li hija taħtar għal dak l-għan, spezzjonijiet ta' xi tali fergħa u kontrolli fuq il-post dwar l-informazzjoni msemmija fl-artikolu 17(2A).

(8) Mingħajr preġudizzju għas-subartikolu (7), meta Malta tkun l-Istat Membru ospitanti, l-awtorità kompetenti għandu jkollha, għall-għanijiet ta' supervizjoni u meta l-awtorità kompetenti tqis li jkun rilevanti għal raġunijiet tal-istabilità tas-sistema finanzjarja f'Malta, is-setgħa li twettaq, kull każ għalih, kontrolli fuq il-post u spezzjonijiet tal-attivitàjiet imwettqa mill-fergħat ta' Kumpanija ta' Investiment Ewropew fuq it-territorju tagħha u teħtieġ informazzjoni mill-fergħa dwar l-attivitàjiet tagħhom:

Izda, qabel ma twettaq dawk il-verifiki u spezzjonijiet, l-awtorità kompetenti għandha, mingħajr dewmien, tikkonsulta mal-awtorità regolatorja Ewropea tal-Istat Membru ospitanti:

Izda wkoll, kemm jista' jkun malajr wara li jintemmu dawk il-kontrolli fuq il-post u l-ispezzjonijiet, l-awtorità kompetenti għandha tikkomunika lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti l-informazzjoni li tinkiseb u r-rizultanzi li jkunu rilevanti għall-valutazzjoni tar-riskju tal-Kumpanija ta' Investiment Ewropew involuta."

23. Is-subartikolu (2) tal-artikolu 17F tal-Att prinċipali għandu jiġi emendat b'dan li ġej:

Emenda tal-artikolu 17F tal-Att prinċipali.

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(a) fil-paragrafu (i) tiegħu, minflok il-kliem "impriżi tal-assigurazzjoni u għas-sorveljanza ta' swieq finanzjarji," għandhom jidhlu l-kliem "impriżi tal-assigurazzjoni, istituzzjonijiet finanzjarji u swieq finanzjarji, inklużi entitajiet finanzjarji li jkollhom liċenzja biex joperaw bħala kontropartijiet ċentrali meta kontropartijiet ċentrali jkunu ġew rikonoxxuti taht l-Artikolu 25 tar-Regolament (UE) Nru 648/2012;"

(b) fil-paragrafu (v) tiegħu, minflok il-kliem "istituzzjonijiet finanzjarji oħra;" għandhom jidhlu l-kliem "istituzzjonijiet finanzjarji oħra;" u

(ċ) minnufih wara l-paragrafu (v) tiegħu għandu jiġi miżjud dan il-proviso ġdid li ġej:

"Iżda, għall-finijiet ta' dan il-paragrafu, it-terminu "istituzzjonijiet finanzjarji" ifisser istituzzjonijiet finanzjarji kemm kif imfissra fil-punt (26) tal-Artikolu 4(1) tas-CRR, kif ukoll kif imfissra fil-punt (14) tal-Artikolu 4(1) tal-IFR;"

Emenda tal-
artikolu 18 tal-
Att prinċipali

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

(a) Minflok is-subartikolu (1) tiegħu għandu jidhol dan li ġej:

"(1) Awditur ta' detentur tal-liċenzja jkollu d-dmir li jirrapporta minnufih lill-awtorità kompetenti kwalunkwe fatt jew deċiżjoni li jkunu jirrigwardaw lil dak id-detentur tal-liċenzja li huwa jsir jaf bihom fil-kapaċità tiegħu bħala awditur ta' dak id-detentur tal-liċenzja li –

(a) x'aktarx iwasslu għal kwalifika serja jew ir-rifjut tar-rapport tal-awditur fuq il-kontijiet ta' dak id-detentur tal-liċenzja;

(b) jikkostitwixxu jew x'aktarx jikkostitwixxu ksur materjali ta' dan l-Att jew ta' xi regolamenti jew Regoli maħruġa tahtu, inklużi r-rekwiżiti legali jew regolatorji li japplikaw għal detenturi tal-liċenzja f'dan l-Att jew tahtu;

(ċ) jistgħu jaffettwaw il-funzjonament kontinwu tad-detentur tal-liċenzja;

(d) jistgħu jwasslu għal rifjut ta' ċertifikazzjoni tal-kontijiet tad-detentur tal-liċenzja jew biex jiġu espressi xi riżervi; jew

(e) ikollhom x'jaqsmu ma' hwejjeg oħra li jistgħu jiġu preskritti."; u

(b) minnufih wara s-subartikolu (5) tiegħu għandu jiżdid dan is-subartikolu ġdid li ġej:

"(6) L-awtorità kompetenti tista' teħtieġ is-sostituzzjoni ta' xi persuna msemmija fis-subartikolu (1) jekk dik il-persuna taġixxi bi ksur tal-obbligazzjonijiet tiegħu taħt il-paragrafi (a) sa (d) tas-subartikolu (1).".

25. Is-subartikolu (2) tal-artikolu 19 tal-Att prinċipali għandu jiġi emendat b'dan li ġej:

Emenda tal-artikolu 19 tal-Att prinċipali.

(a) fil-paragrafu (i) tiegħu, minflok il-kliem "(2) u (4)." għandhom jidhlu l-kliem "(2) u (4)."; u

(b) minnufih wara l-paragrafu (i) tiegħu għandu jiġi mizjud dan il-paragrafu ġdid li ġej:

"(j) kwalunkwe mizura li tittiehed skont il-paragrafi (a) sa (l) tal-artikolu 16AA(1).".

26. L-artikolu 26 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 26 tal-Att prinċipali

(a) fis-subartikolu (1) tiegħu:

(i) minflok il-kliem "Tagħrif miksub mill-awtorità kompetenti" għandhom jidhlu l-kliem "Flief bil-għan li jaqdu dmirijietom jew il-funzjonijiet tagħhom sew taħt dan l-Att jew taħt xi Att ieħor, jew hekk kif jista' jiġi xort'oħra provdut f'xi liġi oħra, tagħrif miksub mill-awtorità kompetenti", u minflok il-kliem "fil-qadi ta' xi funzjonijiet taħt xi waħda mill-imsemmija dispożizzjonijiet, għandu jitqies" għandhom jidhlu l-kliem "fil-qadi ta' dmirijietom jew ta' xi funzjoni tagħhom, għandu jitqies"; u

(ii) fl-ewwel proviso tiegħu, minflok il-kliem "id-Direttiva UCITS, u" għandhom jidhlu l-kliem "id-Direttiva UCITS, l-IFD u l-IFR u";

(b) minnufih wara s-subartikolu (1) tiegħu, kif emendat, għandhom jiżdidu dawn is-subartikoli ġodda li ġejjin:

"(1A) Minkejja d-dispożizzjonijiet tas-subartikolu (1), tagħrif miksub mill-awtorità kompetenti jew mill-uffiċjali, mill-impjegati jew mill-aġenti tagħha, kif ukoll

minn spetturi, awdituri u esperti, li jkunu jew kienu mqabnda mill-awtorità kompetenti, waqt il-qadi ta' dmirijiethom u, jew skont l-IFR jew l-IFD kif trasposti fil-liġi tal-pajjiż, għandu jitqies bħala kunfidenzjali u protett bid-dmir ta' segretezza professjonali, u ma għandu jiġi żvelat lill-ebda persuna oħra, hlief f'dawn il-każijiet li ġejjin:

(a) meta dan ikun meħtieġ għall-qadi kif imiss ta' dmirijiethom jew tal-funzjonijiet tagħhom taħt dan l-Att jew taħt xi Att ieħor, jew hekk kif jista' jiġi xort'oħra provdut f'xi liġi oħra;

(b) meta t-tagħrif jiġi żvelat f'format sommarju jew aggregat, sakemm ditti ta' investiment jew persuni individwali ma jkunux jistgħu jiġu identifikati, mingħajr preġudizzju għal każijiet li jaqgħu fl-ambitu tal-liġi kriminali;

(c) fi proċeduri ċivili jew kummerċjali, meta d-ditta ta' investiment li t-tagħrif ikollu x'jaqsam magħha tkun giet dikjarata falluta jew tkun qiegħda tiġi stralċjata b'mod obbligatorju, dak it-tagħrif ma jkunx jinvolvi terzi persuni u l-iżvelar ta' dak it-tagħrif ikun meħtieġ biex jitmexxew dawk il-proċeduri;

(d) fi proċeduri istitwiti taħt l-artikolu 19;

(e) sabiex jiġu sorveljati r-regoli prudenzjali stabbiliti fl-IFD kif trasposti fil-liġi tal-pajjiż u fl-IFR;

(f) sabiex jiġu imposti penaltajiet u miżuri amministrattivi oħra;

(g) f'xi appell kontra deċiżjoni tal-awtorità kompetenti, inklużi proċeduri ġudizzjarji;

(h) lill-Kummissjoni tal-Unjoni Ewropea meta t-tagħrif ikun meħtieġ biex jitwettqu s-setgħat tal-Kummissjoni tal-Unjoni Ewropea; u, jew

(i) lill-EBA, l-ESMA, l-ESRB, lil banek centrali tal-Istati Membri jew ta' Stati taż-ŻEE, lis-Sistema Ewropea ta' Banek Ċentrali u lill-Bank Ċentrali Ewropew, fil-kapaċità tagħhom bħala

awtoritajiet monetarji, u, meta jkun xieraq, awtoritajiet pubbliċi responsabbli għas-sorveljanza ta' sistemi ta' pagament u saldu, meta dak it-tagħrif ikun meħtieġ għat-twettiq ta' dmirijiethom.

(1B) Persuni fiżiċi u ġuridiċi u korpi oħra, li ma jkunux dawk imsemmija fis-subartikolu (1A), li jirċievu tagħrif skont l-IFR jew l-IFD kif trasposti fil-liġi tal-pajjiż għandhom jużaw biss dak it-tagħrif għal dawk il-finijiet espressament provduti mill-awtorità kompetenti jew bil-liġi."; u

(ċ) fis-subartikolu (2) tiegħu, minflok il-kliem "tal-Artikolu 81 tal-MiFID u tal-Artikolu 102 tad-Direttiva UCITS", għandhom jidhlu l-kliem "tal-Artikolu 81 tal-MiFID, tal-Artikolu 15 tal-IFD, u tal-Artikolu 102 tad-Direttiva UCITS".

27. Minnufih wara l-artikolu 31 tal-Att prinċipali għandhom jiżiedu dawn l-artikoli ġodda li ġejjin:

Żieda tal-artikoli 32, 33 u 34 fl-Att prinċipali.

"Inklużjoni ta' holding companies fis-superviżjoni ta' konformità mat-test tal-kapital tal-grupp.

Valutazzjoni ta' superviżjoni minn pajjiżi terzi u tekniki superviżorji oħra.

32. Holding companies ta' investiment u holding companies finanzjarji mħallta għandhom jiġu inklużi fis-superviżjoni ta' konformità mat-test tal-kapital tal-grupp.

33. (1) Meta żewġ ditti ta' investiment Ewropej jew aktar li jkunu sussidjarji tal-istess kumpanija prinċipali, li jkollha l-uffiċċju reġistrat tagħha f'pajjiż terz, ma jkunux soġġetti għal superviżjoni effettiva f'livell ta' grupp, l-awtorità kompetenti għandha, flimkien ma' awtoritajiet regolatorji Ewropej involuti, tevalwa jekk id-ditti ta' investiment Ewropej ikunux soġġetti għal superviżjoni mill-awtorità superviżorja tal-pajjiż terz li tkun ekwivalenti għas-superviżjoni stabbilita fl-IFD kif trasposta fil-liġi tal-pajjiż u fl-Ewwel Parti tal-IFR.

(2) Meta l-valutazzjoni msemmija fis-subartikolu (1) tikkonkludi li ma tapplika l-ebda tali superviżjoni ekwivalenti, l-awtorità kompetenti għandha tadotta tekniki superviżorji xierqa li jiksibu l-għanijiet ta' superviżjoni skont l-artikolu 7 jew 8 tal-IFR. Dawk it-tekniki superviżorji għandhom jiġu deċiżi mill-awtorità kompetenti fejn din kienet kieku tkun is-superviżur tal-grupp li kieku l-kumpanija prinċipali kienet stabbilita fl-Unjoni Ewropea, wara konsultazzjoni mal-awtoritajiet regolatorji Ewropej involuti. Il-miżuri li jittiehdu skont dan il-paragrafu mill-awtorità kompetenti għandhom jiġu notifikati lill-awtoritajiet

regolatorji Ewropej involuti, lill-EBA u lill-Kummissjoni tal-Unjoni Ewropea.

(3) Mingħajr preġudizzju għas-subartikolu (2), meta l-awtorità kompetenti kienet kieku tkun is-superviżur tal-grupp li kieku l-kumpanija prinċipali kienet stabbilita fl-Unjoni Ewropea, din tista' teħtieġ li titwaqqaf holding company ta' investment jew holding company finanzjarja mħallta fl-Unjoni Ewropea u tapplika l-artikolu 7 jew 8 tal-IFR għal dik il-holding company ta' investment jew holding company finanzjarja mħallta.

Superviżjoni ta' holding companies ta' attività mħallta.

34. Meta l-impriza prinċipali ta' ditta ta' investment li jkollha liċenzja taht dan l-Att tkun holding company ta' attività mħallta, l-awtorità kompetenti tista' tissorvelja transazzjonijiet bejn dik id-ditta ta' investment u l-holding company ta' attività mħallta u s-sussidjarji ta' din tal-aħħar, u teħtieġ li l-imsemmija ditta ta' investment ikollha jiffunzjonaw proċessi ta' ġestjoni ta' riskju u mekkaniżmi ta' kontroll intern adegwati, inklużi rappurtar sod u proċeduri ta' kontabbiltà li jidentifikaw, iqisu, jissorveljaw u jikkontrollaw dawk it-transazzjonijiet."

TAQSIMA III EMENDI GĦALL-ATT DWAR IL-KUMMERĊ BANKARJU

Emendi għall-Att dwar il-Kummerċ Bankarju. Kap. 371.

28. Din it-Taqsima temenda l-Att dwar il-Kummerċ Bankarju u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Kummerċ Bankarju, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda tal-artikolu 2 tal-Att prinċipali.

