

*Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,387, 27 ta' Frar, 2015*

*Taqsimha C*

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## **Nru. 87**

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27. 2. 2015

### **MALTA**

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#### **KAMRA TAD-DEPUTATI**

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ABBOZZ ta' Ligi mressaq mill-Onorevoli Edward Scicluna, M.P., Ministru għall-Finanzi, u moqri għall-Ewwel darba fis-Seduta tat-23 ta' Frar, 2015.

**ATT biex jemenda l-Att dwar il-Kummerċ Bankarju, Kap. 371, u biex jipprovi dwar hwejjeġ ancillari jew incidentali għalih.**

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RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

#### **HOUSE OF REPRESENTATIVES**

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A BILL introduced by the Honourable Edward Scicluna, M.P., Minister for Finance, and read the First time at the Sitting of the 23rd February, 2015.

**AN ACT to amend the Banking Act, Cap. 371, and to provide for matters ancillary or incidental thereto.**

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RAYMOND SCICLUNA  
*Clerk of the House of Representatives*



**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT biex jemenda l-Att dwar il-Kummerċ Bankarju, Kap. 371, u biex jipprovdi dwar hwejjeġ anċillari jew inċidentali għalih.*

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

**1.** It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2015 li jemenda l-Att dwar il-Kummerċ Bankarju, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kummerċ Bankarju, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 371.

**2.** L-artikolu 2 tal-Att prinċipali għandu jigi emendat kif ġej:

(a) minnufih qabel t-tifsira "attivitajiet materjali", għandha tizdied it-tifsira ġdida li ġejja:

Emenda tal-artikolu 2 tal-Att prinċipali.

" "amministrazzjoni għolja" tfisser dawk il-persuni naturali li jeżerċitaw funzjoni eżekuttiva fi hdan istituzzjoni ta' kreditu u li jkunu responsabbli lejn u jwieġbu lill-bord tad-diretturi, dwar l-amministrazzjoni ordinarja tal-istituzzjoni ta' kreditu;"

(b) minflok it-tifsira " "bank" jew "istituzzjoni ta' kreditu" ", għandhom jidhlu dawn it-tifsiriet li ġejjin:

" "bank" jew "istituzzjoni ta' kreditu" għandu jkollhom l-istess tifsira bħal dik mogħtija lilhom fil-punt (1) tal-Artikolu 4(1) tal-CRR;

"banek ċentrali tal-ESCB" għandu jkollha l-istess tifsira bhal dik mogħtija lilha fil-punt (45) tal-Artikolu 4(1) tal-CRR;"

(ċ) minnufih wara t-tifsira "banek ċentrali tal-ESCB", għandha tiżdied it-tifsira ġdida li ġejja:

" "CRD" tfisser Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività ta' istituzzjonijiet ta' kreditu u s-superviżjoni prudenzjali ta' istituzzjonijiet ta' kreditu u ta' ditti ta' investiment, li temenda d-Direttiva 2002/87/KE u li tħassar id-Direttivi 2006/48/KE u 2006/49/KE, kif emendati minn żmien għal żmien, u li tinkludi kull miżura implimentattiva li tkun ġiet maħruġa, jew li tista' tinħareġ taħtha;"

(d) minnufih wara t-tifsira ġdida "CRD", għandha tiżdied it-tifsira ġdida li ġejja:

" "CRR" tfisser ir-Regolament (UE) Nru. 575/2013 tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 fuq htigiet prudenzjali għal istituzzjonijiet ta' kreditu u ditti ta' investiment u li jemendaw ir-Regolament (UE) Nru. 648/2012, kif emendat minn żmien għal żmien, u li jinkludi kull miżura implimentattiva li tkun ġiet maħruġa, jew li tista' tinħareġ tahtu;"

(e) minnufih wara t-tifsira "depożitu", għandhom jidhlu it-tifsiriet godda li ġejjin:

" "Direttiva 2004/39/KE" tfisser id-Direttiva 2004/39/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta' April 2004 dwar swieq ta' strumenti finanzjarji li temenda d-Direttivi tal-Kunsill 85/611/KEE u 93/6/KEE u d-Direttiva 2000/12/KE tal-Parlament Ewropew u tal-Kunsill u li tħassar id-Direttiva tal-Kunsill 93/22/KEE, kif emendata minn żmien għal żmien, u tinkludi kull miżura implimentattiva li tkun ġiet maħruġa, jew li tista' tinħareġ taħtha;

"Direttiva 2004/109/KE" tfisser id-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Diċembru 2004 dwar l-armonizzazzjoni tal-htigiet ta' trasparenza fir-rigward ta' informazzjoni dwar emittenti li jkollhom it-titoli tagħhom ammessi għall-kummerċ f'suq regolat u li temenda d-Direttiva 2001/34/KE, kif emendata

minn żmien għal żmien, u tinkludi kull miżura implimentattiva li tkun giet mahruġa, jew li tista' tinhareg taħtha;

"ditta ta' investment" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (2) tal-Artikolu 4(1) tal-CRR;"

(f) it-tifsira "Direttiva dwar Adegwatezza Kapitali" għandha tithassar;

