

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE ABELA
President

7 ta' Mejju, 2010

ATT Nru. II tal-2010

ATT biex jemenda diversi liġijiet dwar Istituzzjonijiet Finanzjarji u Servizzi Finanzjarji oħra u biex jimplimenta d-Direttiva 2007/64/EC.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att ta' l-2010 li jemenda diversi liġijiet dwar Istituzzjonijiet Finanzjarji u Servizzi Finanzjarji oħra u biex jimplimenta d-Direttiva 2007/64/EC. Titolu fil-qosor.

TAQSIMA I

EMENDA TA' L-ATT DWAR L-AWTORITÀ GHAS-SERVIZZI FINANZJARJI TA' MALTA, KAP. 330

2. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, hawn iżjed 'il quddiem f'din it-Taqsima msejjah "l-Att prinċipali". Emenda ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.

(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom jidhlu fis-seħh fid-data tal-publikazzjoni ta' dan l-Att. Kap. 330.

3. L-artikolu 20A ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 20A ta' l-Att prinċipali.

(a) l-artikolu 20A tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1) tiegħu;

(b) minnufih wara s-subartikolu (1) tiegħu għandu jiżdied dan is-subartikolu (2) ġdid li ġej:

“(2) Il-Ministru, li jaġixxi fuq il-parir ta’ l-awtorità kompetenti, jista’ jagħmel regolamenti sabiex jagħti seħh aħjar għad-dispożizzjonijiet ta’ dan l-Att, u mingħajr preġudizzju għall-ġeneralità ta’ dak hawn qabel imsemmi jista’, b’dawk ir-regolamenti, jordna kull m’għandu jew li jista’ jiġi ordnat u jipprovi dwar kull haġa konsegwenzjali, inċidentali jew konnessa ma’ xi haġa msemmija hawn aktar qabel”.

TAQSIMA II

EMENDA TA’ L-ATT DWAR IL-KUMMERĊ BANKARJU, KAP. 371

Emenda ta’ l-Att dwar
il-Kummerċ Bankarju.
Kap. 371.

4. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma’ l-Att dwar il-Kummerċ Bankarju, hawn iżjed ’il quddiem f’ din it-Taqsima msejjaħ “l-Att prinċipali”.

(2) Id-dispożizzjonijiet ta’ din it-Taqsima għandhom jidhlu fis-seħh fid-data tal-publikazzjoni ta’ dan l-Att.

Emenda ta’ l-artikolu
30 ta’ l-Att prinċipali.

5. Fl-artikolu 30 ta’ l-Att prinċipali, minflok il-kliem “jew f’xi żmien ieħor skond ma jista’ jiġi eċċezzjonalment mogħti b’licenza mill-awtorità kompetenti -”, għandhom jidhlu l-kliem “jew f’xi żmien ieħor hekk kif jista’ jkun awtorizzat bil-miktub mill-awtorità kompetenti -”.

Emenda ta’ l-Iskeda
li tinsab ma’ l-Att
prinċipali.

6. Minflok l-Attivitajiet 2 u 3 ta’ l-Iskeda li tinsab ma’ l-Att prinċipali għandu jidhol dan li ġej:

Kap. 376.

“2. Servizzi ta’ pagament kif imfissra fl-Att dwar Istituzzjonijiet Finanzjarji;

3. Hruġ u amministrazzjoni ta’ mezzi ta’ hlas oħra (travellers’ cheques, drafts bankarji u strumenti simili) sakemm din l-attività ma tkunx koperta bl-attività 2 hawn qabel;”.

TAQSIMA III

EMENDA TA' L-ATT DWAR ISTITUZZJONIJIET
FINANZJARJI, KAP. 376

7. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar Istituzzjonijiet Finanzjarji, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda ta' l-Att
dwar Istituzzjonijiet
Finanzjarji.
Kap. 376.

(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom jidhlu fis-seħħ fid-data tal-publikazzjoni ta' dan l-Att.

8. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu
2 ta' l-Att prinċipali.

(a) l-artikolu 2 tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1) tiegħu;

(b) fis-subartikolu (1) kif enumerat mill-ġdid:

(i) minnufih wara l-kliem "F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra -" għandha tidhol din it-tifsira ġdida li ġejja:

Kap. 386.

“ “agent” tfisser persuna li taġixxi f'isem istituzzjoni finanzjarja meta tkun qegħda tipprovdi dawk is-servizzi elenkati taht l-Ewwel Skeda li tinsab ma' l-Att;”;

(ii) minflok it-tifsira “fergħa”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “fergħa” tfisser post ta' kummerċ, li ma jkunx l-uffiċċju prinċipali, li jkun jiffirma parti minn istituzzjoni finanzjarja li ma jkollhiex personalità ġuridika u li jkun direttament jiġġestixxi xi transazzjonijiet jew it-transazzjonijiet kollha, kif awtorizzat, li jkollhom x'jaqsmu mal-kummerċ ta' istituzzjoni finanzjarja; il-postijiet ta' kummerċ kollha stabbiliti f'Malta minn istituzzjoni li jkollha uffuċċju prinċipali fi Stat Membru iehor għandhom jitqiesu bħala fergħa waħdanija;”;

(iii) minflok it-tifsira “rabtiet mill-qrib”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “rabtiet mill-qrib” tfisser sitwazzjoni fejn żewġ persuni jew iktar ikollhom rabta f’xi wiehed minn dawn il-modi li ġejjin:

(a) bil-partecipazzjoni, permezz ta’ proprjetà diretta jew permezz ta’ kontroll, ta’ għoxrin fil-mija jew iktar tal-jeddijiet tal-voti jew tal-kapital ta’ korp ġuridiku;

(b) bil-kontroll, permezz ta’ relazzjoni bejn impriża parent (jew impriża ċentrali) u impriża sussidjarja kif imfisser fl-artikolu 2 (2) ta’ l-Att dwar il-Kumpanniji, jew relazzjoni simili bejn persuna naturali jew ġuridika u impriża; jew

(ċ) permanentement ma’ terza persuna waħda u unika permezz ta’ relazzjoni ta’ kontroll;”;

(iv) minflok it-tifsira “kontroll”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “kontroll” dwar korp ġuridiku, hija s-setgħa li jiġu b’xi mod stabbiliti l-policies finanzjarji u operattivi tal-korp ġuridiku”;

(v) minnufih wara t-tifsira “Bank Ċentrali”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “id-Direttiva” tfisser Direttiva 2007/64/KE tal-Parlament Ewropew u tal-Kunsill tat-13 ta’ Novembru 2007 fuq servizzi ta’ pagament fis-suq intern li temenda d-Direttivi 97/7/KE, 2002/65/KE, 2005/60/KE u 2006/48/KE u li tħassar id-Direttiva 97/5/KE, kif din tista’ tiġi emendata minn żmien għal żmien, u tinkludi kull mizura implimentattiva li setgħet inħarġet jew li tista’ tinħareġ taħtha;”;

(vi) minnufih wara t-tifsira “rikostruzzjoni”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “Stat ŻEE” tfisser Stat li jkun parti kontraenti fil-ftehim fuq iż-Żona Ekonomika Ewropea iffirmit f’Oporto fit-2 ta’ Mejju, 1992

kif emendat bil-Protokoll iffirmat fi Brussel fis-17 Marzu, 1993 u kif emendat b'attijiet sussegwenti;";

(vii) it-tifsira "azzjoni ta' ekwità" għandha tithassar;

(viii) minflok it-tifsira "istituzzjoni finanzjarja", għandha tidhol din it-tifsira ġdida li ġejja:

“ “istituzzjoni finanzjarja” tfisser kull persuna li b'mod regolari jew abitwali tikseb *holdings* jew tidhol biex twettaq xi attività elenkata fl-Ewwel Skeda li tinsab ma' l-Att akkont u għar-riskju tal-persuna li tkun qegħda twettaq dik l-attività;";

(ix) minflok it-tifsira "direttiva lill-istituzzjonijiet finanzjarji", għandha tidhol din it-tifsira ġdida li ġejja:

“ “Regola dwar Istituzzjonijiet Finanzjarji” tfisser Regola maħruġa mill-awtorità kompetenti biex tirregola istituzzjonijiet finanzjarji bis-saħħa tas-setgħat li joriginaw taht dan l-Att, u “Regola” għandha tiftiehem hekk kif imfisser;"; u minflok il-kliem "direttiva lill-istituzzjonijiet finanzjarji", "direttivi lill-istituzzjonijiet finanzjarji" u, jew "direttivi", kull fejn dawn jinsabu fl-Att principali, għandhom jidhlu l-kliem "Regola dwar Istituzzjonijiet Finanzjarji", "Regoli dwar Istituzzjonijiet Finanzjarji" u, jew "Regoli" rispettivament;

(x) minflok it-tifsira "grupp ta' kumpanniji", għandha tidhol din it-tifsira ġdida li ġejja:

“ “grupp ta' kumpanniji” tfisser kumpanniji li jkollhom l-istess *holding company*, u għandha tinkludi lill-istess *holding company*;";

(xi) minnufih wara t-tifsira "kapital azzjonarju kwalifikanti", għandha tidhol din it-tifsira ġdida li ġejja:

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

(xii) minnufih qabel it-tifsira “Stat ŻEE”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “Stat Membru” tfisser Stat Membru tal-Komunitajiet Ewropej;”;

(xiii) minnufih wara t-tifsira “l-awtorità kompetenti”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “awtorità regolatorja barranija” tfisser awtorità li, f’xi pajjiż jew territorju barra minn Malta, tkun teżerċita xi funzjoni li tikkorrispondi għall-funzjonijiet ta’ l-awtorità kompetenti taht dan l-Att;”;

(xiv) minnufih wara t-tifsira “istituzzjoni finanzjarja”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “istituzzjoni ta’ pagament” għandu jkollha t-tifsira mogħtija lilha fit-Tieni Skeda;”;

(xv) minflok it-tifsira “kapital azzjonarju kwalifikanti”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “kapital azzjonarju kwalifikanti” tfisser il-partecipazzjoni diretta jew indiretta f’kumpannija li tirrappreżenta għaxra fil-mija jew aktar tal-kapital azzjonarju jew tal-jeddijiet tal-voti, meta jitqiesu, il-jeddijiet tal-voti kif stabbiliti fl-Artikli 9 u 10 tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta’ Diċembru 2004 fuq l-armonizzazzjoni ta’ htigiet ta’ trasparenza dwar informazzjoni fuq min joħroġ titoli li jkunu jistgħu jitqegħdu fil-kummerċ u li jemenda d-Direttiva 2001/34/KE, kif ukoll il-kundizzjonijiet dwar l-aggregazzjoni relattiva stipulata fl-Artiklu 12 (4) u (5) ta’ dik id-Direttiva, jew li biha tkun haġa possibbli li tiġi eżerċitata influwenza sinifikanti fuq il-manigġ tal-kumpannija li fiha jkun hemm dik il-partecipazzjoni, u “azzjonista kwalifikanti” għandha tiftiehem bl-istess mod:

Izda, sabiex jiġi determinat jekk il-kriterji għal kapital azzjonarju kwalifikanti jkunux ġew sodisfatti, l-awtorità kompetenti m’għandhiex

tqis jeddijiet tal-voti jew azzjonijiet li jista' jkollhom ditti ta' investiment jew istituzzjonijiet ta' kreditu minhabba f'illi jkunu qegħdin jipprovdu s-sottoskrizzjoni ta' strumenti finanzjarji u, jew it-tqegħid ta' strumenti finanzjarji fuq bażi soda ta' impenn hekk kif hemm fil-punt tas-Sezzjoni A ta' l-Anness 1 mad-Direttiva 2004/39/KE, sakemm minn banda waħda dawk id-drittijiet ma jiġux eżerċitati jew xort'oħra użati biex isir xi intervent fil-manigġ ta' min joħroġ it-titoli u, mill-banda l-oħra, ma jsirx minnhom fi żmien sena minn meta dawn ikunu ġew akkwistati;”;

(xvi) minnufih wara t-tifsira “*money laundering*”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “pajjiż terz” tfisser pajjiż li mhux Stat Membru jew Stat ŻEE;”;

(ċ) minnufih fi tmiem it-tifsira “Tribunal għas-Servizzi Finanzjarji”, għandu jżidded dan is-subartikolu (2) ġdid li ġej:

“(2) F’dan l-Att u fir-regolamenti kollha magħmulin tahtu, jekk ikun hemm xi konflitt bejn it-test Ingliz u dak Malti, għandu jipprevali t-test Ingliz.”.

9. L-artikolu 3 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 3 ta' l-Att prinċipali.

(a) fis-subartikolu (2) (a) tiegħu, minflok il-kliem “xi attività minn dawk elenkati fl-Iskeda li tinsab ma’ dan l-Att”, għandhom jidhlu l-kliem “xi attività minn dawk elenkati fl-Ewwel Skeda li tinsab ma’ dan l-Att”;

(b) minnufih wara s-subartikolu (4) tiegħu, għandhom jżiddedu dawn is-subartikoli (5) u (6) ġodda li ġejjin:

“(5) Ma tistax istituzzjoni finanzjarja li jkollha liċenza tirċievi depożiti jew fondi oħra li dwarhom jista' jerga' jsir pagament fil-kuntest ta' l-Att dwar il-Kummerċ Bankarju.

(6) Meta persuna diġà jkollha liċenza taht l-Att dwar il-Kummerċ Bankarju jew l-Att dwar Servizzi ta'

Investiment sabiex tiġġestixxi xi attività minn dawk elenkati fl-Ewwel Skeda li tinsab ma' dan l-Att, dik il-persuna ma tkunx tahtieġ liċenza għal attività bħal dik taht dan l-Att.”.

Emenda ta' l-artikolu 4 ta' l-Att prinċipali.

10. Fis-subartikolu (3) ta' l-artikolu 4 ta' l-Att prinċipali, minflok il-kliem “mehtieġa għad-deċiżjoni ta' applikazzjoni għal liċenza u għad-deċiżjoni ta' jekk liċenza għandhiex tiġi ristretta jew revokata.”, għandhom jidhlu l-kliem “mehtieġa sabiex tiġi deċiża applikazzjoni għal liċenza.”.