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

(a) minnufih qabel it-tifsira "ditta ta' investment" għandha tizzied din it-tifsira ġdida li ġejja:

" "Direttiva (UE) 2019/2034" tfisser Direttiva (UE) 2019/2034 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' Novembru 2019 dwar is-superviżjoni prudenzjali tad-ditti ta' investment u li temenda d-Direttivi 2002/87/KE, 2009/65/KE, 2011/61/UE, 2013/36/UE, 2014/59/UE u 2014/65/UE, kif emendati minn żmien għal żmien, u li tinkludi kull strument legali vinkolanti, linji gwida u miżuri oħra li jkunew għew maħruġa jew li jistgħu jiġu maħruġa taħtha;"

(b) fit-tifsira "liċenza", minflok il-kliem "liċenza

mogħtija skont l-artikolu 5 jew 7;"għandhom jidhlu l-kliem "liċenzja mogħtija skont l-artikolu 5, 6A jew 7"; u

(ċ) minnufih wara t-tifsira "Regolament (UE) Nru 1095/2010" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Regolament (UE) 2019/2033" tfisser Regolament (UE) 2019/2033 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' Novembru 2019 dwar ir-rekwiżiti prudenzjali tad-ditti tal-investiment u li jemenda r-Regolamenti (UE) Nru 1093/2010, (UE) Nru 575/2013, (UE) Nru 600/2014 u (UE) Nru 806/2014, kif emendati minn żmien għal żmien, u li jinkludi kull strument legali vinkolanti, linji gwida u miżuri oħra li jkunu ġew maħruġa jew li jistgħu jiġu maħruġa taħtu;"

30. Minnufih wara l-artikolu 6 tal-Att prinċipali għandu jiżdied dan l-artikolu ġdid li ġej:

Żieda tal-artikolu 6A fl-Att prinċipali.

"Rekwiżiti speċifiċi dwar liċenzji għal istituzzjonijiet ta' kreditu msemmija fil-punt (1)(b) tal-Artikolu 4(1) tas-CRR.
Kap. 370.

6A. (1) L-impriża msemmija fil-punt (1)(b) tal-Artikolu 4(1) tas-CRR li jkunu diġà kisbu liċenzja b'mod konformi mal-artikoli 3, 5 u 6 tal-Att dwar Servizzi ta' Investiment għandhom jipprezentaw talba għal liċenzja skont l-artikoli 5 u 6, mhux aktar tard mill-jum meta tigri xi waħda minn dawn l-avvenimenti li ġejjin:

(a) il-medja tal-attiv totali fix-xahar, kalkulat tul perjodu ta' tnax-il xahar konsekuttiv, tkun daqs jew teċċedi tletin biljun euro (€30,000,000,000); jew

(b) il-medja tal-attiv totali fix-xahar kalkulat tul perjodu ta' tnax-il xahar konsekuttiv ikun inqas minn tletin biljun euro (€30,000,000,000), u l-intrapriża tkun tiffirma parti minn grupp li fih il-valur totali tal-attiv konsolidat tal-impriża kollha fil-grupp li individwalment ikollhom attiv totali ta' inqas minn tletin biljun euro (€30,000,000,000) u li jiġġestixxu xi attività minn daww imsemmija fil-paragrafi (3), (4), (6) u (7) tal-Ewwel Skeda li tinsab annessa mal-Att dwar Servizzi ta' Investiment ikun daqs jew jeċċedi tletin biljun euro (€30,000,000,000), it-tnejn li huma kalkulati tul perjodu ta' tnax-il xahar konsekuttiv.

Kap. 370.

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(2) L-impriża msemija fis-subartikolu (1) jistgħu jkomplu jiġġestixxu l-attivitajiet msemija fil-punt (1)(b) tal-Artikolu 4(1) tas-CRR sakemm dawn jiksbu l-liċenzja msemija fis-subartikolu (1).

(3) Meta l-awtorità kompetenti, wara li tirċievi l-informazzjoni skont l-Artikolu 95a tal-MiFID, tistabbilixxi li intrapriża tkun se tiġi awtorizzata bħala istituzzjoni ta' kreditu skont l-Artikoli 5 u 6, din għandha tavża lil dik l-impriża.

(4) B'mod konformi mas-subartikolu (1), l-awtorità kompetenti għandha tiżgura li l-proċess għandu kemm jista' jkun jiġi simplifikat u li jittiehed kont ta' kull informazzjoni li l-awtorità kompetenti jista' jkollha minn qabel."

Emenda tal-artikolu 9 tal-Att prinċipali.

31. Minnufih wara l-paragrafu (a) tas-subartikolu (2) tal-artikolu 9 tal-Att prinċipali għandu jiżdied dan il-paragrafu ġdid li ġej:

"(aa) tuża l-liċenzja tagħha esklużivament biex tiegħu sehem fl-attivitajiet imsemija fil-punt (1)(b) tal-Artikolu 4(1) tas-CRR u jkollha, tul perjodu ta' ħames snin konsekuttivi, medja ta' attiv totali taħt il-limiti stabbiliti f'dak l-Artikolu;"

Emenda tal-artikolu 25 tal-Att prinċipali.

32. Is-subartikolu (2) tal-artikolu 25 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"(2) L-awtorità kompetenti tista' aktar minn hekk, abbażi tal-impenji internazzjonali ta' Malta, tiskambja informazzjoni ma' awtoritajiet regolatorji barranin fi Stati Membri oħra jew twassal informazzjoni lill-ESRB, l-EBA jew lill-Awtorità Ewropea tat-Titoli u s-Swieq imwaqqfa bir-Regolament (UE) Nru 1095/2010, b'mod konformi ma' dan l-Att u ma' kwalunkwe regolamenti magħmula u Regoli Bankarji maħruġa tahtu li jittrasponu s-CRD, ma' kwalunkwe strument legali vinkolanti maħruġ taht is-CRD, mas-CRR, mar-Regolament (UE) 2019/2033, mal-Artikolu 15 tar-Regolament (UE) Nru 1092/2010, mal-Artikoli 31, 35 u 36 tar-Regolament (UE) Nru 1093/2010, mal-Artikoli 31 u 36 tar-Regolament (UE) Nru 1095/2010, mad-Direttiva (UE) 2019/2034 u mad-Direttivi l-oħra li japplikaw għal istituzzjonijiet ta' kreditu. Dik l-informazzjoni għandha tkun soġġetta għas-sigriet professjonali kif provdut dwar dan taht dan l-Att u kwalunkwe regolamenti maħruġa tahtu."

Thassir tal-artikolu 29A tal-Att prinċipali.

33. L-artikolu 29A tal-Att prinċipali għandu jiġi mħassar.

34. Minflok is-subartikolu (5) tal-artikolu 34 tal-Att prinċipali għandu jidhol dan li ġej:

Emenda tal-artikolu 34 tal-Att prinċipali.