(g) it-tifsira "Direttiva dwar Htigiet Kapitali" għandha tithassar;

(h) minflok it-tifsira "EBA", għandu jidhol dan li ġej:

" "EBA" tfisser l-Awtorità Ewropea dwar il-Banek imwaqqfa bir-Regolament (UE) Nru. 1093/2010;"

(i) minnufih wara t-tifsira "EBA", għandhom jizdiedu it-tifsiriet ġodda li ġejjin:

" "entità fis-settur finanzjarju" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (27) tal-Artikolu 4(1) tal-CRR;

"ESFS" tfisser Sistema Ewropea ta' Supervizjoni Finanzjarja;

"ESRB" tfisser Bord Ewropew dwar ir-Riskju Sistemiku mwaqqaf bir-Regolament (UE) Nru 1092/2010;"

(j) minflok it-tifsira "fergħa", għandu jidhol dan li ġej:

" "fergħa" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (17) tal-Artikolu 4(1) tal-CRR;"

(k) minnufih wara t-tifsira "fergħa", għandha tizdied it-tifsira ġdida li ġejja:

" "fondi proprji" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (118) tal-Artikolu 4(1) tal-CRR;"

(l) minflok it-tifsira "*holding* kwalifikattiv ta' azzjonijiet" għandhom jidhlu it-tifsiriet li ġejjin:

" *holding company* finanzjarja" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (20) tal-Artikolu 4(1) tal-CRR;

"*holding* kwalifikattiv" jew "azzjonijiet kwalifikattivi" għandu jkollhom l-istess tifsira bħal dik mogħtija lilhom fil-punt (36) tal-artikolu 4(1)-CRR;";

(m) it-tifsira "istituzzjoni ta' kreditu prinċipali tal-UE" għandha tithassar u minflokha għandhom jidhlu t-tifsiriet li ġejjin:

" *impriza tal-assigurazzjoni*" għandu jkollha l-istess tifsira tifsira bħal dik mogħtija lilha fil-punt (5) tal-Artikolu 4(1) tal-CRR;

"*impriza ċentrali*" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (15) tal-Artikolu 4(1) tal-CRR;

"*impriza tar-riassigurazzjoni*" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (6) tal-Artikolu 4(1) tal-CRR;

"istituzzjoni" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (3) tal-Artikolu 4(1) tal-CRR;";

(n) minflok il-tifsira "*kapital inizjali*", għandu jidhol dan li ġej:

" *kapital inizjali*" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (51) tal-Artikolu 4(1) tal-CRR;";

(o) fit-tifsira "*kummerċ bankarju*", minflok il-kliem, "*kif speċifikat fis-subartikolu (2)*", għandhom jidhlu l-kliem "*kif speċifikat fl-artikolu 2A*";

(p) minflok il-tifsira "*kumpannija holding* finanzjarja mħallta", għandu jidhol dan li ġej:

" *kumpannija holding* finanzjarja mħallta" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (21) tal-Artikolu 4(1) tal-CRR;";

(q) it-tifsira "*kumpannija holding* finanzjarja prinċipali tal-UE" għandha tithassar;

(r) it-tifsira "*kumpannija holding* finanzjarja prinċipali mħallta tal-UE" għandha tithassar;

(s) it-tifsira "Metodu ta' Kejl Avvanzat" għandha tithassar;

(t) fit-tifsira "obbligi internazzjonali ta' Malta", minflok il-kliem "tfisser kull impenn, responsabbiltà u obbligi li joriginaw mill-liġi tal-Komunità Ewropea,", għandhom jidhlu l-kliem "tfisser kull impenn, responsabbiltà u obbligu li joħorgu mill-liġijiet tal-Unjoni Ewropea,";

(u) fit-test Inġliż tat-tifsira "outsourcing service provider", minflok il-kliem "which may or may not be an licensed entity,", għandhom jidhlu l-kliem "which may or may not be a licensed entity,";

(v) it-tifsira "persuni konnessi" għandha tithassar;

(w) minflok it-tifsira "rabtiet mill-qrib", għandu jidhol dan li ġej:

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

(x) minnufih wara t-tifsira "Regola Bankarja", għandhom jidhlu t-tifsiriet ġodda li ġejjin:

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

"Regolament (UE) Nru. 1093/2010" tfisser ir-Regolament (UE) Nru. 1093/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jwaqqaf Awtorità Supervizorja Ewropea (Awtorità Ewropea dwar il-Kummerċ Bankarju), li temenda d-Deċiżjoni Nru. 716/2009/KE u li tħassar id-Deċiżjoni tal-Kummissjoni 2009/78/KE, kif emendat minn żmien għal żmien, u li jinkludi kull miżura implimentattiva li tkun ġiet maħruġa, jew li tista' tinħareġ tahtu;