Emenda ta' l-artikolu 5 ta' l-Att prinċipali.

11. L-artikolu 5 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (a) tiegħu, minflok il-kliem “il-fondi tagħha stess, kemm jekk f'euro jew fi flus oħra”, għandhom jidhlu l-kliem “il-kapital inizjali tagħha kemm jekk f'euro jew fi flus oħra”, u minflok il-kliem “mill-awtorità kompetenti kif adattat”, għandhom jidhlu l-kliem “mill-awtorità kompetenti f'Regola u hekk kif jista' jkun adattat”;

(ii) il-paragrafu (d) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (e);

(iii) minnufih wara l-paragrafu (ċ) tiegħu, għandu jizjed dan il-paragrafu (d) ġdid li ġej:

“(d) l-awtorità kompetenti ma tkunx sodisfatta li l-istituzzjoni finanzjarja jkollha tmexxija soda u prudenti, u jkollha arrangamenti ta' tmexxija qawwija, li jinkludu struttura ċara organizzattiva b'linji ta' responsabbiltà definiti sew, trasparenti u konsistenti, proċeduri effettivi li jidentifikaw, jimmaniġġaw, jissorveljaw u jirrappurtaw ir-riskji li tkun esposta jew li tista' tkun esposta għalihom, u mekkaniżmi ta' kontroll intern adegwati, inklużi proċeduri amministrattivi u ta' kontijiet sodi:

Izda dawk l-arrangamenti, proċeduri u mekkaniżmi għandhom ikunu jinkludu u jkunu fi

proporzjon max-xorta, skala u kompleksità tas-servizzi provduti mill-istituzzjoni;”;

(iv) minflok il-proviso mal-paragrafu (e) tiegħu, kif enumerat mill-ġdid, għandu jidhol dan li ġej:

“Izda l-kumpanija għandha, wara li tkun ingħatat liċenza taht dan l-Att, minnufih tgħarraf lill-awtorità kompetenti b’kull bidla fiċ-ċirkostanzi li jirrigwardaw l-applikazzjoni u għandha iktar minn hekk tenhtieg tipprovd lill-awtorità kompetenti kull informazzjoni mehtieġa sabiex tkun tista’ tissorvelja jekk ikunx hemm konformità kontinwa mal-kundizzjonijiet imsemmija f’dan il-paragrafu.”;

(b) minflok is-subartikolu (4) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(4) (a) Meta l-awtorità kompetenti tkun qegħda tohrog liċenza hija tista’ tassoġgetta istituzzjoni finanzjarja għal dawk il-kundizzjonijiet li tista’ tqis li jkunu adatti u wara li tkun harġet il-liċenza hija tista’, minn żmien għal żmien, tvarja jew tirrevoka kull kundizzjoni li tkun hekk imponiet jew timponi kundizzjonijiet godda.

(b) Sabiex tkun tista’ twettaq aħjar id-dispożizzjonijiet ta’ dan l-Att u sabiex tkun tista’ tittrasponi aħjar id-dispożizzjonijiet tad-Direttiva, l-awtorità kompetenti tista’, minn żmien għal żmien, tohrog u tippubblica Regoli li jkunu jorbtu lil detenturi ta’ liċenza u oħrajn hekk kif jista’ jiġi speċifikat fihom. Dawk ir-Regoli jistgħu jistipulaw htigiet u kundizzjonijiet addizzjonali dwar l-attivitajiet ta’ detenturi ta’ liċenza, kif imexxu l-kummerċ tagħhom, ir-relazzjonijiet tagħhom mal-klijenti, mal-pubbliku u ma’ partijiet oħra, ir-responsabbiltajiet tagħhom lejn l-awtorità kompetenti, htigiet ta’ rappurtagġ u kull haġa oħra li l-awtorità kompetenti tista’ tqis li tkun adatta.”;

(ċ) minflok is-subartikolu (6) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(6) Meta istituzzjoni finanzjarja li jkollha

licenza tipproponi li teżerçita attivitajiet kummerçjali li m'huma elenkati f'ebda waħda mill-Iskedi, l-awtorità kompetenti tista' teħtieg li titwaqqaf entità separata, meta l-attivitajiet proposti jistgħu fil-fehma ta' l-awtorità kompetenti jaffettwaw hażin jew jheddu li jaffettwaw hażin sew l-istat finanzjarju sod ta' l-istituzzjoni jew il-kapaçità ta' l-awtorità kompetenti li tissorvelja il-konformità ta' istituzzjoni finanzjarja ma' l-obbligazzjonijiet kollha stipulati f'dan l-Att jew f'xi regolamenti u Regoli maħruġin taħtu.”;

(d) minnufih wara s-subartikolu (6) tiegħu, għandu jiżdied dan is-subartikolu (7) ġdid li ġej:

“(7) Meta l-applikant tkun istituzzjoni finanzjarja li jkollha licenza jew awtorizzazzjoni ekwivalenti f'xi pajjiż iehor, huwa għandu jkollu l-uffiçju prinçipali tiegħu fl-istess pajjiż fejn ikun reġistrat u, jew ikollu l-licenza.”.

Żjieda ta' l-artikolu 5A ġdid ma' l-Att prinçipali.

12. Minnufih wara l-artikolu 5 ta' l-Att prinçipali, għandu jiżdied dan l-artikolu 5A ġdid li ġej:

“Fondi tagħha stess.

5A. (1) Mingħajr preġudizzju għall-inqas livell tal-ħtiġiet kapitali stipulati f'Regola dwar Istituzzjonijiet Finanzjarji, il-fondi ta' istituzzjoni finanzjarja stess ma jistgħux jaqgħu taħt l-ammont ta' kapital inizjali jew kull tali ammont li jista' minn żmien għal żmien ikun meħtieg mill-awtorità kompetenti, kemm-il darba tnaqqis bħal dak ma jkun ta' xorta temporanja u jsir wara li tkun inkisbet l-approvazzjoni bil-quddiem ta' l-awtorità kompetenti.

(2) Minkejja l-ħtiġiet kapital inizjali li jistgħu jiġu stipulati f'Regola dwar Istituzzjonijiet Finanzjarji, istituzzjonijiet finanzjarji li jkunu qegħdin jipprovdu xi servizzi minn dawk elenkati fit-Tieni Skeda li tinsab ma' l-Att għandhom f'kull waqt ikollhom il-fondi tagħhom stess li jiġu kalkulati hekk kif indikat f'xi wiehed mit-tliet metodi stipulati fir-Regola msemmija.

(3) Meta l-ammont ta' fondi ta' istituzzjoni finanzjarja stess jinżel taħt l-ammont stabbilit taħt is-

subartikoli (1) u (2), l-awtorità kompetenti għandha teħtiegħ lil dik l-istituzzjoni finanzjarja tiegħu l-miżuri meħtiegħa sabiex iġġib il-livell ta' fondi tagħha stess għal li kien qabel f'dak iż-żmien li l-awtorità kompetenti tista' tistabbilixxi:

Iżda jekk il-livell ta' fondi ta' istituzzjoni finanzjarja stess ma jingiebx għal li kien qabel fiż-żmien stabbilit, l-awtorità kompetenti tista', b'żjieda mas-setgħa li timponi piena amministrattiva, teżerċita xi waħda mis-setgħat mogħtijin lilha taħt id-dispożizzjonijiet ta' l-artikolu 6(4).”.

13. L-artikolu 6 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 6 ta' l-Att prinċipali.

(a) minflok is-subartikolu (1) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(1) L-awtorità għandha tirtira liċenza maħruġa lil xi istituzzjoni finanzjarja meta dik l-istituzzjoni:

(a) espressament turrinunzja għal-liċenza;

(b) ma tibdiex il-kummerċ li għandu jsir bis-saħħa ta' dik il-liċenza fi żmien tnax-il xahar minn meta tinħareġ, jew tkun waqfet mill-kummerċ tagħha għal aktar minn sitt xhur jew f'dak il-perjodu ieħor ta' żmien li jista' jkun speċifikat fil-liċenza;

(c) jekk xi dokument jew informazzjoni li jkunu ma' l-applikazzjoni għal liċenza jew xi informazzjoni li tingħata f'konnessjoni magħha jkunu foloz f'xi dettall sostanzjali jew jekk id-detentur tal-liċenza jaħbi, jew jonqos milli javża lill-awtorità kompetenti xi dokument jew informazzjoni jew xi bidla fihom li kien fid-dmir tiegħu li juri jew li javża taħt dan l-Att;

(d) ma tibqax tonora l-kundizzjonijiet meħtiegħa għall-ħruġ tal-liċenza;

(e) tiġi dikjarata falluta jew tibda likwidazzjoni jew tagħmel ftehim mal-kredituri jew tiġi xort'ohra xolta;

(f) tkun waqfet topera bħala rizultat ta' amalgamazzjoni ma' xi istituzzjoni finanzjarja ohra;

(g) tkun fergħa ta' istituzzjoni inkorporata barra minn Malta u l-awtorità regolatorja barranija fil-pajjiż ta' l-inkorporazzjoni tirtira l-awtorizzazzjoni lil dik l-istituzzjoni; jew

(h) tkun ta' theddida għall-istabbiltà tas-sistema ta' pagament meta hija tkompli bis-servizzi ta' pagament tagħha fil-kuntest tat-tifsira tat-Tieni Skeda li tinsab ma' dan l-Att.”;

(b) is-subartikoli (2), (3), (4), (5), (6) u (7) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (3), (4), (5), (6), (7) u (8) tiegħu;

(c) minnufih wara s-subartikolu (1) tiegħu, għandu jiżdied dan is-subartikolu (2) ġdid li ġej:

“(2) Meta l-awtorità kompetenti tirtira liċenza, hija għandha tgħarraf lill-istituzzjoni finanzjarja bir-raġunijiet għall-irtirar ta' liċenza u l-avviż ta' dak l-irtirar għandu jkun wiehed pubbliku.”;

(d) minflok is-subartikolu (3) tiegħu kif enumerat mill-ġdid, għandu jidhol dan is-subartikolu ġdid li ġej:

“(3) L-awtorità kompetenti tista' timponi restrizzjonijiet jew tirrevoka liċenza għal xi waħda minn dawn iċ-ċirkostanzi li ġejjin:

(a) jekk id-detentur ma jkunx għadu jippossjedi fondi tiegħu stess biżżejjed;

(b) jekk id-detentur x'aktarx ma jkunx jista' jonora l-obbligi tiegħu;

(c) jekk id-detentur ma jkollux attiv biżżejjed biex ikopri l-passiv tiegħu; jew

(d) jekk l-awtorità kompetenti tkun tal-fehma li, minhabba fil-mod kif l-istituzzjoni finanzjarja tkun qegħda tmexxi jew tkun bi ħsiebha tmexxi l-affarijiet tagħha, jew għal xi raġuni oħra, dawn ikunu jheddu l-istabbiltà tas-sistema finanzjarja.”;

(e) minflok is-subartikolu (4) tiegħu kif enumerat mill-ġdid, għandu jidhol dan is-subartikolu ġdid li ġej:

“(4) Ir-restrizzjonijiet imposti mill-awtorità kompetenti bis-saħħa tas-subartikolu (3) għandhom ikunu dawk ir-restrizzjonijiet li l-awtorità kompetenti jkun jidhrilha li jkunu adatti sabiex l-istituzzjoni finanzjarja tħares kif imiss id-dispożizzjonijiet ta’ dan l-Att jew ta’ regolamenti u Regoli maħruġin taħt dan l-Att u l-kundizzjonijiet, jekk ikun hemm, tal-licenza tagħha u għall-protezzjoni ta’ l-integrità tas-sistema finanzjarja tal-pajjiż u jistgħu jinkludu -

(a) it-tneħħija ta’ xi funzjonarju ta’ l-istituzzjoni finanzjarja jew it-tqegħid ta’ persuna oħra minflok xi funzjonarju hekk kif l-awtorità kompetenti tista’ tagħzel;

(b) il-ħtieġa li kull persuna li direttament jew indirettament tkun tippossjedi kapital azzjonarju kwalifikanti fl-istituzzjoni finanzjarja tirrinunzja għal dak il-*holding* kollu jew parti minnu;

(ċ) il-ħtieġa li l-istituzzjoni finanzjarja tiegħu jew iżzomm lura milli tiegħu xi azzjoni;

(d) il-ħtieġa li l-istituzzjoni finanzjarja tkun projbita milli timpenja ruħha f’xi transazzjoni jew transazzjonijiet jew f’xi attività minn dawk elenkati fl-Ewwel Skeda

li tinsab ma' dan l-Att jew li tithalla timpenja ruħha f'xi transazzjoni jew transazzjonijiet jew f'xi attività minn dawk elenkati fl-Ewwel Skeda li tinsab ma' dan l-Att fuq dawk il-pattijiet biss li l-awtorità kompetenti tista' tordna.”;

(f) fis-subartikolu (6) tiegħu kif enumerat mill-ġdid, minflok il-kliem “wara konsultazzjoni ma' l-awtoritajiet kompetenti tal-pajjiż ta' inkorporazzjoni,”, għandhom jidhlu l-kliem “wara konsultazzjoni ma' l-awtorità regolatorja barranija tal-pajjiż ta' inkorporazzjoni.”;

(g) fis-subartikolu (7) tiegħu kif enumerat mill-ġdid, minflok il-kliem “għandha tavża lill-awtoritajiet kompetenti tal-pajjiż ta' kwalunkwe stat barrani li fih l-istituzzjoni finanzjarja jew is-sussidjarji tagħha jkunu qed jagħmlu xi attività li hemm fl-Iskeda li tinsab ma' dan l-Att”, għandhom jidhlu l-kliem “għandha tavża lill-awtoritajiet regolatorji barranin tal-pajjiż li fih l-istituzzjoni finanzjarja jew is-sussidjarji tagħha jkunu qegħdin jagħmlu xi attività taht l-Ewwel Skeda li tinsab ma' dan l-Att”.

Emenda ta' l-artikolu 8 ta' l-Att prinċipali.