"(5) Id-dispożizzjonijiet tas-subartikolu (4) ma għandhomx jipprevjenu lill-awtorità kompetenti milli tiskambja informazzjoni mal-awtoritajiet regolatorji barranin fi Stati Membri oħra u ma' awtoritajiet fi Stati Membri oħra responsabbli għas-superviżjoni ta' ditti ta' investiment jew milli twassal informazzjoni lill-ESRB, l-EBA jew lill-Awtorità Ewropea tat-Titoli u s-Swieq imwaqqfa bir-Regolament (UE) Nru 1095/2010, b'mod konformi mal-Att u ma' kwalunkwe regolamenti u Regoli Bankarji mahruġa tahtu li jittrasponu s-CRD, ma' kull strument legali vinkolanti mahruġ taht is-CRD, mas-CRR, mar-Regolament (UE) 2019/2033, mal-Artikolu 15 tar-Regolament (UE) Nru 1092/2010, mal-Artikoli 31, 35 u 36 tar-Regolament (UE) Nru 1093/2010 u mal-Artikoli 31 u 36 tar-Regolament (UE) Nru 1095/2010, mad-Direttiva (UE) 2019/2034 u mad-Direttivi l-oħra li japplikaw għal istituzzjonijiet ta' kreditu. Dik l-informazzjoni għandha tkun soġġetta għad-dispożizzjonijiet tas-subartikolu (4):

Iżda d-dispożizzjonijiet tas-subartikolu (4) m'għandhomx jipprevjenu lill-awtorità kompetenti milli tippubblika r-riżultanzi ta' *stress tests* li jkunu saru b'mod konformi mar-Regolamenti dwar Banking Act (Supervisory Review) jew mal-Artikolu 32 tar-Regolament (UE) Nru 1093/2010 jew milli twassal ir-riżultanzi ta' *stress tests* lill-EBA bil-għan li jiġu pubblikati mill-EBA ir-riżultati ta' *stress tests* magħmula abbażi tal-UE kollha."

S.L. 371.16.

35. Fil-paragrafu (e) tas-subartikolu (1) tal-artikolu 35 tal-Att prinċipali, minflok il-kliem "tal-artikoli 2A, 5(1) u (2), 6(1), 12" għandhom jidhlu l-kliem "tal-artikoli 2A, 5(1) u (2), 6(1), 6A, 12".

Emenda tal-artikolu 35 tal-Att prinċipali.

TAQSIMA IV EMENDI GHALL-ATT DWAR ISTITUZZJONIJIET FINANZJARJI

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

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

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

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) fit-tifsira "CRD", minflok il-kliem "s-superviżjoni prudenzjali tal-istituzzjonijiet ta' kreditu u tad-ditti tal-

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investment, li temenda" għandhom jidhlu l-kliem "s-superviżjoni prudenzjali tal-istituzzjonijiet ta' kreditu, li temenda"; u

(b) fit-tifsira "CRR", minflok il-kliem "ir-reqwiżiti prudenzjali għall-istituzzjonijiet ta' kreditu u d-ditti tal-investment u li jemenda" għandhom jidhlu l-kliem "ir-reqwiżiti prudenzjali għall-istituzzjonijiet ta' kreditu u li temenda".

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 530 tal-14 ta' Diċembru, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

28th December, 2021

ACT No. LXXII of 2021

AN ACT to further amend various financial services laws.

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

1. (1) The short title of this Act is the Various Financial Services Laws (Amendment No. 3) Act, 2021.

Short title and commencement.

(2) Article 33 of this Act shall come into force on such date as the Minister responsible for the regulation of financial services may, by notice in the Gazette, establish.

PART I
AMENDMENTS TO THE MALTA FINANCIAL SERVICES
AUTHORITY ACT

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

Amendment to the Malta Financial Services Authority Act. Cap. 330.

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Amendment of the First Schedule to the principal Act.

3. Sub-item (1) of item 1 of the First Schedule to the principal Act shall be amended by the following:

(a) immediately before the definition "the CRR" there shall be added the following new definition:

" "the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;" and

(b) in the definition "the CRR", for the words "on prudential requirements for credit institutions and investment firms and amending" there shall be substituted the words "on prudential requirements for credit institutions and amending".

PART II

AMENDMENTS TO THE INVESTMENT SERVICES ACT

Amendments to the Investment Services Act. Cap. 370.

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

Amendment of article 2 of the principal Act.

5. Article 2 of the principal Act shall be amended by the following:

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

(i) the definition "agricultural commodity derivatives" shall be substituted by the following new definition:

" "agricultural commodity derivatives" means derivative contracts relating to products listed in Article 1 and Annex I of Parts I to XX and XXIV/1, to Regulation (EU) No. 1308/2013, as well as to products listed in Annex I to Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council

Regulations (EC) No. 1184/2006 and (EC) No. 1224/2009 and repealing Council Regulation (EC) No. 104/2000, as amended from time to time;";

(ii) immediately after the definition "Alternative Investment Fund Manager or AIFM" there shall be added the following new definition:

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

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

" "compliance with the group capital test" means compliance by a parent undertaking in an investment firm group with the requirements of Article 8 of the IFR;";

(iv) immediately after the definition "Conduct of Business Rules" there shall be added the following new definitions:

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

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

(v) immediately after the definition "derivatives" there shall be added the following new definition:

" "Directive 2002/87/EC" means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC

and 2000/12/EC of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;";

(vi) immediately after the definition "'document" or "documentation"' there shall be added the following new definition:

" "EBA" means the European Banking Authority established by Regulation (EU) No. 1093/2010;";

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

" "EU parent financial holding company" means the same as the meaning assigned to it in point (31) of Article 4(1) of the CRR;

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

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

(viii) immediately after the definition "exempted person" there shall be added the following new definitions:

" "financial holding company" means the same as the meaning assigned to it in point (20) of Article 4(1) of the CRR;

"financial institution" means a financial institution as defined in point (14) of Article 4(1) of the IFR;";

(ix) immediately after the definition "host Member State or EEA State" there shall be added the following new definitions:

"the IFD" means Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"the IFR" means Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No. 1093/2010, (EU) No. 575/2013, (EU) No. 600/2014 and (EU) No. 806/2014, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(x) immediately after the definition "investment agreement" there shall be added the following new definitions:

"investment firm" means an investment firm as defined in Article 4(1) of the MiFID;

"investment firm group" means an investment firm group as defined in point (25) of Article 4(1) of the IFR;

"investment holding company" means an investment holding company as defined in point (23) of Article 4(1) of the IFR;"

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

"mixed-activity holding company" means a parent undertaking other than a financial holding company, an investment holding company, a credit institution, an investment firm, or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm;

S.L. 330.06.

"mixed financial holding company" means the same as the meaning assigned to it in regulation 2 of the Financial Conglomerates Regulations;"

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

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

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

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

(xiii) immediately after the definition "regulated market" there shall be added the following new definitions:

"Regulation (EU) No. 1092/2010" means Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, as amended from time to time, and includes any implementing 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 amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Regulation (EU) No. 1094/2010" means Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(xiv) immediately after the definition "Regulation (EU) No. 1308/2013" there shall be added the following new definitions:

" "resolution entity" means the same as the meaning assigned to it in sub-regulation (1) of regulation 2 of the Recovery and Resolution Regulations;

S.L. 330.09.

"resolution group" means the same as the meaning assigned to it in sub-regulation (1) of regulation 2 of the Recovery and Resolution Regulations;" and

S.L. 330.09.

(xv) immediately after the definition "structured finance products" there shall be added the following new definition:

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

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

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

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(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with article 10CA of this Act and, or Article 21a of the CRD;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is exempted in accordance with article 10CA(5) of this Act and, or Article 21a(4) of the CRD; and

(c) financial holding companies, mixed financial holding companies or institutions designated pursuant to article 16AA(1)(f) of this Act and, or Article 21a(6)(d) of the CRD:

Provided that for the purposes of this sub-article:

(i) the term "control" means the same as the meaning assigned to it in point (37) of Article 4(1) of the CRR, and the term "controlled" shall be construed accordingly; and

(ii) the term "institution" means the same as the meaning assigned to it in point (3) of Article 4(1) of the CRR.