"Regolament (UE) Nru. 1094/2010" tfisser ir-Regolament (UE) Nru. 1094/2010 tal-Parlament Ewropew

u tal-Kunsill tal-24 ta' Novembru 2010 li jwaqqaf Awtorità Superviżorja Ewropea (Awtorità Ewropea dwar l-Assigurazzjoni u l-Pensjonijiet Okkupazzjonali), li temenda d-Deċiżjoni Nru. 716/2009/KE u li thassar id-Deċiżjoni tal-Kummissjoni 2009/79/KE, kif emendata minn żmien għal żmien, u tinkludi kull miżura implimentattiva li tkun giet maħruġa, jew li tista' tinhareġ tahtu;

"Regolament (UE) Nru. 1095/2010" tfisser ir-Regolament (UE) Nru. 1095/2010 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2010 li jstabbilixxi Awtorità Superviżorja Ewropea (Awtorità Ewropea dwar Titoli u Swieq), li temenda d-Deċiżjoni Nru 716/2009/KE u li thassar id-Deċiżjoni tal-Kummissjoni 2009/77/KE, kif emendata minn żmien għal żmien, u li jinkludi kull miżura implimentattiva li tkun giet maħruġa, jew li tista' tinhareġ tahtu;"

(y) minflok it-tifsira "Stat Membru domestiku", għandu jidhol dan li ġej:

" "Stat Membru domestiku" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (43) tal-Artikolu 4(1) tal-CRR;"

(z) it-tifsira "Regola dwar *Exposures* Kbar" għandha tiġi mħassra;

(aa) minflok il-tifsira "Stat Membru ospitanti", għandu jidhol dan li ġej:

" "Stat Membru ospitanti" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (44) tal-Artikolu 4(1) tal-CRR;"

(bb) minnufih wara t-tifsira "Stat ŻEE" għandha tidhol it-tifsira ġdida li ġejja:

" "strument finanzjarju" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (50) tal-Artikolu 4(1) tal-CRR;"

(ċċ) it-tifsira "superviżur konsolidatur" għandha tithassar;

(dd) minflok it-tifsira "sussidjarju", għandu jidhol dan li ġej:



" "sussidjarju" għandha jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (16) tal-Artikolu 4(1) tal-CRR;"

(ee) minflok it-tifsira "uffiċċju rappreżentattiv", għandu jidhol dan li ġej:

" "uffiċċju rappreżentattiv" tfisser, relattivament għal korp ġuridiku, korp mhux ġuridiku jew assoċjazzjoni kostitwita kif hemm fil-liġijiet ta' Malta u li teżisti tahtom, fond barra minn Malta li minnu jiġi promoss jew mgħejjun b'xi mod li jkun il-kummerċ bankarju;"

(ff) minnufih wara l-tifsira " "Tribunal għal-Servizzi Finanzjarji" jew "it-Tribunal" ", għandha tiżdied it-tifsira ġdida li ġejja:

" "UCITS" tfisser imprizi għal investiment kollettiv f'titoli trasferibbli kif hemm fid-Direttiva 2009/65/KE tal-Parlament Ewropew u tal-Kunsill tat-13 ta' Lulju 2009 dwar il-koordinazzjoni ta' liġijiet, regolamenti u disposizzjonijiet amministrattivi li għandhom x'jaqsmu ma' imprizi għal investiment kollettiv f'titoli trasferibbli (UCITS) (tfassil mill-ġdid), kif emendata minn żmien għal żmien, li tinkludi kull miżura implimentattiva li tkun giet maħruġa, jew li tista' tinħareġ taħtha;"

(gg) is-subartikolu (2) tiegħu għandu jiġi mħassar;

(hh) is-subartikoli (3), (4) u (5) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2), (3) u (4) rispettivament;

(ii) fis-subartikolu (3) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "L-għan ta' dan l-Att hu, f'parti minnu, biex jimplimenta d-disposizzjonijiet tad-Direttiva u tad-Direttiva dwar Adegwatezza Kapitali", għandhom jidhlu l-kliem "L-għan ta' dan l-Att hu, f'parti minnu, li jittrasponi u jimplimenta d-dispożizzjonijiet rilevanti tal-CRD u l-CRR,".

**3.** Minnufih wara l-artikolu 2 tal-Att prinċipali, għandu jizdied l-artikolu 2A ġdid li ġej:

Żieda tal-artikolu 2A ġdid mal-Att prinċipali.

"Projbizzjoni minn twestiq ta' kummerċ bankarju.

2A. Persuna li ma tkunx istituzzjoni ta' kreditu għandha tkun projbita milli twettaq il-kummerċ li tirċievi depositi jew fondi ripagabbli oħra mill-pubbliku. Persuna titqies li tkun qegħda taċċetta depożiti ta' flus bħala parti regolari mill-kummerċ tagħha, jekk, sew bħala prinċipal jew bħala aġent, tirreklama jew titlob depożiti bhal dawk, bla ma jitqiesu l-pattijiet u l-kondizzjonijiet li depożiti bħal dawk jintalbu jew jiġu riċevuti tahtom u bla ma jitqies jekk jiġux mahruġa ċertifikati jew strumenti oħra dwar kull depożitu bħal dak:

Izda dan l-artikolu m'għandux japplika għat-teħid ta' depożiti jew ta' fondi oħra ripagabbli mill-Istat Membru jew mill-awtoritajiet reġjonali jew lokali ta' xi Stat Membru jew minn korpi internazzjonali pubbliċi li tagħhom xi Stat Membru wiehed jew aktar ikunu Membri jew għal kazijiet espressament koperti mil-liġijiet nazzjonali jew tal-Unjoni Ewropea, sakemm dawk l-attivitajiet ikunu soġġetti għal regolamenti u kontrolli maħsubin biex jipproteġu lid-depositaturi u l-investituri:

Izda wkoll l-aċċettazzjoni ta' flus kontra kull hrug ta' obligazzjonijiet jew ta' *debenture stock* jew ta' strumenti oħra li johlqu jew jirrikonoxxu dejn offrut lill-pubbliku kif ikun hemm f'xi liġi li tkun fis-seħħ f'Malta m'għandux minnu nnifsu jitqies li jikkostitwixxi l-aċċettazzjoni ta' depożiti ta' flus għall-finijiet ta' dan l-Att u ta' kull regolamenti magħmula jew Regoli Bankarji mahruġa tahtu."

Emenda tal-artikolu 3 tal-Att prinċipali.

4. L-artikolu 3 tal-Att prinċipali għandu jiġi emendat kif ġej:

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

"(1) Il-Ministru, fuq il-parir tal-awtorità kompetenti, jista' jagħmel, jemenda jew jirrevoka regolamenti biex jagħti seħħ lid-disposizzjonijiet ta' dan l-Att u, mingħajr preġudizzju għall-ġeneralità ta' dak imsemmi hawn qabel jista', b'dawk ir-regolamenti, b'mod

partikolari, jagħmlu kull haġa minn dawn li ġejjin:

(a) jittrasponi, jimplimenta u, jew jagħtu effett għall-htigiet tal-CRD u l-CRR;"

(b) il-paragrafi (b) u (ċ) tas-subartikolu (1) tiegħu għandhom jiġi enumerati mill-ġdid bħala l-paragrafi (ċ) u (e) rispettivament;

(ċ) minnufih wara l-paragrafu (a) tas-subartikolu (1) tiegħu, għandu jżied il-paragrafu (b) ġdid li ġej:

"(b) jittrasponi d-Direttiva 2001/24/KE tal-Parlament Ewropew u tal-Kunsill tal-Unjoni Ewropea tal-4 ta' April 2001 dwar ir-riorganizzazzjoni u l-istralċ ta' istituzzjonijiet ta' kreditu fir-rigward ta' istituzzjonijiet ta' kreditu stabbiliti f'Malta u tal-friegħi ta' istituzzjonijiet ta' kreditu stabbiliti barra minn Malta, u jistgħu jsiru dispozizzjonijiet differenti għal każijiet jew klassijiet ta' każijiet differenti, u għandu jittiehed kont tal-impenji internazzjonali ta' Malta f'dan ir-rigward. Dawn ir-regolamenti jistgħu jkunu jipprovdu għall-implimentazzjoni ta' miżuri u proċeduri ta' riorganizzazzjoni dettaljati, inklużi dawn l-affarijiet li ġejjin: il-pubblikazzjoni u l-preżentazzjoni ta' informazzjoni f'dik il-lingwa jew lingwi u f'dawk il-gazzetti jew pubblikazzjonijiet ohra hekk kif jista' jiġi ordnat; il-preżentazzjoni ta' informazzjoni lill-kredituri, u l-mod u l-proċedura kif isir dan; l-avviż li jingħata lill-kredituri u l-proċedura biex isiru talbiet jew ilmenti; miżuri għall-protezzjoni tad-drittijiet tal-kredituri u ta' terzi persuni ohra, inklużi arrangamenti ta' netting; konsultazzjoni bejn l-awtorità kompetenti u kull awtorità ohra regolatorja, amministrattiva jew ġudizzjarja f'Malta u barra minn Malta li jkollha kompetenza fuq l-istralċ jew ir-riorganizzazzjoni ta' istituzzjonijiet ta' kreditu jew tal-fergħat tagħhom; il-pubblikazzjoni ta' deċiżjonijiet li jkollhom x'jaqsmu ma' dawk il-proċeduri ta' stralċ jew ta' riorganizzazzjoni; it-twaqqif ta' Regoli Bankarji li jirregolaw l-applikabilità tal-liġi proprja jew li tkun tapplika u kwistjonijiet ohra ta' kunflitt ta' liġijiet;"

(d) fil-paragrafu (ċ) tas-subartikolu (1) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "il-Ministru, li jaġixxi bil-parir tal-awtorità kompetenti, jista' jagħmel regolamenti biex jittrasponi, jimplimenta u jagħti seħħ" għandhom jidhru l-kliem "jittrasponi, jimplimenta u, jew jagħti seħħ";

(e) minnufih wara paragrafu (ċ) tas-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jiżdied il-paragrafu (d) ġdid li ġej:

"(d) jadotta, fejn ikun meħtieġ, kull Komunikat li jinħareġ mill-Kummissjoni Ewropea;" u

(f) minflok l-paragrafu (e) tas-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jidhol dan li ġej:

"(e) jordna li l-ksur ta' regolamenti magħmulin taħt dan l-Att jista' jitqies bħala reat kriminali kif jista' jkun speċifikat, u dawk ir-regolamenti jistgħu jimponu pieni għal kull ksur, li ma jkunux iżjed minn multa ta' żewġ miljun Euro (€2,000,000) jew prigunerija għal żmien mhux iżjed minn tliet snin, jew dik il-multu u prigunerija flimkien, u tista' tigi imposta multa oghla meta jitqies li dan ikun meħtieġ jew xieraq għal kull ksur jew nuqqas ta' konformità ma' xi Direttiva tal-UE jew Regolament tal-UE jew ma' regolamenti magħmulin taħt dan l-artikolu biex jittrasponu jew biex jagħtu seħħ lil xi Direttiva tal-UE jew Regolament tal-UE."

Emenda tal-artikolu 4 tal-Att prinċipali.

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

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "Għandu jkun id-dmir tal-awtorità kompetenti li tesegwixxi l-funzjonijiet preskritti b'dan l-Att u kull regolament jew Regoli Bankarji magħmulin taħtu u li tassikura li l-istituzzjonijiet ta' kreditu li jagħmlu kummerċ f'Malta josservaw dan l-Att, u kull regolament, direttiva u Regoli Bankarji maħruġin taħtu u l-kondizzjonijiet tal-liċenzi tagħhom.", għandhom jidhlu l-kliem "Għandu jkun id-dmir tal-awtorità kompetenti li tesegwixxi l-funzjonijiet u d-dmirijiet ordnati b'dan l-Att, kull regolament magħmul jew Regoli Bankarji maħruġin taħtu u l-CRR u li tassikura li l-istituzzjonijiet ta' kreditu li jwettqu l-attivitajiet tagħhom f'Malta josservaw dan l-Att, kull regolament magħmul, direttiva u Regola Bankarja maħruġin taħtu, il-CRR u l-kondizzjonijiet tal-liċenzi tagħhom.";

(b) is-subartikoli (2), (3), (4) u (5) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (6), (9), (10) u (11) rispettivament;

(ċ) minnufih wara s-subartikolu (1) tiegħu, għandhom jiżdiedu s-subartikoli (2), (3), (4) u (5) godda li ġejjin.

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"(2) L-awtorità kompetenti għandha tkun l-awtorità mahtura għall-iskopijiet tal-Artikolu 131(1) tal-CRD u għandha tagħxi flimkien mal-awtorità nominata kif mahtura taht ir-Regolamenti dwar l-Att dwar il-Bank Ċentrali ta' Malta (Hatra ta' Awtorità Responsabbli biex timplimenta Strumenti Makroprudenzjali).

(3) L-awtorità kompetenti għandha tinnotifika lill-Kummissjoni Ewropea u lill-EBA bil-funzjonijiet u d-dmirijiet tagħha.

(4) L-awtorità kompetenti għandha, fl-eżerċizzju tad-dmirijiet generali tagħha, debitament tqis l-impatt potenzjali tad-deċizjonijiet tagħha dwar l-istabbiltà tas-sistema finanzjarja fl-Istati Membri l-oħra involuti u, b'mod partikolari, f'sitwazzjonijiet ta' emerġenza, abbażi tal-informazzjoni disponibbli fiż-żmien rilevanti.

(5) L-awtorità kompetenti għandha tissorvelja l-attivitajiet tal-istituzzjonijiet ta' kreditu, u fejn ikun japplika, ta' kumpanniji finanzjarji *holding* u ta' kumpanniji *holding* finanzjarji mħallta, biex jistmaw il-konformità mal-htigiet tal-CRR u ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin tahtu."

(d) fis-subartikolu (6) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "ta' dan l-Att u ta' kull regolament jew Regoli Bankarji magħmulin tahtu.", għandhom jidhlu l-kliem "ta' dan l-Att u ta' kull regolament magħmul tahtu.";

(e) minnufih wara subartikolu (6) tiegħu, kif enumerat mill-ġdid, għandhom jiziedu s-subartikoli (7) u (8) godda li ġejjin:

"(7) L-awtorità kompetenti tista' tagħmel, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ sabiex jiġu implimentati linji gwida, rakkomandazzjonijiet u deċizjonijiet individwali maħruġin mill-EBA taht l-Artikoli 16, 17(3) u 18(3) tar-Regolament (UE) Nru. 1093/2010.

(8) L-awtorità kompetenti tista' tagħmel, temenda jew tirrevoka Regoli Bankarji hekk kif jista' jkun meħtieġ sabiex jiġu implimentati opinjonijiet u rakkomandazzjonijiet maħruġin mill-BĊE taħt l-Artikoli 127(4) u 132(1) tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea.";

(f) is-subartikolu (11) tiegħu, kif enumerat mill-ġdid, għandu jiġi mħassar.

Sostituzzjoni tal-artikolu 4A tal-Att prinċipali.

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

"Prattici ta' superviżjoni.