14. Minflok l-artikolu 8 ta' l-Att prinċipali għandu jidhrol dan li ġej:

“Ftuh ta' fergħat u l-eżerċizzju ta' Drittijiet Ewropej. 8. (1) Istituzzjoni finanzjarja għandha tavża lill-awtorità kompetenti bil-miktub qabel ma tiftaħ fergħa ġdida f'Malta.

(2) Istituzzjoni finanzjarja inkorporata f'Malta li tkun trid tiftaħ fergħa, aġenzija jew ufficċju barra minn Malta u istituzzjoni finanzjarja inkorporata f'Malta li tkun trid tiftaħ jew takkwista xi sussidjarja fi jew barra minn Malta, għandu jkollha l-approvazzjoni bil-miktub ta' l-awtorità kompetenti li tingħatalha bil-quddiem.

(3) Is-subartikolu (2) m'għandux ikun japplika għal xi istituzzjoni finanzjarja li jkollha licenza, li tkun:

(a) tipprovdi xi waħda mill-attivitajiet elenkati fl-Ewwel Skeda li tinsab ma' dan l-Att, minbarra fil-paragrafu 4 tagħha,

(b) twettaq il-kundizzjonijiet tar-regolament 13 tar-Regolamenti dwar id-Drittijiet Ewropej, u

A.L. 88 ta' l-2004.

(ċ) trid tipprovdi servizzi fi Stat Membru jew fi Stat ŻEE, fl-eżerċizzju ta' dritt Ewropew; u li għaldaqstant tkun soġġetta għar-Regolamenti dwar id-Drittijiet Ewropej.

(4) Is-subartikolu (2) m'għandux ikun japplika għal xi istituzzjoni finanzjarja li jkollha licenza u li tkun qegħda twettaq servizzi ta' pagament, li tkun trid tipprovdi servizzi għall-ewwel darba fi Stat Membru jew fi Stat ŻEE, b'eżerċizzju ta' dritt Ewropew.

(5) L-istituzzjonijiet finanzjarji li jkollhom licenza u li jinsabu msemija fis-subartikolu (4) għandhom jgħarrfu lill-awtorità kompetenti bl-intenzzjoni tagħhom li jeżerċitaw dritt Ewropew u l-awtorità kompetenti għandha fi żmien xahar minn meta tirċievi din l-informazzjoni, tgħarraf lill-awtorità regolatorja barranija involuta:

(a) bl-isem u l-indirizz ta' l-istituzzjoni finanzjarja;

(b) bl-ismijiet ta' kull min ikun responsabbli għat-tmexxija tal-fergħa;

(ċ) bl-istruttura organizzattiva li jkollha; u

(d) bix-xorta ta' servizzi li tkun bi ħsiebha tipprovdi fit-territorju ta' l-Istat Membru jew ta' l-Istat ŻEE.

(6) F'dan l-artikolu:

(a) “Dritt Ewropew” tirreferi għad-drittijiet deskritti fir-Regolamenti dwar id-Drittijiet Ewropej; u

(b) “Regolamenti dwar id-Drittijiet Ewropej” tfisser ir-Regolamenti ta’ l-2004 dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet ta’ Kreditu.”.

Emenda ta’ l-artikolu 8A ta’ l-Att prinċipali.

15. Minflok l-artikolu 8A ta’ l-Att prinċipali għandu jidhrol dan li ġej:

“Arrangamenti ta’ Aġenzija.

8A. (1) Ebda istituzzjoni finanzjarja m’għandha tagħmel xi arrangamenti ta’ aġenzija ma’ terzi kemm-il darba ma tkunx tat din l-informazzjoni li ġejja lill-awtorità kompetenti:

(a) l-isem u l-indirizz ta’ l-aġent;

Kap. 373.

A.L. 180 ta’ l-2008.

(b) deskrizzjoni tal-mekkaniżmi ta’ kontroll intern li jkunu ser jintużaw mill-aġenti sabiex jitharsu l-obbligazzjonijiet dwar il-*Money Laundering* u Finanzjar ta’ Terroriżmu taht l-Att kontra *Money Laundering*, u r-Regolamenti ta’ l-2008 kontra *Money Laundering* u Finanzjar ta’ Terroriżmu; u

(c) l-identità tad-diretturi u persuni responsabbli għat-tmexxija ta’ l-aġent li tkun ser tintuża sabiex jiġu provduti s-servizzi, u prova li dawn ikunu persuni adatti:

Izda persuna li tinhatar aġent ta’ istituzzjoni finanzjarja għandha taġixxi biss bhala aġent:

(i) għar-rigward ta’ dawk l-attivitajiet li l-istituzzjoni finanzjarja li jkun ser jagħmilha ta’ aġent tagħha, jkollha liċenza dwarhom taht dan l-Att;

(ii) għal mhux iżjed minn persuna waħda li jkollha liċenza taht dan l-Att; u

(iii) wara l-verifika mill-awtorità kompetenti ta' l-informazzjoni provduta mill-istituzzjoni finanzjarja.

(2) L-awtorità kompetenti tista' tassoggetta lill-persuna li tinħatar bhala aġent għal kull obbligazzjoni imposta fuq il-kumpanija li jkollha licenza taħt dan l-Att.

(3) L-awtorità kompetenti tista' telenka lill-aġent fir-registru pubbliku hekk kif hemm provdut fl-artikolu 8D u jekk din tirrifjuta milli telenka lil dak l-aġent, hija għandha tgħarraf lill-istituzzjoni finanzjarja bil-miktub bir-raġunijiet għar-rifjut tagħha:

Izda jekk l-awtorità kompetenti ma tkunx sodisfatta li l-informazzjoni li tigi provduta lilha tkun korretta, hija għandha tirrifjuta li telenka lill-aġent fir-registru pubbliku hekk kif hemm provdut fl-artikolu 8D.”.

16. Minnufih wara l-artikolu 8A ta' l-Att prinċipali, għandhom jiżdiedu dawn l-artikoli 8B, 8C u 8D godda li ġejjin:

Zjieda ta' l-artikoli godda 8B, 8C u 8D ma' l-Att prinċipali.

“*Outsourcing* ta' funzjonijiet operattivi.

8B. (1) Meta istituzzjoni finanzjarja tkun bi ħsiebha tagħmel *outsourcing* ta' funzjonijiet operattivi tas-servizzi tagħha u, jew attivitajiet, dak il-provditur ta' l-*outsourcing* għandu jkun rikonoxxut mill-awtorità kompetenti:

Izda l-*outsourcing* ta' funzjonijiet operattivi importanti jista' ma jsirx b'tali mod li jkun materjalment jaffettwa l-kwalità tal-kontroll intern u l-kapaċità li l-awtorità kompetenti għandha li tissorvelja l-konformità ta' l-istituzzjoni finanzjarja ma' l-obbligazzjonijiet kollha li hemm provdur dwarhom taħt dan l-Att, u r-regolamenti kollha jew Regoli magħmulin taħtu.

(2) Għall-finita' dan l-Att jew ta' regolamenti jew Regoli maħruġin taħtu, funzjoni operattiva għandha titqies bhala waħda importanti jekk xi difett jew nuqqas fit-twettiq tagħha jkun materjalment jaffettwa il-konformità kontinwa ta' istituzzjoni finanzjarja mal-ħtigiet tal-licenza jew ta' l-obbligazzjonijiet tagħha taħt dan l-Att jew taħt regolamenti jew Regoli maħruġin

tahtu, jew it-twettiq finanzjarju tagħha, jew is-sodizza jew il-kontinwità tas-servizzi tagħha:

Izda l-awtorità kompetenti għandha tiżgura li, meta istituzzjonijiet finanzjarji jagħmlu *outsourcing* ta' funzjonijiet operattivi importanti, l-istituzzjonijiet finanzjarji għandhom jikkonformaw ruħhom ma' dawn il-kundizzjonijiet li ġejjin:

(a) l-*outsourcing* m'għandux jirrizulta f'illi d-direzzjoni ewlenija tiddelega r-responsabbiltajiet tagħha;

(b) m'għandhomx jinbidlu r-relazzjoni u l-obbligazzjonijiet ta' l-istituzzjoni finanzjarja lejn kull min juża s-servizzi tagħha taht dan l-Att, regolamenti jew Regoli maħruġin taht l-Att;

(ċ) sabiex jibqgħu kif inhuma, m'għandhomx jiġu sorspassati l-kundizzjonijiet li bihom l-istituzzjoni finanzjarja għandha tikkonforma ruħha sabiex tinħarġilha licenza hekk kif provdut f'dan l-Att, regolamenti jew Regoli maħruġin taht dan l-Att; u

(d) m'għandha titneħħa jew tinbidel ebda waħda mill-kundizzjonijiet l-oħra li l-licenza għal istituzzjoni finanzjarja tkun inħarġet soġġetta għalihom.

(3) L-awtorità kompetenti tista' toħroġ Regola, li tkun tistipula l-htigiet għar-rikonoxximent tal-provdituri ta' servizzi ta' *outsourcing* u l-għoti ta' dawk is-servizzi ta' *outsourcing*.

(4) Meta l-istituzzjoni finanzjarja li jkollha licenza jew awtorizzazzjoni ekwivalenti fi Stat Membru ieħor jew fi Stat ŻEE u li tkun tibbenefika mid-dritt ta' stabbiliment u mil-libertà li tipprovdni servizzi, twettaq l-attivitajiet elenkati fl-Iskedi li jinsabu ma' l-Att f'Malta permezz ta' fergħa jew billi tqabbad agent, skond il-każ, l-istituzzjoni finanzjarja għandha ssegwi l-proċeduri stipulati fir-Regola:

Izda jekk l-awtorità kompetenti jkollha tassew għaliex tissuspetta li, permezz ta' dik il-fergħa jew agent, ikun qed isir jew sar jew gie ittentat li jsir xi *money laundering* jew finanzjar ta' terroriżmu, fil-kuntest tad-

Direttiva tal-Kunsill 2005/60/KE, jew li l-ingaġġ ta' dik il-fergħa jew ta' dak l-aġent jistgħu jzidu r-riskju ta' *money laundering* jew finanzjar ta' terroriżmu, hija għandha tgharraf lill-Istat Membru domestiku, li jista' jirrifjuta milli jirreġistra lil dik il-fergħa jew lil dak l-aġent, jew li jista' jirtira r-reġistrazzjoni, jekk din tkun diġà saret, tal-fergħa jew ta' l-aġent.

Responsabbiltà. 8C. (1) Meta istituzzjonijiet finanzjarji jkunu jiddependu fuq terzi għat-twettiq ta' funzjonijiet operattivi, dawk l-istituzzjonijiet finanzjarji għandhom jieħdu passi raġonevoli biex jiżguraw li jitharsu l-ħtiġiet ta' dan l-Att.

(2) L-istituzzjonijiet finanzjarji għandhom jibqgħu għalkollox responsabbli għal kull att li jsir mill-impjegati tagħhom, jew minn xi aġent, fergħa jew entità li setgħu lilhom ġew *outsourced* xi attivitajiet.

Reġistrazzjoni. 8D. (1) L-awtorità kompetenti jkollha d-dmir iżzomm reġistru pubbliku li jkun jelenka kull istituzzjoni finanzjarja li jkollha liċenza jew istituzzjonijiet finanzjarji li jkollhom awtorizzazzjoni ekwivalenti f'xi pajjiż ieħor, u l-fergħat u l-aġenti tagħhom, fejn għandhom jiġu identifikati s-servizzi li dwarhom ikollha liċenza l-istituzzjoni finanzjarja. Dawk ir-reġistrazzjonijiet għandhom jinżammu għal dak il-perjodu ta' żmien li jista' jiġi stipulat fir-Regola.

(2) Dak ir-reġistru għandu jkun disponibbli pubblikament għal konsultazzjoni, ikun aċċessibbli *online* u jkun aġġornat fuq bażi regolari.”.

17. L-artikolu 9 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 9 ta' l-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (a) tiegħu, minflok il-kliem “biex tikseb jew tiddisponi minn kapital azzjonarju kwalifikanti f'istituzzjoni finanzjarja jew iżżid jew tnaqqas kapital azzjonarju kwalifikanti”, għandhom jidhlu l-kliem “biex tikseb jew tiddisponi, direttament

jew indirettament, minn kapital azzjonarju kwalifikanti f'istituzzjoni finanzjarja jew iżżid jew tnaqqas, direttament jew indirettament, dak il-kapital azzjonarju kwalifikanti”, u minflok il-kliem “jonqos taht 20 fil-mija, 33 fil-mija jew 50 fil-mija”, għandhom jidhlu l-kliem “jonqos taht 20 fil-mija, 30 fil-mija jew 50 fil-mija”;

(ii) minflok il-kliem “mingħajr ma jiksbu minn qabel il-kunsens ta' l-awtorità kompetenti jew, alternattivament, jekk wara li jkunu kisbu dak il-kunsens”, għandhom jidhlu l-kliem “mingħajr ma jiksbu minn qabel l-approvazzjoni ta' l-awtorità kompetenti jew, alternattivament, jekk wara li jkunu kisbu dik l-approvazzjoni”;

(iii) minflok il-kliem “għal xi piena oħra li tista' tiġi imposta taht dan l-Att.”, għandhom jidhlu l-kliem “għal xi piena oħra li tista' tiġi imposta taht dan l-Att jew taht xi regolamenti jew Regoli mahruġin tahtu.”;

(b) fis-subartikolu (2) tiegħu, minflok il-kliem “l-awtorità kompetenti jkollha d-diskrezzjoni li tikkunsidra kull talba magħmula minn dik il-persuna għall-kunsens ta' l-awtorità kompetenti taht id-dispożizzjonijiet ta' dan l-artikolu li tikkostitwixxi talba biex tapplika għal liċenza biex tmexxi l-kummerċ ta' istituzzjoni finanzjarja taht id-dispożizzjonijiet ta' dan l-Att.”, għandhom jidhlu l-kliem “l-awtorità kompetenti jkollha d-diskrezzjoni li tikkunsidra jekk talba magħmula minn dik il-persuna għall-approvazzjoni ta' l-awtorità kompetenti taht id-dispożizzjonijiet ta' dan l-artikolu tikkostitwix talba biex tapplika għal liċenza biex tmexxi l-kummerċ ta' istituzzjoni finanzjarja taht id-dispożizzjonijiet ta' dan l-Att jew ta' regolamenti u Regoli mahruġin taht dan l-Att.”;

(ċ) fis-subartikolu (3) tiegħu, minflok il-kliem “l-azzjonijiet rilevanti jkunu jew ma jkunux elenkati f'borża ta' investimenti rikonoxxut skond l-Att dwar is-Swieq Finanzjarji.”, għandhom jidhlu l-kliem “l-azzjonijiet rilevanti jkunu jew ma jkunux elenkati f'suq regolat skond l-Att dwar is-Swieq Finanzjarji, jew f'suq ekwivalenti f'pajjiż terz.”;

(d) fis-subartikolu (4) tiegħu, minflok il-kliem “hija għandha qabel ma tiegħu din l-azzjoni tavża lill-awtorità kompetenti. L-awtorità kompetenti għandha fi żmien xahrejn

li tirċievi din in-notifika tagħti jew ma tagħtix il-kunsens tagħha”, għandhom jidhlu l-kliem “hija għandha qabel ma tiegħu din l-azzjoni tavża lill-awtorità kompetenti bil-miktub. L-awtorità kompetenti għandha fi żmien xahrejn li tirċievi din in-notifika tagħti jew ma tagħtix l-approvazzjoni tagħha”;

(e) fis-subartikolu (5) (a) tiegħu, minflok il-kliem “għandha tinforma lill-awtorità kompetenti bil-partikolaritajiet kollha ta’ kull persuna”, għandhom jidhlu l-kliem “għandha tinforma lill-awtorità kompetenti bil-miktub bil-partikolaritajiet kollha ta’ kull persuna”.