(1B) Reference to the "approval" of financial holding companies or mixed financial holding companies in this Act and any regulations and, or Investment Services Rules issued thereunder, means an approval granted by the competent authority in terms of article 10CA of this Act or an approval granted through the joint decision of the competent authority and any European regulatory authority in terms of article 10CA of this Act and Article 21a of the CRD as the case may be.

(1C) Reference to the "exemption" of financial holding companies or mixed financial holding companies in this Act and any regulations and, or Investment Services Rules issued thereunder, means an exemption granted by the competent authority in terms of article 10CA of this Act or an exemption granted through the joint decision of the competent authority and any European regulatory authority in terms of article 10CA of this Act and Article 21a of the CRD, as the case may be."

6. Article 2A of the principal Act shall be amended as follows:

Amendment of article 2A of the principal Act.

(a) in sub-article (2) thereof, for the words "the MiFIR and the UCITS Directive, and the Commission" there shall be substituted the words "the MiFIR, the UCITS Directive, the IFD and the IFR, and the Commission" and immediately thereafter there shall be added the following new sub-article:

"(2A) The competent authority shall have the expertise, resources, operational capacity, powers and independence necessary to carry out its functions and exercise its powers at law."; and

(b) in sub-article (3) thereof, for the words "the MiFID, the MiFIR or the UCITS Directive, the competent authority shall:" there shall be substituted the words "the MiFID, the MiFIR, the UCITS Directive, the IFD or the IFR, the competent authority shall:".

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

Amendment of article 6 of the principal Act.

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

"(f) grant a licence to an applicant which has an investment holding company or a mixed financial holding company as its parent undertaking unless it is satisfied that the members of the management body of such parent undertaking are of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company."; and

(b) sub-article (5) thereof shall be amended as follows:

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

"(b) certain types of licences;"; and

(c) in paragraph (c) thereof, for the words "certain categories of holders;" there shall be substituted the words "certain types of licence holders;".

Amendment of article 7 of the principal Act.

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

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

(i) in paragraph (f) thereof, for the words "of the licence holder; and" there shall be substituted the words "of the licence holder; or"; and

(ii) in paragraph (g) thereof, for the words "the grant of such licence." there shall be substituted the words "the grant of such licence:" and immediately thereafter there shall be added the following new proviso:

"Provided that an investment services licence shall automatically be cancelled if the licence holder is either declared bankrupt, or goes into liquidation, or makes a composition with its creditors, or is otherwise dissolved.";

(b) in paragraph (f) of sub-article (3) thereof, for the words "of the manager or trustee or custodian of the scheme, or their equivalent." there shall be substituted the words "of the manager or trustee or custodian of the scheme, or their equivalent:" and immediately thereafter there shall be added the following new proviso:

"Provided that a collective investment scheme licence shall automatically be cancelled if the licence holder is either declared bankrupt, or goes into liquidation, or makes a composition with its creditors, or is otherwise dissolved."; and

(c) in sub-article (4) thereof, for the words "sub-article (1)." there shall be substituted the words "sub-article (2).".

Addition of article 8A to the principal Act.

9. Immediately after article 8 of the principal Act there shall be

added the following new article:

"Application of CRR to certain investment firms.

8A. (1) The competent authority may decide to apply the requirements of the CRR pursuant to point (c) of the first sub-paragraph of Article 1(2) of the IFR to an investment firm to carry out any of the activities listed in points (3) and (6) of Section A of Annex I to MiFID, where the total value of the consolidated assets of such investment firm is equal to or exceeds five billion euro (€5,000,000,000), calculated as an average of the previous twelve (12) months, and one or more of the following criteria apply:

(a) such investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;

(b) the investment firm is a clearing member as defined in point (3) of Article 4(1) of the IFR; and, or

(c) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:

(i) the importance of the investment firm for the economy of Malta or of the European Union;

(ii) the significance of the investment firm's cross-border activities;

(iii) the interconnectedness of the investment firm with the financial system.

(2) Sub-article (1) shall not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings.

(3) Where the competent authority decides to apply the requirements of the CRR to an investment firm in accordance with sub-article (1), that investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of the CRD as transposed in national law.

(4) Where the competent authority decides to revoke a decision taken in accordance with sub-article (1), it shall inform the investment firm without delay:

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Provided that, any decision taken by the competent authority under sub-article (1) shall cease to apply where an investment firm no longer meets the threshold referred to in that sub-article, calculated over a period of twelve consecutive months.

(5) For the purposes of this article, the term "investment firm" means an investment firm licensed under this Act."

Amendment of article 9 of the principal Act.

10. In sub-article (1) of article 9 of the principal Act, for the words "an investment services licence and the manager" there shall be substituted the words "an investment services licence, an investment holding company or mixed financial holding company and the manager".

Amendment of article 10A of the principal Act.

11. In paragraph (b) of sub-article (6) of Article 10A of the principal Act, for the words "the CRD or the Solvency Directive." there shall be substituted the words "the CRD, the IFD, or the Solvency Directive."

Addition of article 10CA to the principal Act.

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

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

10CA. (1) Parent financial holding companies, parent mixed financial holding companies, EU parent financial holding companies and EU parent mixed financial holding companies, which are established in Malta or in another Member State or EEA State and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority acting, as the consolidating supervisor, in accordance with this article. Other financial holding companies or mixed financial holding companies, established in Malta or in another Member State or EEA State and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the competent authority, acting as the consolidating supervisor, in accordance with this article where they are required to comply with the CRD or the CRR on a sub-consolidated basis:

Provided that in accordance with article 10D where the competent authority is not the consolidating supervisor, financial holding companies and mixed financial holding companies established in Malta and which have an investment firm as a subsidiary, shall seek the approval or exemption, as the case may be, of the consolidating supervisor determined in accordance with Article 111 of the CRD.

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

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

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

provide the competent authority with the following information:

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

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

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

(d) any other information that may be necessary to carry out the assessments referred to in sub-articles (3) and (4) as may be requested by the competent authority.

(3) All applications for an approval or exemption, as the case may be, in terms of this article shall be in such form and accompanied by such information and shall conform with any such requirements as may be established, from time to time, by Investment Services Rules.

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

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

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

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

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

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

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

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

- (ii) the shareholding structure; and
- (iii) the role of the financial holding company or mixed financial holding company, as the case may be, within the group;

(c) the requirements on the qualification of directors laid down in Investment Services Rules, are complied with.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Where approval of a financial holding company or mixed financial holding company, as the case may be, pursuant to this article is refused and the competent authority is the consolidating supervisor, the competent authority shall notify the applicant of the decision and the reasons therefor within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision. Refusal may be accompanied, where necessary, by any of the measures referred to in article 16AA:

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

(15) For the purposes of this article:

(a) the term "financial institution" means the same as the meaning assigned to it in point (26) of Article 4(1) of the CRR;

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

(c) the term "institution" means an institution as defined in point (3) of Article 4(1) of the CRR;

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

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

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

(g) the term "subsidiary" means a subsidiary as defined in point (16) of Article 4(1) of the CRR.