4A. (1) Meta tkun qegħda twettaq dmirijietha, l-awtorità kompetenti għandha tqis il-konverġenza fir-rigward ta' għodda ta' sorveljanza u prattici ta' sorveljanza fl-applikazzjoni ta' dan l-Att u ta' kull regolament magħmul u Regoli Bankarji maħruġin taħtu li jittrasponu l-CRD, u l-CRR. Għal dak il-għan, l-awtorità kompetenti għandha -

(a) bhala parti fl-ESFS, tikkoopera b'fiduċja u rispett reċiproku, b'mod partikolari meta jiġi żgurat il-fluss ta' informazzjoni adatta u affidabbli bejn l-awtorità kompetenti u partijiet oħra fl-ESFS kif hemm fil-prinċipju ta' koperazzjoni sinciera stabbilit fl-Artikolu 4(3) tat-Trattat dwar l-Unjoni Ewropea;

(b) jipparteċipaw fl-attivitajiet tal-EBA u, kif ikun adatt, fil-kulleġġi ta' superviżuri;

(ċ) tagħmel kull sforz biex tħares dawk il-linji gwida u rakkomandazzjonijiet maħruġin mill-EBA kif hemm fl-artikolu 16 tar-Regolament (UE) Nru. 1093/2010 u tirrispondi għat-twissijiet u rakkomandazzjonijiet maħruġin mill-ESRB konformement mal-Artikolu 16 tar-Regolament (UE) Nru. 1092/2010;

(d) tikkoopera mill-qrib mal-ESRB.

(2) L-awtorità kompetenti m'għandhiex tkun inibita minn dispożizzjonijiet leġislattivi nazzjonali oħra fil-qadi ta' dmirijietha bħala Membru tal-EBA u l-ESRB, jew minn dmirijietha taht l-CRD u l-CRR."

7. Minnufih wara l-artikolu 4A tal-Att prinċipali, għandu jizjed l-artikolu 4B ġdid li ġej:

Zieda tal-artikolu 4B ġdid mal-Att prinċipali.

"Setgħa li jinħarġu direttivi.

4B. (1) Bla preġudizzju għal ebda setgħa mogħtija f'dan l-Att, l-awtorità kompetenti tista', kull meta jidhrilha li jkun meħtieġ, tagħti, permezz ta' avviż bil-miktub, dawk id-direttivi li jistgħu jidhrilha li jkunu xierqa fiċ-ċirkostanzi sabiex twettaq il-funzjonijiet u d-dmirijiet imposti bl-Att dwar is-Servizzi Finanzjarji ta' Malta, u b'dan l-Att, u b'kull regolament magħmul jew Regoli Bankarji maħruġin tahtu, u mill-CRR.

(2) Kull persuna li tingħatalha avviż kif hemm fis-subartikolu (1) għandha tobdi, thares u xort'oħra tagħti seħħ lil dik id-direttiva fiż-żmien u bil-mod imsemmi fid-direttiva.

(3) Is-setgħa li toħroġ direttivi taht dan l-artikolu għandha tkun tinkludi s-setgħa li kull direttiva tista' tiġi varjata, mibdula, jiġi mizjud magħha jew tiġi rtirata, kif ukoll is-setgħa li toħroġ direttivi ġodda jew ulterjuri.

(4) Meta l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi jkunu hekk jeħtieġu, hija tista' f'kull waqt tippubblika kull direttiva li tkun ħarġet taht xi disposizzjoni ta' dan l-artikolu."

8. Is-subartikolu (2) tal-artikolu 5 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 5 tal-Att prinċipali.

(a) minflok il-kliem "tiftaħ fergħa, aġenzija jew ufficiċju jew twaqqaf sussidjarja f'Malta", għandhom jidhlu l-kliem "tiftaħ fergħa jew aġenzija jew twaqqaf sussidjarja f'Malta"; u

(b) fil-proviso tiegħu, minflok il-kliem "teżerċita d-drittijiet tagħha taht il-liġi tal-Komunità Ewropea.", għandhom jidhlu l-kliem "teżerċita d-drittijiet tagħha taht il-liġi tal-Unjoni Ewropea."

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Emenda tal-  
artikolu 6 tal-  
Att prinċipali.

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

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

"(2) L-applikazzjonijiet għal liċenza għandhom ikunu f'dik il-forma u għandu jkollhom magħhom dik l-informazzjoni, inkluż programm ta' operazzjonijiet li jstipulaw it-tipi ta' negozju ippjanat u l-organizzazzjoni strutturali tal-istituzzjoni ta' kreditu, u għandhom ikunu konformi ma' dawk il-htigiet li jistgħu jiġu ordnati minn żmien għal żmien permezz ta' xi Regola Bankarja. Dawk il-htigiet għandhom jiġu notifikati lill-EBA:

Iżda qabel ma awtorizzazzjoni tkun ġiet mogħtija jew miċhuda, applikazzjoni tista' biss tiġi irtirata b'avviż bil-miktub lill-awtorità kompetenti.";

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "jekk liċenza għandhiex tiġi ristretta jew revokata.", għandhom jidhlu l-kliem "jekk liċenza għandhiex tiġi ristretta jew irtirata.";

(ċ) minnufih wara s-subartikolu (3) tiegħu, għandu jidher is-subartikolu (4) ġdid li ġej:

"(4) L-awtorità kompetenti m'għandhiex tqis il-htigiet ekonomiċi tas-suq bħala kriterju meta tkun qegħda teżamina applikazzjoni għal-liċenza.".