18. Fis-subartikolu (1) ta’ l-artikolu 10 ta’ l-Att prinċipali, minflok il-kliem “Istituzzjoni finanzjarja m’għandhiex -”, għandhom jidhlu l-kliem “Mingħajr preġudizzju għad-dispożizzjonijiet tal-paragrafu 3(e) tat-Tieni Skeda li tinsab ma’ l-Att, istituzzjoni finanzjarja m’għandhiex -”. Emenda ta’ l-artikolu 10 ta’ l-Att prinċipali.

19. L-artikolu 12 ta’ l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta’ l-artikolu 12 ta’ l-Att prinċipali.

(a) minflok is-subartikolu (2) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(2) Il-Ministru, bil-parir ta’ l-awtorità kompetenti, jista’ jagħmel regolamenti li jkunu jagħtu seħh lid-dispożizzjonijiet ta’ dan l-Att, u mingħajr preġudizzju għall-ġeneralità ta’ dak hawn qabel imsemmi jista’, b’dawk ir-regolamenti, partikolarment, jagħmel kull haġa minn dan li ġej:

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

(b) jittrasponi, jimplementa u jagħti seħh lill-htigiet tad-Direttiva.”;

(b) minnufih wara s-subartikolu (2) tiegħu għandu jiddied dan is-subartikolu (3) ġdid li ġej:

“(3) Meta jkunu nħarġu regolamenti kif hawn f’dan l-artikolu, l-awtorità kompetenti tista’ toħroġ Regoli fil-kuntest tat-tifsira ta’ dan l-Att għat-twettiq tajjeb u l-aħjar implimentazzjoni tad-dispożizzjonijiet tar-regolamenti.”.

Thassir l-artikolu 12A ta' l-Att prinċipali.

20. L-artikolu 12A ta' l-Att prinċipali għandu jithassar.

Enumerazzjoni mill-ġdid ta' l-artikolu 12B ta' l-Att prinċipali.

21. L-artikolu 12B ta' l-Att prinċipali għandu jiġi enumerat mill-ġdid bhala l-artikolu 12A ta' l-Att prinċipali.

Emenda ta' l-artikolu 13 ta' l-Att prinċipali.

22. L-artikolu 13 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

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

“(1) Ikun id-dmir ta' l-awtorità kompetenti li tesegwixxi l-funzjonijiet mogħtija lilha b'dan l-Att u li tassikura li l-istituzzjonijiet finanzjarji li jagħmlu kummerċ f'Malta jharsu dan l-Att, regolamenti, Direttivi u Regoli maħruġa taħt dan l-Att u l-kundizzjonijiet tal-liċenzi tagħhom. Fit-twettiq ta' dawk il-funzjonijiet, l-awtorità kompetenti għandha tiżgura li l-kontrolli li jiġu eżerċitati sabiex tiġi verifikata konformità kontinwa taħt dan l-Att, jew taħt regolamenti u Regoli maħruġa taħtu, ikunu proporzjonati, adegwati u responsivi għar-riskji li l-istituzzjonijiet finanzjarji jkunu esposti għalihom.

Dawk il-funzjonijiet ikunu fost l-oħrajn jikkonsistu f'dan li ġej:

(a) li jeħtieġu lill-istituzzjoni finanzjarja biex taħt l-artikolu 14 ta' dan l-Att tipprovdi kull informazzjoni meħtieġa sabiex tkun tista' tiġi sorveljata l-konformità;

(b) li jsiru spezzjonijiet fil-fond ta' l-istituzzjoni finanzjarja, ta' kull agent jew fergħa li jkunu jipprovdu attivitajiet magħmulin taħt il-liċenza u taħt ir-responsabbiltà ta' l-istituzzjoni finanzjarja, jew ta' xi entità li l-attivitajiet jiġu *outsourced* lilha;

(ċ) li jissospendu jew jiritraw l-awtorizzazzjoni fil-każijiet imsemmija fl-artikolu 6 ta' l-Att; u

(d) minkejja l-htigiet ta' l-artikoli 5 u 5A, li jieħdu l-passi kollha meħtieġa sabiex jiġi

żgurat kapital biżżejjed għall-attivitajiet imwettqa minn istituzzjoni finanzjarja, partikolarment meta l-attivitajiet ta' istituzzjoni finanzjarja li ma jkunux dawk elenkati fl-Iskeda li tinsab ma' l-Att ikunu jaffettwaw jew x'aktarx jaffettwaw is-sodizza finanzjarja ta' l-istituzzjoni.”;

(b) fis-subartikolu (3) tiegħu, minflok il-kliem “tagħmel kopji tagħhom disponibbli għal pubbliku.”, għandhom jidhlu l-kliem “tagħmel kopji tagħhom disponibbli għal pubbliku meta tintalab tagħmel dan.”.

23. L-artikolu 14 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “dik l-informazzjoni u reżokontijiet dwar il-fergħat tagħha f' Malta jew barra minn Malta li l-awtorità kompetenti tista' teħtieġ fil-qadi ta' dmirijietha taht dan l-Att jew kull liġi oħra”, għandhom jidhlu l-kliem “dik l-informazzjoni u reżokontijiet li l-awtorità kompetenti tista' teħtieġ fil-qadi ta' dmirijietha taht dan l-Att jew taht regolamenti u Regoli maħruġa tahtu jew kull liġi oħra.”;

(b) is-subartikolu (5) tiegħu għandu jithassar;

(ċ) is-subartikoli (3) u (4) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (4) u (5) rispettivament;

(d) minnufih wara s-subartikolu (2) tiegħu, għandu jizdied dan is-subartikolu (3) ġdid li ġej:

“(3) Istituzzjonijiet finanzjarji li jipprovdu s-servizzi elenkati taht it-Tieni Skeda li tinsab ma' l-Att għandhom jipprovdu informazzjoni dwar il-kontijiet separata dwar is-servizzi ta' pagament elenkati f'punt 2 u punt 3 ta' dik l-Iskeda, bla ħsara għal rapport ta' l-awditur.”;

(e) fis-subartikolu (6), fil-paragrafu (ċ) tiegħu, minflok il-kliem “tista' raġonevolment tkun teħtieġ biex taqdi d-dmirijiet tagħha taht dan l-Att.”, għandhom jidhlu l-kliem “raġonevolment tkun teħtieġ biex taqdi l-funzjonijiet tagħha taht dan l-Att jew taht regolamenti u Regoli maħruġa tahtu.”;

(f) is-subartikolu (12) tiegħu għandu jġi emendat kif ġej:

(i) fil-paragrafu (d) tiegħu, minflok il-kliem “kontrollur ta’ dik l-istituzzjoni finanzjarja; jew”, għandhom jidhlu l-kliem “kontrollur ta’ dik l-istituzzjoni finanzjarja.”;

(ii) fil-paragrafu (e) tiegħu, minflok il-kliem “kapital azzjonarju kwalifikanti ta’ dik l-istituzzjoni finanzjarja.”, għandhom jidhlu l-kliem “kapital azzjonarju kwalifikanti ta’ dik l-istituzzjoni finanzjarja; jew”;

(iii) minnufih wara l-paragrafu (e) tiegħu, għandu jżidied dan il-paragrafu (f) ġdid li ġej:

“(f) agent maħtur taħt l-artikolu 8A ta’ dan l-Att.”;

(iv) minnufih wara il-paragrafu (f) ġdid tiegħu, il-kliem “u l-provvedimenti ta’ dan l-artikolu ikunu japplikaw għal dik il-persuna.” għandhom jiħassru;

(g) fis-subartikolu (13) tiegħu, minflok il-kliem “tista’ tkun haġja ta’ reat taħt dan l-Att.”, għandhom jidhlu l-kliem “tista’ tkun haġja ta’ reat taħt dan l-Att jew taħt regolamenti u Regoli maħruġa taħtu.”.

Emenda ta’ l-artikolu 17 ta’ l-Att prinċipali.

24. Is-subartikolu (1) ta’ l-artikolu 17 ta’ l-Att prinċipali għandu jġi emendat kif ġej:

(a) minflok il-kliem “tkun tapplika xi waħda miċ-ċirkostanzi muriġja fl-artikolu 6(2)”, għandhom jidhlu l-kliem “tkun tapplika xi waħda miċ-ċirkostanzi muriġja fl-artikolu 6(3)”, u minflok il-kliem “tirrevoka liċenza taħt id-dispożizzjonijiet ta’ l-artikolu 6(2)”, għandhom jidhlu l-kliem “tirrevoka liċenza taħt id-dispożizzjonijiet ta’ l-artikolu 6(3)”;

(b) fil-paragrafu (d) tiegħu, minflok il-kliem “taħtar persuna kompetenti biex tieħu f’idejha l-kontroll tal-kummerċ”, għandhom jidhlu l-kliem “taħtar persuna kompetenti biex tieħu għalkollox f’idejha l-kontroll tal-kummerċ”.

25. Fil-paragrafu (a) ta' l-artikolu 19 ta' l-Att prinċipali, minflok il-kliem “li tenhtieg li tiġi komunikata bis-saħħa ta’ dan l-Att;”, għandhom jidhlu l-kliem “li tenhtieg li tiġi komunikata bis-saħħa ta’ dan l-Att jew ta’ regolamenti u Regoli mahruġa tahtu;”.

Emenda ta' l-artikolu 19 ta' l-Att prinċipali.

26. L-artikolu 20 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 20 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “tista’ taqşam id-dmirijiet ta’ sorveljanza tagħha ma’ l-awtoritajiet kompetenti barranin fil-każ ta’ istituzzjoni finanzjarja”, għandhom jidhlu l-kliem “tista’ taqşam id-dmirijiet ta’ sorveljanza tagħha ma’ awtoritajiet regolatorji oħra barranin fil-każ ta’ istituzzjoni finanzjarja”;

(b) minflok is-subartikolu (2) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(2) L-awtorità kompetenti għandha, iktar minn hekk, tiskambja informazzjoni ma’ dawn li ġejjin:

(a) awtoritajiet regolatorji barranin responsabbli għall-ħruġ ta’ licenzi u superviżjoni ta’ istituzzjonijiet finanzjarji li jkunu qegħdin iwettqu servizzi ta’ pagament unikament għall-finijiet superviżorji u regolatorji tagħhom jew għal dawk ir-raġunijiet l-oħra li jistgħu jkunu speċifikament miftiehma ma’ l-awtorità kompetenti;

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

(ċ) awtoritajiet rilevanti oħra imsemmija taht id-Direttiva 2007/64/KE, id-Direttiva 95/46/KE, id-Direttiva 2005/60/KE u oħer leġislazzjoni Komunitarja oħra li tapplika għall-pagament ta’ provdituri ta’ servizzi, inklużi miżuri li jirregolaw il-protezzjoni ta’ individwi dwar il-proċessar ta’ informazzjoni personali data u kontra *money laundering* u l-iffinanzjar ta’ terroriżmu.”;

(ċ) minflok is-subartikolu (3) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(3) L-awtorità kompetenti tista’ wkoll, fuq il-bażi ta’ kull ftehim internazzjonali, jew ta’ kull ftehim ta’ reċiproċità, tikxef informazzjoni lil awtoritajiet regolatorji barranin, partikolarment, fil-każ ta’ xi kontravvenzjoni jew kontravvenzjoni suspettata minn xi aġent, fergħa, jew entità li lilha jiġu *outsourced* l-attivitajiet:

Izda l-awtorità kompetenti għandha, fuq talba li ssirilha, tikkomunika kull informazzjoni rilevanti u, b’inizjattiva relattiva, kull informazzjoni li tintalab minnha.”;

(d) minflok is-subartikolu (4) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(4) L-awtorità kompetenti għandha tavża lill-awtorità regolatorja barranija rilevanti kull meta tkun bi ħsiebha twettaq xi spezzjoni fuq il-post f’xi Stat Membru iehor:

Izda l-awtorità kompetenti tista’ bi ftehim tiddelega lill-awtorità regolatorja barranija rilevanti, il-kompitu li twettaq l-ispezzjonijiet fuq il-post ta’ l-istituzzjoni involuta.”;

(e) fis-subartikolu (5) tiegħu, minflok il-kliem “tikxef lill-Bank Ċentrali kull informazzjoni”, għandhom jidhlu l-kliem “tikxef lill-Bank Ċentrali Ewropew u, jew lill-Bank Ċentrali kull informazzjoni”, u minflok il-kliem “fil-qadi tad-dmirijiet tal-Bank Ċentrali taht il-liġi.”, għandhom jidhlu l-kliem “fil-qadi tad-dmirijiet tal-Bank Ċentrali Ewropew u, jew tal-Bank Ċentrali taht il-liġi.”;

(f) minflok is-subartikolu (8) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(8) L-awtorità kompetenti u l-Bank Ċentrali għandhom minn żmien għal żmien jiddiskutu materji ta’ interess reċiproku li jkunu jirrigwardaw istituzzjonijiet finanzjarji, u għandhom f’kull żmien jagħtu lil xulxin

dik il-koperazzjoni li tista' tkun meħtieġa għall-qadi tad-dmirijiet rispettivi tagħhom.”.