(16) The provisions of this article shall be without prejudice to the provisions of article 10."

13. Sub-article (1) of article 12 of the principal Act shall be amended as follows:

Amendment of article 12 of the principal Act.

(a) in paragraph (c) thereof, for the words "licence holders or any categories thereof as may be specified," there shall be substituted the words "licence holders or any types

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thereof as may be specified,";

(b) in paragraph (k) thereof, for the words "of the AIFM Directive, the BRRD, the CRD, the MiFID, the MiFIR and the UCITS Directive;"; there shall be substituted the words "of the AIFM Directive, the BRRD, the CRR, the CRD, the MiFID, the MiFIR, the UCITS Directive, the IFD, and the IFR;"; and

(c) in paragraph (l) thereof, for the words "of the CRD and the CRR, as may be" there shall be substituted the words "of the CRD, the CRR, the IFD and the IFR, as may be".

Amendment of
article 13 of the
principal Act.

14. Article 13 of the principal Act shall be amended as follows:

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

"(1) Without prejudice to any powers of the competent authority arising under any other law, the competent authority shall have the power to require information from:

(a) any person who is or was providing, or who appears to be or to have been providing, an investment service;

(b) a collective investment scheme;

(c) any person who is or was carrying on, or who appears to be or has been carrying on activities in connection with such a scheme;

(d) any person who has issued, or appears to have issued an advertisement falling within the provisions of article 11(1);

(e) an auditor of a licence holder; or

(f) any other person who appears to be in possession of relevant information.";

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

"(1A) Without prejudice to sub-article (1), the competent authority shall have the power to require information from:

- (a) investment firms established in Malta;
- (b) investment holding companies established in Malta;
- (c) mixed financial holding companies established in Malta and their subsidiaries;
- (d) mixed-activity holding companies established in Malta;
- (e) persons belonging to the entities referred to in points (a) to (d);
- (f) third parties to whom the entities referred to in points (a) to (d) have outsourced operational functions or activities.

(1B) Without prejudice to the generality of sub-articles (1) and (1A), the competent authority may, by notice in writing, require any person referred to in the said sub-articles 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, including the power to require existing telephone and existing data traffic records, with respect to any such service, scheme or advertisement as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 6;
 - (b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify;
 - (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 with respect to any such service, scheme or advertisement as aforesaid."; and
- (c) sub-article (2) thereof shall be substituted by the following:
- "(2) The competent authority may examine and

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make copies or extracts of any documents furnished or provided under this article."

Amendment of article 14 of the principal Act.

15. In sub-article (1) of article 14 of the principal Act, for the words "referred to in article 13(1)(i) to (iv).", there shall be substituted the words "referred to in article 13(1)(a) to (d) and (1A).".

Amendment of article 15 of the principal Act.

16. In paragraph (g) of sub-article (2) of article 15 of the principal Act, for the words "of the AIFM Directive, the BRRD, the CRD, the MiFID Directive and the UCITS Directive;" there shall be substituted the words "of the AIFM Directive, the BRRD, the CRD, the MiFID, the UCITS Directive, and the IFD;".

Amendment of article 16 of the principal Act.

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

(a) in sub-article (1) thereof, for the words "for the purpose of obtaining there the information", there shall be substituted the words "for the purpose of obtaining and, or verifying there the information"; and

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

"(2A) Without prejudice to sub-articles (1) and (2), any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 13 and by any other person included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, in order to conduct an inspection:

Provided that the exercise of the right of entry under this sub-article in relation to any person included in the supervision of compliance with the group capital test where the competent authority is the group supervisor, shall be subject to the prior notification of other competent authorities concerned."

Addition of article 16AA to the principal Act.

18. Immediately after article 16A of the principal Act there shall

be added the following new article:

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

16AA. (1) Without prejudice to any other power of the competent authority under this Act or any other law, where the competent authority is the consolidating supervisor and has established that the conditions set out in article 10D(4) are not met or have ceased to be met, the competent authority shall take the appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensure compliance with the requirements laid down in this Act and any regulations made and Investment Services Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD, and in the CRR, on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures applied by the competent authority as the consolidating supervisor shall, in particular, take into account the effects on the financial conglomerate. The supervisory measures referred to in this sub-article shall include:

(a) withdrawing the approval granted to a financial holding company or mixed financial holding company in terms of article 10D;

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

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

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

(e) issuing a directive to the financial holding company or mixed financial holding company in terms of article 15;

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

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

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

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

(j) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies from taking, or continuing to take, any action as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met;

(k) requiring any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies to take such steps as may be necessary to restore the position existing immediately before any action, as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met, was taken;

(l) restraining any person within financial holding companies or mixed financial holding companies and, or financial holding companies or mixed financial holding companies from exercising any rights which a lawful action, as a result of which the conditions set out in article 10D(4) are not met or have ceased to be met, would have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(m) any measure under article 15A:

Provided that in exercising any of its powers under article 15A, the provisions of the said article shall apply *mutatis mutandis*, and provided further that any reference to "the licence holder" shall be deemed to be reference to "the financial holding company" and, or "the mixed financial holding company", as applicable.

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

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

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

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

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

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

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

may be, in conformity with the decision of the EBA:

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

(8) In the case of mixed financial holding companies, where the coordinator appointed in terms of Article 10 of Directive 2002/87/EC is neither the competent authority, nor the European regulatory authority acting as the consolidating supervisor, nor the European regulatory authority in the Member State or EEA State where the mixed financial holding company is established, the agreement of the said coordinator shall be required for the purposes of the decisions or joint decisions referred to in sub-article (1) of this article and, or in Article 21a(6) of the CRD, as applicable. Where the agreement of the coordinator is required, the competent authority shall refer any disagreements to the relevant European Supervisory Authority, namely, to the EBA or to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No. 1094/2010, which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this sub-article shall be without prejudice to the obligations under Directive 2002/87/EC or the Solvency II Directive.

(9) For the purposes of this article:

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

(b) the term "institution" means an institution as defined in point (3) of Article 4(1) of the CRR;

(c) the term "participation" means the same as the meaning assigned to in point (35) of Article 4(1) of the CRR; and

(d) the term "subsidiary" means a subsidiary as defined in point (16) of Article 4(1) of the CRR."

19. In article 16B of the principal Act, for the words "the MiFID Directive and the UCITS Directive, including", there shall be substituted the words "the MiFID, the UCITS Directive, and the IFD, including".

Amendment of
article 16B of
the principal
Act.

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Amendment of
a sub-title in the
principal Act.

20. Immediately after article 16B, as amended, the sub-title "CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES AND OTHER BODIES", shall be substituted by the sub-title "CO-OPERATION WITH REGULATORY AUTHORITIES AND OTHER BODIES".

Amendment of
article 17 of the
principal Act.

21. Article 17 of the principal Act shall be amended as follows:

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

"(1A)The competent authority shall cooperate with other local regulatory authorities or bodies which are also responsible for the supervision of credit institutions and financial institutions and shall exchange with such local regulatory authorities or bodies, without delay, any information which is essential or relevant to the exercise of their functions.";

(b) in sub-article (2) thereof, for the words "the MiFIR and the UCITS Directive.", there shall be substituted the words "the MiFIR, the UCITS Directive, the IFD and the IFR.", for the words "the MiFID Directive and the UCITS Directive, the competent authority may use" there shall be substituted the words "the MiFID, the UCITS Directive and the IFD, the competent authority may use" and immediately after the proviso thereof, there shall be added the following new sub-article:

"(2A) Without prejudice to the generality of sub-article (2), the competent authority shall, for the purposes of its duties pursuant to the IFR and the IFD as transposed in national law, exchange information about investment firms with European regulatory authorities without delay, including the following:

(a) information about the management and ownership structure of the investment firm;

(b) information about compliance with own funds requirements by the investment firm;

(c) information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;

(d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm; and

(e) any other relevant factors that may influence the risk posed by the investment firm:

Provided that for the purposes of this sub-article the term "investment firm" means an investment firm licensed under this Act.";

(c) in paragraph (f) of sub-article (7) thereof, for the words "the MiFIR." there shall be substituted the words "the MiFIR; or" and immediately thereafter there shall be added the following new paragraph:

"(g) to monitor the prudential rules set out in the IFD and the IFR.";

(d) in sub-article (9) thereof, for the words "of the BRRD, CRD and the CRR, as may be prescribed." there shall be substituted the words "of the BRRD, CRD, the CRR, the IFD and the IFR, as may be prescribed.";

(e) in sub-article (10) thereof, for the words "of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR or the UCITS Directive are being", there shall be substituted the words "of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR, the UCITS Directive, the IFD and the IFR are being"; and

(f) in sub-article (12) thereof, for the words "of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR or the UCITS Directive are being" there shall be substituted the words "of the AIFM Directive, the CRD, the CRR, the MiFID, the MiFIR, the UCITS Directive, the IFD or the IFR are being".

22. Article 17A of the principal Act shall be amended as follows:

Amendment of
article 17A of
the principal
Act.

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

"Co-operation in supervisory functions, verifications, on-site checks, inspections and investigations."; and

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

"(4) Without prejudice to any other provision of this Act, the competent authority may request the cooperation of a European regulatory authority to verify information about investment firms, investment holding companies,

mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries, including subsidiaries which are insurance companies, that are located in the territory of the European regulatory authority concerned.

(5) Without prejudice to any other provision of this Act, a European regulatory authority may request the cooperation of the competent authority to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries, including subsidiaries which are insurance companies, that are located in Malta.

(6) Where a European regulatory authority makes a request in terms of sub-article (2), the competent authority shall, within the framework of its powers:

- (a) carry out the verification itself;
- (b) allow the European regulatory authority who made that request to carry out such verification;
- (c) request an auditor or expert to carry out the verification impartially and to report the results promptly:

Provided that for the purposes of paragraphs (a) and (c), the European regulatory authority that made the request shall be allowed to participate in the verification.

(7) Where a European investment firm carries out its activities through a branch in Malta, the European regulatory authority of the home Member State may, after having informed the competent authority, carry out, itself or through intermediaries that it appoints for that purpose, inspections of such a branch and on-site checks of the information referred to in article 17(2A).

(8) Without prejudice to sub-article (7), where Malta is the host Member State, the competent authority shall, for supervisory purposes and where the competent authority considers it to be relevant for reasons of stability of the financial system in Malta, have the power to carry out, on a case-by-case basis, on-site checks and inspections

of the activities carried out by branches of European investment firms on its territory and require information from a branch about its activities:

Provided that, before carrying out such checks and inspections, the competent authority shall, without delay, consult the European regulatory authority of the home Member State:

Provided further that, as soon as possible following the completion of those on-site checks and inspections, the competent authority shall communicate to the European regulatory authority of the home Member State the information obtained and findings that are relevant for the risk assessment of the European investment firm concerned."

23. Sub-article (2) of article 17F of the principal Act shall be amended by the following:

Amendment of article 17F of the principal Act.

(a) in paragraph (i) thereof, for the words "insurance undertakings and the supervision of financial markets;" there shall be substituted the words "insurance undertakings, financial institutions and financial markets, including financial entities licensed to operate as central counterparties where central counterparties have been recognised under Article 25 of Regulation (EU) No. 648/2012;"

(b) in paragraph (v) thereof, for the words "other financial institutions;" there shall be substituted the words "other financial institutions:"; and

(c) immediately after paragraph (v) thereof there shall be added the following new proviso:

"Provided that, for the purposes of this paragraph, the term "financial insitutions" means both financial institutions as defined in point (26) of Article 4(1) of the CRR and as defined in point (14) of Article 4(1) of the IFR;"

24. Article 18 of the principal Act shall be amended as follows:

Amendment of article 18 of the principal Act.

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

"(1) An auditor of the holder of a licence shall have the duty to report immediately to the competent authority any fact or decision concerning that licence holder of

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which he becomes aware in his capacity as auditor of such licence holder which –

(a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such licence holder;

(b) constitutes or is likely to constitute a material breach of this Act or any regulations or Rules issued thereunder, including the legal or regulatory requirements applicable to the licence holders in or under this Act;

(c) may affect the continuous functioning of the licence holder;

(d) may lead to the refusal to certify the licence holder's accounts or to the expression of reservations; or

(e) relates to any other matter which may be prescribed."; and

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

"(6) The competent authority may require the replacement of a person referred to in sub-article (1) if that person acts in breach of his obligations under paragraphs (a) to (d) of sub-article (1).".

Amendment of article 19 of the principal Act.

25. Sub-article (2) of article 19 of the principal Act shall be amended by the following:

(a) in paragraph (i) thereof, for the words "(2) and (4)." there shall be substituted the words "(2) and (4)."; and

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

"(j) any measure taken in terms of paragraphs (a) to (l) of article 16AA(1).".

Amendment of article 26 of the principal Act.

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

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

(i) for the words "Information obtained by the competent authority" there shall be substituted the words

"Other than for the proper discharge of their duties or functions under this Act or any other Act, or as may be otherwise provided in any other law, information obtained by the competent authority" and for the words "in the discharge of any functions under any of the said provisions, shall be treated" there shall be substituted the words "in the discharge of their duties or any functions, shall be treated"; and

(ii) in the first proviso thereof, for the words "the UCITS Directive, and" there shall be substituted the words "the UCITS Directive, the IFD and the IFR and";

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

"(1A) Notwithstanding the provisions of sub-article (1), information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts, who are or were engaged by the competent authority, in the course of their duties and, or pursuant to the IFR or the IFD as transposed in national law, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

(a) where it is necessary for the proper discharge of their duties or functions under this Act or any other Act, or as may be otherwise provided in any other law;

(b) where the information is disclosed in summary or aggregate form, provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law;

(c) in civil or commercial proceedings, where the investment firm to which the information relates has been declared bankrupt or is being compulsorily wound up, such information does not concern third parties and the disclosure of such information is necessary for carrying out those proceedings;

(d) in proceedings initiated under article 19;

(e) to monitor the prudential rules set out in

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the IFD as transposed in national law and in the IFR;

(f) to impose penalties and other administrative measures;

(g) in an appeal against a decision of the competent authority, including court proceedings;

(h) to the Commission of the European Union when the information is necessary for the exercise of the powers of the Commission of the European Union; and, or

(i) to the EBA, ESMA, the ESRB, central banks of the Member States or EEA States, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, where that information is necessary for the performance of their tasks.