27. L-artikolu 22 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

(a) fis-subartikolu (1) (f) tiegħu, minflok il-kliem “lil xi persuna skond dan l-Att”, għandhom jidhlu l-kliem “lil xi persuna taħt dan l-Att jew taħt regolamenti u Regoli mahruġa taħtu.”;

(b) is-subartikolu (3) tiegħu għandu jithassar;

(c) is-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (3) tiegħu;

(d) minnufih wara s-subartikolu (1) tiegħu, għandu jiddied dan is-subartikolu (2) ġdid li ġej:

“(2) Kull persuna li għall-finijiet ta', jew konformement mad-dispożizzjonijiet ta' dan l-Att jew ta' regolamenti jew Regoli magħmulin taħtu, jew ta' xi kundizzjoni, obbligazzjoni, ħtieġa, Direttiva jew ordni magħmula jew mogħtija kif hawn qabel imsemmi, tipprovdi informazzjoni jew tagħmel dikjarazzjoni li tkun taf li mhix eżatta, li tkun falza jew qarrieqa f'xi aspekk materjali tagħha, jew bi traskuraġni tipprovdi informazzjoni jew tagħmel dikjarazzjoni li tkun taf li mhix eżatta, li tkun falza jew qarrieqa f'xi aspekk materjali tagħha, tkun ħatja ta' reat.”;

(e) minflok is-subartikolu (4) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(4) Persuna li tkun ħatja ta' reat taħt id-dispożizzjonijiet ta' dan l-artikolu tista', meta tinsab ħatja, tehel multa ta' mhux iżjed minn erba' mija u ħamsa u sittin elf u tmien mija erbgħa u sebgħin euro u tmienja u sittin ċenteżmu (465,874.68) jew prigunerija għal żmien mhux iżjed minn erba' snin, jew dik il-multa u prigunerija flimkien.”.

28. L-artikolu 23 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 23 ta' l-Att prinċipali.

(a) is-subartikoli (1) u (2) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2) u (3) rispettivament;

(b) minnufih qabel is-subartikolu (2) kif enumerat mill-ġdid għandu jżdid dan is-subartikolu (1) ġdid li ġej:

“(1) Meta l-awtorità kompetenti tkun sodisfatta li l-imġieba ta’ persuna tkun tammonta għal ksur ta’ xi dispożizzjoni ta’ dan l-Att jew ta’ regolamenti u Regoli maħruġa tahtu, l-awtorità kompetenti tista’ permezz ta’ avviż bil-miktub u mingħajr il-htieġa ta’ ebda smigh fil-qorti timponi fuq persuna hekk kif ikun il-każ, piena amministrattiva li ma tistax tkun ta’ iżjed minn tlieta u disghin elf u mija erbgħa u sebgħin euro u erbgħa u disghin ċenteżmu (93,174.94).”.

Emenda ta’ l-artikolu 24 ta’ l-Att prinċipali.

29. Fil-paragrafu (a) ta’ l-artikolu 24 ta’ l-Att prinċipali, minflok il-kliem “liċenza tagħha mhassra skond l-artikolu 6(2) u”, għandhom jidhlu l-kliem “liċenza tagħha revokata taht l-artikolu 6(3) u”.

Emenda ta’ l-artikolu 25 ta’ l-Att prinċipali.

30. L-artikolu 25 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “Ebda haġa f’dan l-Att ma”, għandhom jidhlu l-kliem “Ebda haġa f’dan l-Att jew f’regolamenti u Regoli maħruġa tahtu ma”;

(b) fis-subartikolu (2) tiegħu, minflok il-kliem “skond dan l-Att hlief -”, għandhom jidhlu l-kliem “taht dan l-Att jew regolamenti u Regoli maħruġa tahtu hlief -”;

(c) minflok is-subartikolu (4) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

“(4) Uffiċjali ta’ l-awtorità kompetenti, inklużi uffiċjali passati u prezenti, kif ukoll awdituri jew esperti li jaġixxu għan-nom ta’ l-awtorità kompetenti, ma għandhomx jikxfu informazzjoni miksuba minn istituzzjonijiet finanzjarji waqt il-qadi ta’ dmirijiet ta’ sorveljanza u oħrajn u li jkunu regolati bl-obbligu tassegretezza professjonali, kemm-il darba dak il-kxif ta’ informazzjoni ma jsirx f’forma sommarja jew kollettiva,

sabiex ma tkunx tista' tingħaraf l-identità tal-istituzzjoni finanzjarja li dik l-informazzjoni tkun dwarha:

Iżda dawk l-uffiċjali, awdituri jew esperti jistgħu joħroġu dik l-informazzjoni għall-fini tal-twettiq ta' dmirijiethom jew tal-eżerċizzju tal-funzjonijiet tagħhom, jew meta dawn ikunu legittimament meħtieġa jagħmlu dan minn xi qorti jew taħt xi dispożizzjoni ta' xi liġi.”;

(d) fis-subartikolu (6) tiegħu, minflok il-kliem “xi waħda mill-attivitajiet imsemmija fl-Iskeda.”, għandhom jidhlu l-kliem “xi waħda mill-attivitajiet imsemmija fl-Iskeda maħruġa taħt l-Att ta' l-1994 dwar il-Kummerċ Bankarju.”.

31. Minflok is-subtitolu “MIXXELLANJI” minnufih qabel l-artikolu 26 għandu jidhlo dan is-subtitolu ġdid “ILMENTI TAL-KONSUMATURI”.

Emenda tas-subtitolu li jiġi qabel l-artikolu 26 ta' l-Att prinċipali.

32. Minflok l-artikolu 26 ta' l-Att prinċipali, għandu jidhlo dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 26 ta' l-Att prinċipali.

“Investigazzjoni ta' ilmenti mill-Manager ta' l-Ilmenti tal-Konsumaturi. 26. (1) (a) Il-Manager ta' l-Ilmenti tal-Konsumaturi maħtur taħt l-artikolu 20 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, ikollu l-funzjoni li jinvestiga ilmenti minn utent ta' servizz ta' pagament li joriġinaw minn, jew li jkollhom x'jaqsmu ma' xi kontravvenzjoni allegata minn provditur ta' servizz, tad-dispożizzjonijiet ta' dan l-Att li jimplementaw id-Direttiva.

Kap. 330.

(b) Id-dispożizzjonijiet ta' l-artikolu 20 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, għandhom ikunu japplikaw, *mutatis mutandis*, għal-ilmenti li jsiru taħt dan l-artikolu.

Kap. 387.

(ċ) Ilmenti minn utent ta' servizz ta' pagament taħt is-subartikolu 1(a) jistgħu jinkludu ilmenti minn partijiet interessati, fil-kuntest tad-Direttiva, kif ukoll ilmenti minn assoċjazzjonijiet tal-konsumaturi.

(2) (a) Meta jkun hemm tilwima bejn utent ta' servizz ta' pagament u provditur ta' servizz ta' pagament din tista', fid-diskrezzjoni tal-utent tas-servizz ta' pagament, jew jekk ikun hemm ftehim bejn il-partijiet involuti fit-tilwima, sew permezz ta' ftehim bil-miktub jew xort'oħra, tintbagħat għall-arbitraġġ

Kap. 378. kif hemm fl-Att dwar l-Arbitraġġ. L-awtorità li taħtar u l-amministratur ikun iċ-Ċentru dwar l-Arbitraġġ ta' Malta, u f'dawn it-tilwimiet ikun arbitru wieħed biss li jiġi maħtur.

(b) Persuni li tinħarġilhom liċenza taħt dan l-Att ikunu marbuta bil-kundizzjoni fil-liċenza tagħhom li tilwima tkun tista' tintbagħat għall-arbitraġġ kif hemm fil-paragrafu (a).

(ċ) Il-Manager ta' l-Ilmenti tal-Konsumaturi għandu, fir-risposta tiegħu għal ilment, jgħarraf lil min jaġmel l-ilment bil-possibiltà li t-tilwima tkun tista' tintbagħat għal proċeduri ta' arbitraġġ kif provdut f'dan l-artikolu:

Izda meta tittiehed xi azzjoni mill-Manager ta' l-Ilmenti tal-Konsumaturi, din għandha tkun mingħajr preġudizzju għad-dritt ta' konsumatur, fil-kuntest ta' l-Att dwar l-Affarijiet tal-Konsumatur, li jipprezenta talba quddiem il-Tribunal għal Talbiet tal-Konsumaturi, mwaqqaf taħt dak l-Att, jew li jeżercita kull dritt ieħor taħt dak l-Att.

(3) “Utent ta' servizzi ta' pagament”, “provditur ta' servizz ta' pagament” u “transazzjoni ta' pagament” għandu jkollhom it-tifsira mogħtija lilhom kif hemm fit-Tieni Skeda li tinsab ma' l-Att.”.

Izid subtitolu ġdid qabel l-artikolu 27 ta' l-Att prinċipali.

33. Minnufih wara l-artikolu 26 ta' l-Att prinċipali għandu jiżdied is-subtitolu ġdid “MIXXELLANJI”.

Emenda ta' l-artikolu 27 ta' l-Att prinċipali.

34. Minflok l-artikolu 27 ta' l-Att prinċipali, għandu jidhrol dan l-artikolu ġdid li ġej:

“Għan.

27. L-għan ta' dan l-Att hu, f'parti minnu, biex jimplimenta d-dispożizzjonijiet tad-Direttiva tal-Parlament Ewropew u tal-Kunsill fuq is-servizzi ta' pagament fis-suq intern, partikolarment Titoli I, II, Kapitlu 5 tat-Titolu IV u l-Anness u għandu jkun interpretat u applikat skond hekk.”.

Emenda ta' l-Iskeda li tinsab ma' l-Att prinċipali.

35. Minflok l-Iskeda li tinsab ma' l-Att prinċipali, għandu jidhrol dan li ġej:

“L-EWWEL SKEDA**(Artikolu 2)**

ATTIVITAJIET TA' ISTITUZZJONIJIET FINANZJARJI

1. Self (li jinkludi krediti personali, krediti taht *mortgage*, xiri ta' fatturi kemm bi jew mingħajr dritt ta' rikors, finanzjament ta' transazzjonijiet kummerċjali inkluż *forfaiting*);

2. *Financial leasing*;

3. Kapital ta' sogru jew riskju;

4. Servizzi ta' pagament kif imfisser fit-Tieni Skeda;

5. Hruġ u amministrazzjoni ta' mezzi ta' pagament oħra (*travellers cheques*, ċedoli bankarji u strumenti bħal dawk) sakemm din l-attività ma tkunx taqa' taht il-punt 4 hawn qabel;

6. Garanziji u rabtiet;

7. Negozju li tagħmel persuna f'isimha jew f'isem il-klijenti:

(a) fi strumenti ta' swieq finanzjarji (ċekkijiet, kambjali, Ċertifikati ta' depożitu u strumenti bħal dawk);

(b) kambju ta' flus;

(ċ) *financial futures* u *options*;

(d) strumenti ta' rati ta' kambju u mgħax;

(e) strumenti li jistgħu jigu trasferiti;

8. Sottoskrizzjoni ta' hruġ ta' ishma u s-sehem f'dak il-hruġ;

9. Senserija ta' flus.”.

36. Minnufih wara l-Ewwel Skeda, għandha tizzied din l-Iskeda ġdida li ġejja:

Zjieda tat-Tieni Skeda ġdida ma' l-Att prinċipali.

‘IT-TIENI SKEDA**ISTITUZZJONIJIET FINANZJARJI LI JWETTQU
SERVIZZI TA’ PAGAMENT**

Għan.

L-għan ta’ din l-Iskeda hu li jistabbilixxi il-qafas regolatorju li tahtu jistgħu jitwettqu s-servizzi ta’ pagament fil-kuntest tal-mezzi ta’ ħruġ u amministrazzjoni ta’ pagament kif imsemmi fl-Ewwel Skeda li tinsab ma’ dan l-Att.

Tifsir.

1. F’din l-Iskeda, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort’ohra , għandhom japplikaw dawn it-tifsiriet -

“debitu dirett” tfisser servizz ta’ pagament għad-debitar ta’ kont ta’ pagament ta’ min iħallas, meta transazzjoni ta’ pagament tinbeda minn min jirċievi l-pagament abbażi tal-kunsens ta’ min iħallas mogħti lil min jirċievi l-pagament, jew lill-provditur ta’ servizz ta’ pagament ta’ min jirċievi l-pagament, jew lill-provditur ta’ servizz ta’ pagament ta’ min iħallas innifsu;

“flejjes” tfisser karti tal-flus u muniti, flus li jidhru bil-kitba u flus elettronici;

“grupp” tfisser grupp ta’ imprizi, li jikkonsistu f’impriza ċentrali, is-sussidjarji tagħha u l-entitajiet li fihom l-impriza ċentrali jew is-sussidjarji tagħha jkollhom sehem, kif ukoll imprizi marbutin ma’ xulxin permezz ta’ relazzjoni fil-kuntest ta’ l-artikolu 12(1) tad-Direttiva 83/349/KEE.

“istituzzjoni ta’ pagament” tfisser kumpannija li jkollha liċenza konformi ma’ dan l-Att jew li jkollha awtorizzazzjoni ekwivalenti f’xi pajjiż ieħor kif hemm fid-Direttiva għall-provdiment u eżekuzzjoni ta’ servizzi ta’ pagament;

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

“min iħallas” tfisser sew persuna li jkollha kont ta’ pagament u li tkun tippermetti ordni ta’ pagament minn dak il-kont ta’ pagament, sew, meta ma jkunx hemm kont ta’ pagament, persuna li tagħmel ordni għal transazzjoni ta’ pagament;

“min jirċievi l-pagament” tfisser persuna li tkun ir-riċevitur intiz ta’ flejjes li huma fil-bażi ta’ transazzjoni ta’ pagament;

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

“*outsourcing*” tfisser l-użu li tagħmel entità li jkollha liċenza ta’ terza parti (il-provditur tas-servizz ta’ *outsourcing*) biex twettaq attivitajiet li normalment isiru mill-entità li jkollha liċenza, fil-preżent jew fil-futur. Il-fornitur jista’ jkun jew ma jkunx entità li jkollha liċenza;

“provditur ta’ servizz ta’ pagament” tfisser impriża msemmija f’dan l-Att;

“provditur ta’ servizz ta’ *outsourcing*” tfisser il-fornitur ta’ oġġetti, servizzi jew faċilitajiet, li jistgħu jkunu jew ma jkunx entità li jkollha liċenza, u li tista’ tkun entità affiljata fi ħdan grupp korporat jew an entità li tkun waħda esterna għall-grupp;

“rimessa ta’ flus” tfisser servizz ta’ pagament fejn jiġu riċevuti flejjes minn min iħallas, mingħajr ma jkun hemm ebda kontijiet ta’ pagament f’isem min iħallas jew min jirċievi l-pagament, bil-għan uniku li jsir trasferiment ta’ ammont korrispondenti lil min jirċievi l-pagament jew lil xi provditur ta’ servizz ta’ pagament ieħor li jkun qiegħed jaġixxi f’isem min jirċievi l-pagament, u/jew fejn jiġu riċevuti dawk il-flejjes f’isem min jirċievi l-pagament u jkunu disponibbli għalih;

“servizz ta’ pagament” tfisser l-attività kummerċjali msemmija fil-paragrafu 4 ta’ l-Ewwel Skeda u tinkludi l-attivitajiet li istituzzjoni ta’ pagament tista’ tagħmel taht din l-Iskeda;

“sistema ta’ pagament” tfisser sistema ta’ trasferiment ta’ flejjes b’ arrangamenti formali u standardizzati u b’reġoli komuni għall-ipproċessar, approvazzjoni u/jew finalizzar ta’ transazzjoni ta’ pagamenti;

“strument ta’ pagament” tfisser kull tagħmir personalizzat u/jew kompilazzjoni ta’ proceduri miftiehma

bejn l-utent ta' servizz ta' pagament u l-provditur ta' servizz ta' pagament u li jintuza mill-utent ta' servizz ta' pagament sabiex jagħti bidu għal ordni ta' pagament;

“transazzjoni ta' pagament” tfisser dak l-att, li jinbeda minn min iħallas jew minn min jirċievi l-pagament, li bih jitqegħdu, jiġu trasferiti jew irtirati flejjes, irrispettivament minn kull obbligazzjoni sottostanti bejn min iħallas u min jirċievi l-pagament;

“utent ta' servizz ta' pagament” tfisser persuna li tagħmel użu minn servizz ta' pagament fil-kapaċità jew ta' min iħallas jew ta' min jirċievi l-pagament, jew tat-tnejn.

Lista ta' Attivitajiet.

2. Istituzzjoni ta' pagamenti tista' twettaq dawn l-attivitajiet li ġejjin:

(a) Servizzi li permezz tagħhom flus kontanti jkunu jistgħu jitqegħdu f'kont ta' pagament kif ukoll l-operazzjonijiet kollha meħtieġa biex jiġi operat kont ta' pagament;

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

(ċ) Eżekuzzjoni ta' transazzjoni ta' pagamenti, inkluż it-trasferiment ta' flejjes fuq kont ta' pagament mal-provditur ta' servizz ta' pagament ta' l-utent jew ma' xi provditur ta' servizz ta' pagament ieħor:

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

(ii) eżekuzzjoni ta' transazzjoni ta' pagamenti b'karta ta' pagament jew tagħmir bħal dak;

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

(d) Eżekuzzjoni ta' transazzjoni ta' pagamenti meta l-flejjes ikunu koperti b'linja ta' kreditu għal utent ta' servizz ta' pagament:

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

(ii) eżekuzzjoni ta' transazzjoni ta' pagamenti b'karta ta' pagament jew tagħmir bħal dak;

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

(e) Hruġ u/jew akkwist ta' strumenti ta' pagament;

(f) Rimessa ta' flus;

(g) Eżekuzzjoni ta' transazzjoni ta' pagamenti meta l-kunsens ta' min iħallas għal transazzjoni ta' pagament tintbagħat permezz ta' xi telekomunikazzjoni, diġitalment jew b'apparat ta' IT u l-pagament isir lill-operatur tas-sistema ta' telekomunikazzjoni, IT jew lill-operatur tan-network, li jaġixxi unikament bħala intermedjarju f'isem l-utent ta' servizz ta' pagament u dak li jipprovdi l-oggetti u s-servizzi;

3. Dawn l-attivitajiet addizzjonali li ġejjin jistgħu ukoll isiru minn istituzzjoni ta' pagament:

(a) Il-provdiment ta' servizzi operattivi u dawk anċillari li jkollhom x'jaqsmu ħafna mill-qrib li jkunu jassikuraw l-eżekuzzjoni ta' transazzjoni ta' pagamenti, servizzi ta' kambju ta' munita barranija strettament dwar servizzi ta' pagament, attivitajiet dwar tiżmim taħt sigurtà, u l-ħżin u l-ipproċessar ta' informazzjoni;

(b) L-operazzjoni ta' sistema ta' pagamenti;

(c) Mingħajr preġudizzju għad-dispożizzjonijiet ta' l-artikolu 5 (6) ta' l-Att, attivitajiet kummerċjali li ma jkunux jikkonsistu fil-provdiment ta' servizzi ta' pagament;

(d) Meta istituzzjoni ta' pagamenti jwettqu l-provdiment ta' servizzi ta' pagament, dawn jistgħu iżommu biss kontijiet ta' pagament li jintużaw esklużivament għal transazzjonijiet; flejjes li jiġu riċevuti minn istituzzjoni ta' pagamenti minn utent ta' servizzi ta' pagament bil-għan li jiġu provduti servizzi ta' pagament ma jikkostitwux depożitu jew flejjes oħra li jithallsu lura fil-kuntest ta' l-artikolu 2 ta' l-Att dwar il-Kummerċ Bankarju, jew flus elettronici fil-kuntest ta' l-artikolu 2 ta' l-Att dwar il-Kummerċ Bankarju;

(e) Istituzzjonijiet ta' pagament jistgħu jikkonċedu kreditu għar-rigward tas-servizzi ta' pagament imsemmija fil-

paragrafi (d), (e) jew (g) tal-paragrafu (2) ta' din l-Iskeda biss jekk ikun hemm dawn ir-rekwiziti li ġejjin:

(i) il-kreditu jkun wiehed ancillari u jingħata esklużivament f'dak li għandu x'jaqsam ma' l-eżekuzzjoni ta' transazzjoni; u

(ii) minkejja regoli nazzjonali fuq il-provdiment ta' kreditu permezz tal-karti ta' kreditu, il-kreditu li jingħata f'dak li għandu x'jaqsam ma' pagament u eżegwit ma' l-att għandu jithallas lura fi żmien qasir li m'għandu f'ebda każ ikun ta' iżjed minn tnax-il xahar; u

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

(iv) il-fondi tagħha stess ta' l-istituzzjoni ta' pagament ikunu adatti f'kull waqt, għas-sodisfazzjon ta' l-awtorità ta' sorveljanza, tenut kont ta' l-ammont globali ta' kreditu konċess.”.

Riżervi.

37. (1) Dan l-artikolu japplika għal persuni li fid-data tad-dhul fis-seħh ta' dan l-Att ikollhom liċenza bħala istituzzjoni finanzjarja li tkun qegħda tiġġestixxi servizzi ta' trasmissjoni ta' flus u li wara d-dhul fis-seħh ta' dan l-Att iridu jipprovdu s-servizzi ta' pagament kif hemm fit-Tieni Skeda.

(2) Dawk il-persuni ma jkunux meħtieġa jergħu japplikaw għal liċenza għida taht l-Att prinċipali biex iwettqu s-servizzi ta' attivitajiet ta' pagament sakemm huma jkunu taw għas-sodisfazzjoni ta' l-awtorità kompetenti dik l-informazzjoni li hija tista' teħtieġ f'dak iż-żmien li hija tista' tordna. Meta jiskadi l-perjodu ta' transizzjoni li għandu jiġi stabbilit permezz ta' avviż mill-awtorità kompetenti, dawk il-persuni jistgħu biss jibqgħu jwettqu attivitajiet ta' servizzi ta' pagament kif hemm fid-disposizzjonijiet ta' l-Att prinċipali, kif emendat b'dan l-Att.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 213 tat-3 ta' Mejju, 2010.

MICHAEL FREUDO
Speaker

PAULINE ABELA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE ABELA
President

7th May, 2010

ACT No. II of 2010

AN ACT to amend various laws on Financial Institutions and other Financial Services and to implement Directive 2007/64/EC.

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

1. The short title of this Act is Financial Institutions and other Financial Services Laws (Amendment) Act, 2010 and to implement Directive 2007/64/EC. Short title.

PART I

AMENDMENT OF THE MALTA FINANCIAL SERVICES AUTHORITY ACT, CAP. 330

2. (1) This Part amends and 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 of the Malta Financial Services Authority Act.

(2) The provisions of this Part shall come into force on the date of publication of this Act. Cap. 330.

3. Article 20A of the principal Act shall be amended as follows: Amendment of article 20A of the principal Act.

(a) article 20A thereof shall be re-numbered as subarticle (1) thereof;

(b) immediately after subarticle (1) thereof there shall be inserted the following new subarticle (2):

“(2) The Minister, acting on the advice of the competent authority, may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, prescribe anything that is to be or which may be prescribed and provide for any matter consequential, incidental to or connected with any of the above matters.”.

PART II

AMENDMENT OF THE BANKING ACT, CAP. 371

Amendment of the
Banking Act.
Cap. 371.

4. (1) This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on the date of publication of this Act.

Amendment of article
30 of the principal
Act.

5. In article 30 of the principal Act, for the words “or at any other time as may be exceptionally licensed by the competent authority -”, there shall be substituted the words “or at any other time as may be authorised in writing by the competent authority -”.

Amendment of the
Schedule to the
principal Act.

6. Activities 2 and 3 of the Schedule to the principal Act shall be substituted as follows:

Cap. 376.

“2. Payment Services as defined in the Financial Institutions Act;

3. Issuing and administering other means of payment (travellers’ cheques, bankers’ drafts and similar instruments) insofar as this activity is not covered by activity 2 above;”.

PART III

AMENDMENT OF THE FINANCIAL INSTITUTIONS ACT, CAP. 376

7. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the
Financial Institutions
Act.
Cap. 376.

(2) The provisions of this Part shall come into force on the date of publication of this Act.

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

Amendment of article
2 of the principal Act.

Cap. 386.

(a) article 2 thereof shall be re-numbered as subarticle (1) thereof;

(b) in subarticle (1) as re-numbered:

(i) immediately after the words “In this Act, unless the context otherwise requires-” there shall be inserted the following new definition:

“ “agent” means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule to the Act;”;

(ii) for the definition of “branch”, there shall be substituted the following new definition:

“ “branch” means a place of business other than the head office which is part of a financial institution not having a legal personality and which carries out directly some or all of the transactions, as authorised, inherent in the business of a financial institution; all the places of business set up in Malta by an institution with a head office in another Member State shall be regarded as a single branch;”;

(iii) for the definition of “close links”, there shall be substituted the following new definition:

“ “close links” means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of

twenty per centum or more of the voting rights or capital of a body corporate;

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2 (2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or

(c) permanently to one and the same third person by a control relationship;”;

(iv) for the definition of “control”, there shall be substituted the following new definition:

“ “control” in relation to a body corporate, is the power to determine in any manner the financial and operating policies of the body corporate”;

(v) immediately after the definition of “credit facility”, there shall be inserted the following new definition:

“ “the Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as may be amended from time to time, and includes any implementing measures that have been issued or may be issued thereunder;”;

(vi) immediately after the definition of “director”, there shall be inserted the following new definition:

“ “EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;”;

(vii) the definition of “equity share” shall be deleted;

(viii) for the definition of “financial institution”, there shall be substituted the following new definition:

“ “financial institution” means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in the First Schedule to the Act for the account and at the risk of the person carrying out the activity;”;

(ix) for the definition of “financial institutions directive”, there shall be substituted the following new definition:

“ “Financial Institutions Rule” means a Rule issued by the competent authority to regulate financial institutions in terms of powers arising under this Act, and “Rule” shall be read accordingly;”, and for the words “financial institutions directive”, “financial institutions directives” and, or “directives”, wherever they appear in the principal Act, there shall be substituted the words “Financial Institutions Rule”, “Financial Institutions Rules” and, or “Rules” respectively;

(x) for the definition of “group of companies”, there shall be substituted the following new definition:

“ “group of companies” means companies having a common holding company, and shall include the holding company itself;”;

(xi) immediately after the definition of “holding company”, there shall be inserted the following new definition:

“ “initial capital” means paid up capital and reserves as defined in a Financial Institutions Rule;”;

(xii) immediately after the definition of “licence”, there shall be inserted the following new definition:

“ “Member State” means a Member State of the European Communities;”;

(xiii) immediately after the definition of “officer”, there shall be inserted the following new definition:

“ “overseas regulatory authority” means an authority which in a country or territory outside Malta exercises any function corresponding to the functions of the competent authority under this Act;”;

(xiv) immediately after the definition of “own funds”, there shall be inserted the following new definition:

“ “payment institution” shall have the meaning assigned to it in the Second Schedule;”;

(xv) for the definition of “qualifying shareholding”, there shall be substituted the following new definition:

“ “qualifying shareholding” means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights, taking into account, the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12 (4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and “qualifying shareholder” shall be construed accordingly:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may

hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;”;

(xvi) immediately after the definition of “subsidiary”, there shall be inserted the following new definition:

“ “third country” means a country that is not a Member State or an EEA state;”;

(c) immediately at the end of the definition “trade bills”, there shall be inserted the following new subarticle (2):

“(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.”.