(1B) Natural and legal persons and other bodies, other than those mentioned in sub-article (1A), that receive information pursuant to the IFR or the IFD as transposed in national law shall only use that information for the purposes expressly provided by the competent authority or by law."; and

(c) in sub-article (2) thereof, for the words "of Article 81 of the MiFID and of Article 102 of the UCITS Directive", there shall be substituted the words "of Article 81 of the MiFID, Article 15 of the IFD, and of Article 102 of the UCITS Directive".

Addition of articles 32, 33 and 34 to the principal Act.

27. Immediately after article 31 of the principal Act there shall be added the following new articles:

"Inclusion of holding companies in supervision of compliance with the group capital test.

32. Investment holding companies and mixed financial holding companies shall be included in the supervision of compliance with the group capital test.

Assessment of third country supervision and other supervisory techniques.

33. (1) Where two or more European investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the competent authority shall, together with any other European regulatory authority involved, assess whether the European investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in the IFD as transposed in national law and in Part One of the IFR.

(2) Where the assessment referred to in sub-article (1) concludes that no such equivalent supervision applies, the competent authority shall adopt appropriate supervisory techniques which achieve the objectives of supervision in accordance with Article 7 or 8 of the IFR. Those supervisory techniques shall be decided by the competent authority where it would have been the group supervisor had the parent undertaking been established in the European Union, after consulting the European regulatory authorities involved. Any measures taken pursuant to this paragraph by the competent authority shall be notified to the European regulatory authorities involved, to EBA and to the Commission of the European Union.

(3) Without prejudice to sub-article (2), where the competent authority would have been the group supervisor had the parent undertaking been established in the European Union, it may require the establishment of an investment holding company or mixed financial holding company in the European Union and apply Article 7 or 8 of the IFR to that investment holding company or mixed financial holding company.

Supervision of mixed-activity holding company.

34. Where the parent undertaking of an investment firm licensed under this Act is a mixed-activity holding company, the competent authority may supervise transactions between such investment firm and the mixed-activity holding company and the subsidiaries of the latter, and require the said investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions."

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**PART III
AMENDMENTS TO THE BANKING ACT**

Amendments to
the Banking
Act.
Cap. 371.

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

Amendment of
article 2 of the
principal Act.

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

(a) immediately before the definition "director" there shall be added the following new definition:

" "Directive (EU) 2019/2034" means Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

(b) in the definition "licence", for the words "licence granted in terms of article 5 or 7;" there shall be substituted the words "licence granted in terms of article 5, 6A or 7;" and

(c) immediately after the definition "Regulation (EU) No. 1095/2010" there shall be added the following new definition:

" "Regulation (EU) 2019/2033" means Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No. 1093/2010, (EU) No. 575/2013, (EU) No. 600/2014 and (EU) No. 806/2014, as amended from time to time and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;"

Addition of
article 6A to the
principal Act.

30. Immediately after article 6 of the principal Act, there shall be

added the following new article:

"Specific requirements for licensing of credit institutions referred to in point (1)(b) of Article 4(1) of the CRR.
Cap. 370.

6A. (1) Undertakings referred to in point (1)(b) of Article 4(1) of the CRR which have already obtained a licence pursuant to articles 3, 5 and 6 of the Investment Services Act shall submit an application for a licence in accordance with articles 5 and 6, at the latest on the day when either of the following events takes place:

(a) the average of monthly total assets, calculated over a period of twelve consecutive months, is equal to or exceeds thirty billion euro (€30,000,000,000); or

(b) the average of monthly total assets calculated over a period of twelve consecutive months is less than thirty billion euro (€30,000,000,000), and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than thirty billion euro (€30,000,000,000) and that carry out any of the activities referred to in paragraphs (3), (4), (6) and (7) of the First Schedule annexed to the Investment Services Act is equal to or exceeds thirty billion euro (€30,000,000,000), both calculated as an average over a period of twelve consecutive months.

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(2) The undertakings referred to in sub-article (1) may continue carrying out the activities referred to in point (1)(b) of Article 4(1) of the CRR until they obtain the licence referred to in sub-article (1).

(3) Where the competent authority, after receiving the information in accordance with Article 95a of the MiFID, determines that an undertaking is to be authorised as a credit institution in accordance with Articles 5 and 6, it shall notify the undertaking.

(4) Pursuant to sub-article (1), the competent authority shall ensure that the process is as streamlined as possible and that any information already pertaining to the competent authority shall be taken into account."

31. Immediately after paragraph (a) of sub-article (2) of article 9 of the principal Act there shall be added the following new paragraph:

Amendment of article 9 of the principal Act.

"(aa) uses its licence exclusively to engage in the activities referred to in point (1)(b) of Article 4(1) of the CRR and has, for

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a period of five consecutive years, average total assets below the thresholds set out in that Article;".

Amendment of article 25 of the principal Act.

32. Sub-article (2) of article 25 of the principal Act shall be substituted by the following:

"(2) The competent authority may further, on the basis of Malta's international commitments, exchange information with overseas regulatory authorities in other Member States or transmit information to the ESRB, the EBA or the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010, in accordance with this Act and any regulations made and Banking Rules issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD, with the CRR, with Regulation (EU) 2019/2033, with Article 15 of Regulation (EU) No. 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No. 1093/2010, with Articles 31 and 36 of Regulation (EU) No. 1095/2010, with Directive (EU) 2019/2034 and with other Directives applicable to credit institutions. Such information shall be subject to professional secrecy provided for under this Act and any regulations issued thereunder."

Deletion of article 29A of the principal Act.

33. Article 29A of the principal Act shall be deleted.

Amendment of article 34 of the principal Act.

34. Sub-article (5) of article 34 of the principal Act shall be substituted by the following:

"(5) The provisions of sub-article (4) shall not prevent the competent authority from exchanging information with overseas regulatory authorities in other Member States and authorities in other Member States responsible for the supervision of investment firms or transmitting information to the ESRB, the EBA or the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010, in accordance with the Act and any regulations made and Banking Rules issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD, with the CRR, with Regulation (EU) 2019/2033, with Article 15 of Regulation (EU) No. 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No. 1093/2010 and with Articles 31 and 36 of Regulation (EU) No.1095/2010, with Directive (EU) 2019/2034 and with other Directives applicable to credit institutions. Such information shall be subject to the provisions of sub-article (4):

Provided that the provisions of sub-article (4) shall not prevent the competent authority from publishing the outcome of stress tests carried out in accordance with the Banking Act (Supervisory Review) Regulations or Article 32 of Regulation (EU) No. 1093/2010 or from transmitting the outcome of the stress tests to the EBA for the purpose of publication by the EBA of the results of Union-wide stress tests."

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35. In paragraph (e) of sub-article (1) of article 35 of the principal Act, for the words "of articles 2A, 5(1) and (2), 6(1), 12" there shall be substituted the words "of articles 2A, 5(1) and (2), 6(1), 6A, 12".

Amendment of article 35 of the principal Act.

PART IV AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

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

Amendment to the Financial Institutions Act. Cap. 376.

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

Amendment of article 2 of the principal Act.

(a) in the definition "CRD", for the words "supervision of credit institutions and investment firms, amending" there shall be substituted the words "supervision of credit institutions, amending"; and

(b) in the definition "CRR", for the words "requirements for credit institutions and investment firms and amending" there shall be substituted the words "requirements for credit institutions and amending".

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

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