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

(a) in subarticle (2) (a) thereof, for the words “the activities listed in the Schedule to this Act”, there shall be substituted the words “the activities listed in the First Schedule to this Act”;

(b) immediately after subarticle (4) thereof, there shall be inserted the following new subarticles (5) and (6):

“(5) A licensed financial institution may not take deposits or other repayable funds within the meaning of the Banking Act.

(6) Where a person is already licensed under the Banking Act or the Investment Services Act to carry out an activity listed in the First Schedule to this Act, such person shall not require a licence for such an activity under this Act.”.

Amendment of article
4 of the principal Act.

10. In subarticle (3) of article 4 of the principal Act, for the words “necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.”, there shall be substituted the words “necessary for the purposes of determining an application for a licence.”.

Amendment of article
5 of the principal Act.

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

(a) subarticle (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “its own funds whether in euro or in any other currency”, there shall be substituted the words “its initial capital whether in Euro or in any other currency”, and for the words “the competent authority as appropriate”, there shall be substituted the words “the competent authority in a Rule and as may be appropriate”;

(ii) paragraph (d) thereof shall be re-numbered as paragraph (e);

(iii) immediately after paragraph (c) thereof, there shall be inserted the following new paragraph (d):

“(d) the competent authority is satisfied that the financial institution has sound and prudent management, and has robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the institution;”;

(iv) for the proviso to paragraph (e) thereof, as re-numbered, there shall be substituted the following:

“Provided that the company shall, after being licensed under this Act, inform the competent

authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this paragraph on a continuous basis.”;

(b) for subarticle (4) thereof, there shall be substituted the following new subarticle:

“(4) (a) In granting a licence the competent authority may subject a financial institution to such conditions as it may deem appropriate and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act and to better transpose the provisions of the Directive, the competent authority may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Such Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate.”;

(c) for subarticle (6) thereof, there shall be substituted the following new subarticle:

“(6) Where a licensed financial institution proposes to engage in business activities not listed in any of the Schedules, the competent authority may require the establishment of a separate entity, where the proposed activities may in the opinion of the competent authority impair or threaten to impair either the financial soundness of the institution or the ability of the competent authority to monitor the financial institution’s compliance with all the obligations laid down in this Act or any regulations and Rules issued thereunder.”;

(d) immediately after subarticle (6) thereof, there shall be inserted the following new subarticle (7):

“(7) Where the applicant is a financial institution licensed or holding an equivalent authorisation in another country, it shall have its head office in the same country where it is registered and, or licensed.”.

Addition of new article 5A to the principal Act.

12. Immediately after article 5 of the principal Act, there shall be inserted the following new article 5A:

“Own funds. 5A. (1) Without prejudice to the minimum level of the capital requirements laid down in a Financial Institutions Rule, the own funds of a financial institution may not fall below the amount of initial capital or any such amount as may be required by the competent authority from time to time, unless such a reduction is of a temporary nature and is effected after having obtained the prior approval of the competent authority.

(2) Notwithstanding the initial capital requirements as may be set out in a Financial Institutions Rule, financial institutions providing any of the services listed in the Second Schedule to the Act shall at all times hold own funds calculated in accordance with one of the three methods laid down in the said Rule.

(3) Where the amount of own funds of a financial institution falls below the amount established under subarticles (1) and (2), the competent authority shall require that financial institution to take the necessary measures to restore the level of own funds within such period as the competent authority may determine:

Provided that if the level of own funds of a financial institution is not restored within the determined period, the competent authority may, in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 6(4).”.

Amendment of article 6 of the principal Act.

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

(a) for subarticle (1) thereof, there shall be substituted the following new subarticle:

“(1) The authority shall withdraw a licence issued to a financial institution where the latter:

(a) expressly renounces the licence,

(b) does not commence business pursuant to the licence within twelve months of its issue, or has ceased to engage in business for more than six months or within such other period of time as may be specified in the licence;

(c) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act;

(d) no longer fulfils the conditions required for the granting of the licence;

(e) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved;

(f) has ceased to operate as a result of a merger with another financial institution;

(g) is a branch of an institution incorporated outside Malta and the overseas regulatory authority in the country of incorporation withdrew the authorisation of the institution; or

(h) would constitute a threat to the stability of the payment system by continuing its payment services within the meaning of the Second Schedule to this Act.”;

(b) subarticles (2), (3), (4), (5), (6) and (7) thereof shall be re-numbered as subarticles (3), (4), (5), (6), (7) and (8) thereof;

(c) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle (2):

“(2) Where the competent authority withdraws a licence, it shall inform the financial institution of the reasons for the withdrawal of a licence and notice of such withdrawal shall be made public.”;

(d) for subarticle (3) thereof as re-numbered, there shall be substituted the following new subarticle:

“(3) The competent authority may impose restrictions or revoke a licence in any of the following circumstances:

(a) if the holder no longer possesses sufficient own funds;

(b) if the holder is likely to become unable to meet its obligations;

(c) if the holder has insufficient assets to cover its liabilities; or

(d) if the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability of the financial system.”;

(e) for subarticle (4) thereof as re-numbered, there shall be substituted the following new subarticle:

“(4) Restrictions imposed by the competent authority pursuant to subarticle (3) shall be such restrictions as the competent authority shall consider appropriate for the proper compliance by the financial institution with the provisions of this Act or any regulations and Rules issued under this Act and the conditions, if any, of its licence and for the protection of the integrity of the country’s financial system and may include-

(a) the removal of any officer of the financial institution or the replacement of any officer by such person as the competent authority may designate;

(b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the financial institution to divest himself of all or part of that holding;

(c) the requirement for the financial institution to take or refrain from taking any action;

(d) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the First Schedule to this Act or be permitted to undertake any transaction or transactions or any activity listed in the First Schedule to this Act only upon such terms as the competent authority may prescribe.”;

(f) in subarticle (6) thereof as re-numbered, for the words “after consultation with the competent authorities of the country of incorporation,”, there shall be substituted the words “after consultation with the overseas regulatory authority of the country of incorporation,”;

(g) in subarticle (7) thereof as re-numbered, for the words “shall inform the competent authorities of the country of any foreign states in which the financial institution or its subsidiaries are carrying on any activity under the Schedule to this Act”, there shall be substituted the words “shall inform the overseas regulatory authorities of the country in which the financial institution or its subsidiaries are carrying on any activity under the First Schedule to this Act”.

Amendment of article 8 of the principal Act.

14. For article 8 of the principal Act there shall be substituted the following:

“Opening of branches and exercise of European Rights.

8. (1) A financial institution shall inform the competent authority in writing before opening a new branch in Malta.

(2) A financial institution incorporated in Malta wishing to open a branch, agency or office outside Malta and a financial institution incorporated in Malta wishing to set up or acquire any subsidiary in or outside Malta shall require the prior written approval of the competent authority.

(3) Subarticle (2) shall not apply to any licensed financial institution which:

(a) provides any of the activities listed in the First Schedule to this Act, other than paragraph 4 thereof,

(b) fulfils the conditions of regulation 13 of the European Rights Regulations, and

(c) wishes to provide services in a Member State or an EEA State, in exercise of a European right; and accordingly is subject to the European Rights Regulations.

(4) Subarticle (2) shall not apply to any licensed financial institution carrying out payment services wishing to provide services for the first time in a Member State or an EEA State, in exercise of a European right.

(5) Licensed financial institutions referred to in subarticle (4) shall inform the competent authority of their intention to exercise a European right and the competent authority shall within one month of receiving this information, inform the overseas regulatory authority concerned of:

(a) the name and address of the financial institution;

(b) the names of those responsible for the management of the branch;

(c) its organisational structure; and

(d) the kind of services it intends to provide in the territory of the Member State or EEA State.

(6) In this article:

(a) “European Right” refers to the rights described in the European Rights Regulations; and

(b) “European Rights Regulations” means the European Passport Rights for Credit Institutions Regulations, 2004.”.

L.N. 88 of 2004.

15. For article 8A of the principal Act there shall be substituted the following:

Amendment of article 8A of the principal Act.

“Agency Arrangements.” 8A. (1) No financial institution shall enter into agency arrangements, with third parties, unless it has communicated the following information to the competent authority:

(a) the name and address of the agent;

(b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligation in relation to Money Laundering and Terrorist Financing under the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008; and

Cap. 373.

L.N. 180 of 2008.

(c) the identity of the directors and persons responsible for the management of the agent to be used in the provision of services, and evidence that they are suitable persons:

Provided that a person who is appointed as agent of a financial institution shall only act as agent:

(i) in respect of those activities for which the financial institution to which he will act as agent, is licensed under this Act;

(ii) to not more than one person licensed under this Act; and

(iii) subsequent to the verification by the competent authority of the information provided by the financial institution.

(2) The competent authority may subject the person who will be appointed as agent to any of the obligations imposed on the company licensed under this Act.

(3) The competent authority may list the agent in the public register as provided for in article 8D and if it refuses to list such agent it shall inform the financial institution in writing of the reasons for the refusal:

Provided that if the competent authority is not satisfied that the information provided to it is correct, it shall refuse to list the agent in the public register as provided for in article 8D.”.

Addition of new articles 8B, 8C and 8D to the principal Act.

16. Immediately after article 8A of the principal Act, there shall be inserted the following new articles 8B, 8C and 8D:

“Outsourcing of operational functions.

8B. (1) Where a financial institution intends to outsource operational functions of its services and, or activities, such outsourcing provider shall require the recognition of the competent authority:

Provided that the outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of its internal control and the ability of the competent authority to monitor the financial institution’s compliance with all obligations provided for under this Act, and any Regulation or Rules made thereunder.

(2) For the purpose of this Act or any Regulations or Rules issued thereunder, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a financial institution with the requirements of its licence or its other obligations under this Act or any Regulations or Rules issued thereunder, or its financial performance, or the soundness or continuity of its services:

Provided that the competent authority shall ensure that, when financial institutions outsource important operational functions, the financial institutions comply with the following conditions:

(a) the outsourcing shall not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the financial institution towards its service users under this Act, Regulations or Rules issued under the Act, shall not be altered;

(c) the conditions with which the financial institution must comply in order to be licensed in accordance with this Act, Regulations or Rules issued under this Act, and to remain so, must not be undermined; and

(d) none of the other conditions subject to which the financial institution's licence was granted must be removed or modified.

(3) The competent authority may issue a Rule, laying down the requirements for the recognition of the outsourcing service providers and the provision of such outsourced services.

(4) Where the financial institution licensed or holding an equivalent authorisation in another Member State or EEA State and benefitting from the right of establishment and freedom to provide services, carries out the activities listed in the Schedules to the Act in Malta through a branch or by engaging an agent, as the case may be, the financial institution shall follow the procedures set out in a Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch or agent, money laundering or terrorist financing, within the meaning of Council Directive 2005/60/EC, is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or terrorist financing, it shall inform the home Member State, which may refuse to register the branch or agent, or may withdraw the registration, if already made, of the branch or agent.

Liability. 8C. (1) Where financial institutions rely on third parties for the performance of operational functions, those financial institutions shall take reasonable steps to ensure that the requirements of this Act are complied with.

(2) Financial institutions shall remain fully liable for any acts of their employees, or any agent, branch or entity to which activities may have been outsourced.

Registration. 8D. (1) It shall be the duty of the competent authority to maintain a public register of all licensed financial institutions or financial institutions holding an equivalent authorisation in another country, and their branches and agents, within which there shall be identified the services for which the financial institution is licensed. Such records shall be kept for a period of time as may be laid out in a Rule.

(2) Such register shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis.”.

Amendment of article 9 of the principal Act.

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

(a) subarticle (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “to acquire or dispose of a qualifying shareholding in a financial institution or to increase or reduce such qualifying shareholding”, there shall be substituted

the words “to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to increase or reduce, directly or indirectly, such qualifying shareholding”, and for the words “falls below 20 per cent, 33 per cent or 50 per cent”, there shall be substituted the words “falls below 20 per cent, 30 per cent or 50 per cent”;

(ii) for the words “without obtaining the prior consent of the competent authority or, alternatively, if after having obtained such consent”, there shall be substituted the words “without obtaining the prior approval of the competent authority or, alternatively, if after having obtained such approval”;

(iii) for the words “any other penalty which may be imposed under this Act.”, there shall be substituted the words “any other penalty which may be imposed under this Act or any regulations or Rules issued thereunder.”;

(b) in subarticle (2) thereof, for the words “the competent authority to consider any request made by such person for the consent of the competent authority under the provisions of this article to constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act.”, there shall be substituted the words “the competent authority to consider whether any request made by such person for the approval of the competent authority under the provisions of this article constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act or any regulations and Rules issued under this Act.”;

(c) in subarticle (3) thereof, for the words “shares listed on a recognised investment exchange in terms of the Financial Markets Act.”, there shall be substituted the words “shares listed on a regulated market in terms of the Financial Markets Act, or on an equivalent market in a third country.”;

(d) in subarticle (4) thereof, for the words “he shall before taking such action notify the competent authority. The competent authority shall within two months of receiving such notification give its consent or otherwise”, there shall be substituted the words “he shall before taking such action

notify the competent authority in writing. The competent authority shall within two months of receiving such notification give its approval or otherwise”;

(e) in subarticle (5) (a) thereof, for the words “shall notify to the competent authority full particulars of any person”, there shall be substituted the words “shall notify to the competent authority in writing the full particulars of any person”.

Amendment of article
10 of the principal
Act.

18. In subarticle (1) of article 10 of the principal Act, for the words “A financial institution shall not-”, there shall be substituted the words “Without prejudice to the provisions of paragraph 3(e) of the Second Schedule to the Act, a financial institution shall not-”.

Amendment of article
12 of the principal
Act.

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

(a) for subarticle (2) thereof, there shall be substituted the following new subarticle:

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

(a) amend any of the Schedules to this Act;

(b) transpose, implement and give effect to the requirements of the Directive.”;

(b) immediately after subarticle (2) thereof there shall be inserted the following new subarticle (3):

“(3) Where regulations have been issued in terms of this article, the competent authority may issue Rules within the meaning of this Act for the better carrying out and to better implement the provisions of the regulations.”.

Deletion of article
12A of the principal
Act.

20. Article 12A of the principal Act shall be deleted.

21. Article 12B of the principal Act shall be re-numbered as article 12A of the principal Act.

Renumbering of article 12B of the principal Act.

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

Amendment of article 13 of the principal Act.

(a) subarticle (1) thereof shall be substituted as follows:

“(1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and to ensure that financial institutions carrying on business in Malta comply with this Act, regulations, directives and Rules issued under this Act and with the conditions of their licences. In carrying out such functions, the competent authority shall ensure that the controls exercised for checking continued compliance in terms of this Act, or any Regulations and Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed.

Such functions consist inter alia of the following:

(a) to require the financial institution in terms of article 14 of this Act to provide any information needed to monitor compliance;

(b) to carry out on-site inspections at the financial institution, at any agent or branch providing licensable activities under the responsibility of the financial institution, or at any entity to which activities are outsourced;

(c) to suspend or withdraw authorisation in cases referred to in article 6 of the Act; and

(d) notwithstanding the requirements of articles 5 and 5A, to take all necessary steps to ensure sufficient capital for the activities carried out by a financial institution, in particular where activities of a financial institution other than those listed in the Schedule to the Act impair or are likely to impair the financial soundness of the institution.”;

(b) in subarticle (3) thereof, for the words “shall make copies thereof available to the public.”, there shall be substituted the words “shall make copies thereof available to the public upon request.”.

Amendment of article
14 of the principal
Act.

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

(a) in subarticle (1) thereof, for the words “such information and statements relating to its branches in or outside Malta as the competent authority may require in the discharge of its duties under this Act or any other law.”, there shall be substituted the words “such information and statements as the competent authority may require in the discharge of its duties under this Act or any regulations and Rules issued thereunder or any other law.”;

(b) subarticle (5) thereof shall be deleted;

(c) subarticles (3) and (4) thereof shall be re-numbered as subarticles (4) and (5) respectively;

(d) immediately after subarticle (2) thereof, there shall be inserted the following new subarticle (3):

“(3) Financial institutions providing services listed under the Second Schedule to the Act shall provide separate accounting information for payment services listed in point 2 and point 3 of the said Schedule, subject to an auditor’s report.”;

(e) in subarticle (6), paragraph (c) thereof, for the words “may reasonably require for the performance of its functions under this Act.”, there shall be substituted the words “may reasonably require for the performance of its functions under this Act or any regulations and Rules issued thereunder.”;

(f) subarticle (12) thereof shall be amended as follows:

(i) in paragraph (d) thereof, for the words “a controller of that financial institution; or”, there shall be substituted the words “a controller of that financial institution.”;

(ii) in paragraph (e) thereof, for the words “a qualifying shareholder of that financial institution,” there shall be substituted the words “a qualifying shareholder of that financial institution; or”;

(iii) immediately after paragraph (e) thereof, there shall be inserted the following new paragraph (f):

“(f) an agent appointed in terms of article 8A of this Act.”;

(iv) immediately after the new paragraph (f) thereof, the words “and the provisions of this article shall apply to that person.” shall be deleted;

(g) in subarticle (13) thereof, for the words “is guilty of committing any offence under this Act.”, there shall be substituted the words “is guilty of committing any offence under this Act or any regulations and Rules issued thereunder.”.

24. Subarticle (1) of article 17 of the principal Act shall be amended as follows:

Amendment of article
17 of the principal
Act.

(a) for the words “that any of the circumstances indicated in article 6(2) apply”, there shall be substituted the words “that any of the circumstances indicated in article 6(3) apply”, and for the words “revoke a licence under the provisions of article 6(2)”, there shall be substituted the words “revoke a licence under the provisions of article 6(3)”;

(b) in paragraph (d) thereof, for the words “appoint a competent person to assume control of the business”, there shall be substituted the words “appoint a competent person to take over the business”.

25. In paragraph (a) of article 19 of the principal Act, for the words “is required to be communicated by virtue of this Act;”, there shall be substituted the words “ is required to be communicated by virtue of this Act or any regulations and Rules issued thereunder;”.

Amendment of article
19 of the principal
Act.

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

Amendment of article
20 of the principal
Act.

(a) in subarticle (1) thereof, for the words “may share its supervisory duties with other foreign competent authorities in the case of a financial institution”, there shall be substituted the words “may share its supervisory duties with other overseas regulatory authorities in the case of a financial institution”;

(b) for subarticle (2) thereof, there shall be substituted the following new subarticle:

“(2) The competent authority shall, further, exchange information with the following:

(a) overseas regulatory authorities responsible for the licensing and supervision of financial institutions carrying out payment services solely for their supervisory and regulatory purposes or for such other purposes as may be specifically agreed upon with the competent authority ;

(b) the European Central Bank, other Member States’ central banks and the Central Bank, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) other relevant authorities designated under Directive 2007/64/EC, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to payment service providers, including measures regulating the protection of individuals with regard to the processing of personal data and the prevention of money laundering and terrorist financing.”;

(c) for subarticle (3) thereof, there shall be substituted the following new subarticle:

“(3) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, disclose information to the overseas regulatory authorities, in particular, in the case of infringements or suspected infringements by an agent, a branch, or an entity to which activities are outsourced:

Provided that the competent authority shall communicate upon request, all relevant information and, on their own initiative, all the requested information.”;

(d) for subarticle (4) thereof, there shall be substituted the following new subarticle:

“(4) The competent authority shall notify the relevant overseas regulatory authority whenever it intends to carry out an on-site inspection in another Member State:

Provided that the competent authority may upon agreement delegate to the relevant overseas regulatory authority, the task of carrying out on-site inspections of the institution concerned.”;

(e) in subarticle (5) thereof, for the words “disclose to the Central Bank any information”, there shall be substituted the words “disclose to the European Central Bank and, or the Central Bank any information”, and for the words “for the discharge of the duties of the Central Bank under the law.”, there shall be substituted the words “for the discharge of the duties of the European Central Bank and, or the Central bank under the law.”;

(f) for subarticle (8) thereof, there shall be substituted the following new subarticle:

“(8) The competent authority and the Central Bank shall periodically discuss matters of mutual interest regarding financial institutions, and they shall at all times afford such co-operation to each other as may be necessary for the discharge of their respective duties.”.

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

Amendment of article
22 of the principal
Act.

(a) in subarticle (1) (f) thereof, for the words “any person under this Act,”, there shall be substituted the words “any person under this Act or any regulations and Rules issued thereunder,”;

(b) subarticle (3) thereof shall be deleted;

(c) subarticle (2) thereof shall be re-numbered as subarticle (3) thereof;

(d) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle (2):

“(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations or Rules made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.”;

(e) for subarticle (4) thereof, there shall be substituted the following new subarticle:

“(4) A person guilty of an offence under the provisions of this article shall be liable on conviction to a fine (multa) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.”.

Amendment of article
23 of the principal
Act.

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

(a) subarticles (1) and (2) thereof shall be re-numbered as subarticles (2) and (3) respectively;

(b) immediately before subarticle (2) as re-numbered there shall be inserted the following new subarticle (1):

“(1) Where the competent authority is satisfied that a person’s conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any person as the case may be, an administrative penalty which may not exceed ninety-

three thousand and one hundred seventy four euro and ninety-four cents (93,174.94).”.

29. In paragraph (a) of article 24 of the principal Act, for the words “licence revoked under article 6(2) and”, there shall be substituted the words “licence revoked under article 6(3) and”.

Amendment of article 24 of the principal Act.

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

Amendment of article 25 of the principal Act.

(a) in subarticle (1) thereof, for the words “Nothing in this Act shall”, there shall be substituted the words “Nothing in this Act or any regulations and Rules issued thereunder shall”;

(b) in subarticle (2) thereof, for the words “under this Act except -”, there shall be substituted the words “under this Act or any regulations and Rules issued thereunder except -”;

(c) for subarticle (4) thereof, there shall be substituted the following new subarticle:

“(4) Officers of the competent authority, including past and present officers, as well as auditors or experts acting on behalf of the competent authority, shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties and which is governed by the obligation of professional secrecy, unless such disclosure of information be done in summary or collective form, so as not to enable the identity of the financial institution, to whom such information relates, to be ascertained:

Provided that the said officers, auditors or experts may divulge such information for the purpose of the performance of their duties or the exercise of their functions, or when lawfully required to do so by any court or under a provision of any law.”;

(d) in subarticle (6) thereof, for the words “the activities referred to in the Schedule.”, there shall be substituted the words “the activities referred to in the Schedule issued under the Banking Act, 1994.”.

Amendment of the sub-title preceding article 26 of the principal Act.

31. The sub-title “MISCELLANEOUS” immediately preceding article 26 shall be substituted by the new sub-title “CONSUMER COMPLAINTS”.

Substitution of article 26 of the principal Act.

32. For article 26 of the principal Act, there shall be substituted the following new article:

“Investigation of complaints by the Consumer Complaints Manager.
Cap. 330.

26. (1) (a) The Consumer Complaints Manager appointed under article 20 of the Malta Financial Services Authority Act shall have the function of investigating complaints from a payment service user arising out of, or in connection with, any alleged infringement by a service provider of the provisions of this Act implementing the Directive.

Cap. 387.

(b) The provisions of article 20 of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, to complaints made under this article.

(c) Complaints from a payment service user under subarticle 1(a) may include complaints from interested parties, within the meaning of the Directive, as well as complaints from consumer associations.

Cap. 378.

(2) (a) A dispute between a payment service user and payment service provider may, at the discretion of the payment service user, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.

(b) Reference of a dispute to arbitration in accordance with paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.

(c) The Consumer Complaints Manager shall, in his reply to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article:

Provided that any action taken by the Consumer Complaints Manager shall be without prejudice to the right of a consumer, within the meaning of the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal established under that Act, or to exercise any other rights under that Act.

(3) “Payment services user”, “payment service provider” and “payment transaction” shall have the meaning assigned to the terms in the Second Schedule to the Act.”.

33. Immediately after article 26 of the principal Act there shall be inserted the new sub-title “MISCELLANEOUS”. Inserts a new sub-title preceding article 27 of the principal Act.

34. For article 27 of the principal Act, there shall be substituted the following new article: Amendment of article 27 of the principal Act.

“Objective. 27. The objective of this Act is, in part, to implement the provisions of the Directive of the European Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and shall be interpreted and applied accordingly.”.

35. For the Schedule to the principal Act, there shall be substituted the following: Amendment of the Schedule to the principal Act.

“FIRST SCHEDULE

(Article 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);
2. Financial leasing;
3. Venture or risk capital;
4. Payment services as defined in the Second Schedule;

5. Issuing and administering other means of payment (travellers cheques, bankers' drafts and similar instruments) in so far as this activity is not covered by point 4 above;
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposits and similar instruments);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
8. Underwriting share issues and the participation in such issues;
9. Money broking.”.

Addition of new
Second Schedule to
the principal Act.

36. Immediately after the First Schedule, there shall be inserted the following new Schedule:

“SECOND SCHEDULE

FINANCIAL INSTITUTIONS CARRYING OUT PAYMENT SERVICES

Objective

The purpose of this Schedule is to set out the regulatory framework under which payment services within the means of issuing and administering payment as referred to in the First Schedule to this Act, may be carried out.

Interpretation

1. In this Schedule, unless the context otherwise requires, the following definitions shall apply -

“direct debit” means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent given to the payee, or payee’s payment service provider or to the payer’s own payment service provider;

“funds” means banknotes and coins, scriptural money and electronic money;

“group” means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.

“money remittance” means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

“outsourcing” means a licensed entity’s use of a third party (the outsourcing service provider) to perform activities that would normally be undertaken by the licensed entity, now or in the future. The supplier may or may not be a licensed entity;

“outsourcing service provider” means the supplier of goods, services or facilities, which may or may not be a licensed entity, and which may be an affiliated entity within a corporate group or an entity that is external to the group;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means either a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a person who places an order for a payment transaction;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment institution” means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Directive to provide and execute payment services;

“payment instrument” means any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;

“payment order” means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

“payment service” means the business activity referred to in paragraph 4 of the First Schedule and includes the activities that a payment institution may carry out in terms of this Schedule;

“payment service provider” means undertakings referred to in this Act;

“payment service user” means a person who makes use of a payment service in the capacity of either payer or payee, or both;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;

“payment transaction” means the act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

List of Activities

2. Payment institutions may engage in the following activities:

(a) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;

(b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

(c) Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(d) Execution of payment transactions where the funds are covered by a credit line for a payment service user:

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

(e) Issuing and/or acquiring of payment instruments;

(f) Money remittance;

(g) Execution of payment transactions where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user and the supplier of the goods and services;

3. The following additional activities may also be carried out by a payment institution:

(a) The provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services strictly in relation to payment services, safekeeping activities, and storage and processing of data;

(b) The operation of payment systems;

(c) Without prejudice to the provisions of Article 5 (6) of the Act, business activities other than the provision of payment services;

(d) When payment institutions engage in the provision of payment services, they may only hold payment accounts used exclusively for transactions; any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2 of the Banking Act;

(e) Payment institutions may grant credit related to payment services referred to in paragraphs (d), (e) or (g) of paragraph (2) of this Schedule only if the following requirements are met:

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction; and

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months; and

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

(iv) the own funds of the payment institution are at all times, to the satisfaction of the supervisory authority, appropriate in view of the overall amount of credit granted.”.

Savings.

37. (1) This article applies to persons who on the coming into force of this Act hold a licence as a financial institution carrying out money transmission services, and after the coming into force of this Act wish to provide payment services in terms of the Second Schedule.

(2) Such persons need not re-apply for a new licence under the principal Act to carry out payment services activities, provided they have given to the satisfaction of the competent authority such information as it may request within such period as it may prescribe. Upon the lapse of a transitional period to be established by notice by the competent authority, such persons may only carry out payment services activities in accordance with the provisions of the principal Act, as amended by this Act.

Passed by the House of Representatives at Sitting No. 213 of 3rd May, 2010.

MICHAEL FRENDU
Speaker

PAULINE ABELA
Clerk to the House of Representatives