Emenda tal-  
artikolu 7 tal-  
Att prinċipali.

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

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

"(1) Ebda kumpannija m'għandha tingħata liċenza kemm-il darba -

(a) il-kapital inizjali tagħha ma jkunx jammonta għal iżjed minn hames miljun Euro (€5,000,000) jew għal ammont ekwivalenti f'munita oħra kif jista jkun speċifikat f'xi Regola Bankarja:

Iżda l-awtorità kompetenti tista', permezz ta' xi dispożizzjoni li tkun tinsab f'Regola Bankarja jew kif meħtieġ minn xi kundizzjoni f'liċenza ta' istituzzjoni ta' kreditu, iżżid l-ammont stipulat f'dan il-paragrafu:



Iżda wkoll il-kapital inizjali għandu jkun jinkludi biss lil xi partita waħda jew aktar minn dawk imsemmija fl-Artikolu 26(1)(a) sa (e) tal-CRR;

(b) ikun hemm mill-inqas żewġ individwi li effettivament imexxu n-negozju tal-kumpannija;

(ċ) l-awtorità kompetenti tiġi notifikata bl-identitajiet tal-azzjonisti jew tal-membri sew diretti jew indiretti, li jkollhom *holdings* kwalifikattiv u bl-ammonti ta' dawk il-*holdings* jew, meta ma jkun hemm ebda *holding* kwalifikattiv, bl-għoxrin l-akbar azzjonist jew membru:

Iżda sabiex jiġi stabbilit jekk il-kriterji għal *holding* kwalifikattiv ikunx sodisfatt, għandhom jitqiesu d-drittijiet ta' votazzjoni msemmija fl-Artikoli 9 u 10 tad-Direttiva 2004/109/KE u l-kondizzjonijiet fir-rigward tal-aggregazzjoni tagħhom stabbiliti fl-Artikolu 12(4) u (5) ta' dik id-Direttiva:

Iżda wkoll m'għandhomx jitqiesu id-drittijiet tal-vot jew ishma li jkollhom l-istituzzjonijiet għax huma jipprovdu l-assigurazzjoni ta' strumenti finanzjarji jew it-tqegħid ta' strumenti finanzjarji fuq bażi ta' impenn sod li hu inkluż taħt il-punt (6) tat-Taqsima A tal-Anness I mad-Direttiva 2004/39/KE, sakemm dawk id-drittijiet ma jiġux eżerċitati jew użati xort'oħra biex isir intervent fit-tmexxija tal-emittent u dawn jiġu wżati fi żmien sena mill-akkwist tagħhom;

(d) l-awtorità kompetenti tkun sodisfatta li l-azzjonisti jew membri msemmija fil-paragrafu (ċ) hawn qabel, il-kontrolluri u dawk l-individwi kollha li jkunu sejrin effettivament imexxu l-kummerċ tal-istituzzjoni ta' kreditu jkunu persuni idoneji biex jiżguraw tmexxija soda u prudenti. L-awtorità kompetenti għandha tkun sodisfatta bl-adattabilità tal-individwi li jkunu effettivament ser imexxu n-negozju jekk jintlaħqu l-htigiet msemmija fl-artikolu 14(2). L-awtorità kompetenti għandha tkun sodisfatti bl-idoneità tal-azzjonisti jew tal-membri msemmija fil-paragrafu (ċ) hawn qabel, b'mod partikolari, fejn jintlaħqu il-kriterji

stabbiliti fl-artikolu 13A(9). Għandhom japplikaw l-artikolu 13A(8) u (10) u l-artikolu 13B;

(e) l-awtorità kompetenti tkun sodisfatta illi, meta jkun hemm rabtiet mill-qrib bejn il-kumpannija u xi persuna jew persuni oħra, dawk ir-rabtiet ma jkunux permezz ta' xi liġi, regolament, dispożizzjoni amministrattiva jew b'xi mod ieħor jipprevjenuha milli teżercita superviżjoni effettiva tal-kumpannija, għaladarba din ikollha pussess ta' liċenza, taħt id-dispożizzjonijiet ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin taħtu:

Iżda l-awtorità kompetenti m'għandhiex tagħti awtorizzazzjoni meta l-liġijiet, regolamenti jew dispożizzjonijiet amministrattivi ta' pajjiż terz li jkunu jirregolaw persuna waħda jew aktar li l-istituzzjoni ta' kreditu jkollha rabtiet mill-qrib magħhom, jew id-diffikultajiet involuti fl-infurzar ta' dawk il-liġijiet, regolamenti u dispożizzjonijiet amministrattivi, ikunu jipprevjenu l-eżerċizzju effettiv tal-funzjonijiet superviżorji tiegħu:

Iżda wkoll dwar dan il-paragrafu (e), l-istituzzjoni ta' kreditu għandha tgħarraf lill-awtorità kompetenti minnufih dwar kull bidla fiċ-ċirkostanzi dwar l-applikazzjoni tal-imsemmi paragrafu (e) u aktar għandha iktar minn hekk tipprovdi lill-awtorità kompetenti bl-informazzjoni li tkun teħtieġ biex tissorvelja l-konformità mal-kondizzjonijiet imsemmija f'dan il-paragrafu (e) fuq bażi kontinwa.";

(b) fis-subartikolu (5) tiegħu, minflok il-kliem "dan il-fatt għandu jitqies li jikkostitwixxi rifjut li tagħti liċenza." għandhom jidhlu l-kliem "dan il-fatt għandu jitqies li jikkostitwixxi rifjut li tagħti liċenza u għandha tkun soġġetta għad-dritt ta' appell skond l-artikolu 10.";

(ċ) minflok is-subartikolu (7) tiegħu, għandu jidhol dan li ġej:

"(7) Istituzzjoni ta' kreditu li jkollha liċenza kif hemm fl-Att għandu jkollha l-uffiċċju ewlieni tagħha u l-uffiċċju registrat tagħha f'Malta.".

**11.** Minnufih wara l-artikolu 7A tal-Att prinċipali, għandu jizjed l-artikolu 7B ġdid li ġej:

Zieda tal-artikolu 7B ġdid mal-Att prinċipali.

"Konsultazzjoni minn qabel mal-awtoritajiet regolatorji barranin.

7B. (1) L-awtorità kompetenti għandha, qabel ma tohroġ liċenza għal istituzzjoni ta' kreditu, tikkonsulta mal-awtoritajiet regolatorji barranin ta' Stat Membru ieħor fejn l-istituzzjoni ta' kreditu tkun -

(a) sussidjarja ta' istituzzjoni ta' kreditu awtorizzata f'dak l-Istat Membru l-ieħor;

(b) sussidjarja tal-ażjenda prinċipali ta' istituzzjoni ta' kreditu awtorizzata f'dak l-Istat Membru l-ieħor;

(ċ) ikkontrollata mill-istess persuni bħal dawk li jikkontrollaw istituzzjoni ta' kreditu awtorizzata f'dak l-Istat Membru l-ieħor.

(2) L-awtorità kompetenti għandha, qabel ma tohroġ liċenza lil istituzzjoni ta' kreditu, tikkonsulta lill-awtorità regolatorja barranija li tkun responsabbli għas-supervizjoni tal-impriża ta' assigurazzjoni jew ta' ditta ta' investiment fl-Istat Membru involut fejn l-istituzzjoni ta' kreditu tkun -

(a) sussidjarja ta' impriża ta' assigurazzjoni jew ditta ta' investiment awtorizzati fl-Unjoni Ewropea;

(b) sussidjarja tal-ażjenda prinċipali ta' impriża ta' assigurazzjoni jew ta' ditta ta' investiment awtorizzati fl-Unjoni Ewropea;

(ċ) ikkontrollata mill-istess persuni bħal dawk li jikkontrollaw impriża tal-assigurazzjoni jew ditta ta' investiment awtorizzati fl-Unjoni Ewropea.

(3) L-awtorità kompetenti għandha tikkonsulta ruħha mal-awtoritajiet regolatorji barranin rilevanti msemmija fis-subartikoli (1) u (2) meta tkun qeghda tistma l-adattabilità tal-azzjonisti u l-fama u l-esperjenza tad-diretturi kif hemm fl-artikolu 7(1)(d) u li jkunu involuti fit-tmexxija ta' xi entità oħra tal-istess grupp.

(4) L-awtorità kompetenti għandha tiskambja kull informazzjoni dwar l-addattabilità ta' azzjonisti u l-fama u l-esperjenza tad-diretturi li jkunu ta' rilevanza għall-hruġ ta' liċenza u għall-istima kontinwa ta' konformità mal-awtoritajiet regolatorji barranin rilevanti msemmija fis-subartikoli (1) u (2)."

Thassir tal-artikolu 8 tal-Att prinċipali.

**12.** L-artikolu 8 tal-Att prinċipali għandu jiġi mħassar.

Emenda tal-artikolu 9 tal-Att prinċipali.

**13.** L-artikolu 9 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok in-nota marginali tiegħu, għandu jidhol dan li ġej:

"Irtirar u restrizzjoni ta' liċenza.";

(b) fis-subartikolu (1) tiegħu:

(i) il-paragrafu (b) tiegħu għandu jiġi mħassar u l-paragrafi (ċ), (d) u (e) għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (b), (ċ) u (d) rispettivament; u

(ii) minflok il-paragrafu (d) tiegħu, kif enumerat mill-ġdid, għandu jidhol dan li ġej:

"(d) fil-każ ta' xi istituzzjoni ta' kreditu li jkollha liċenza jew azjenda li jkollha awtorizzazzjoni ekwivalenti f'pajjiż terz u li tkun inġhatat liċenza taht dan l-Att biex tiftaħ fergħa f'Malta, li kellha l-awtorizzazzjoni tagħha irtirata mill-awtorità regolatorja barranija fil-pajjiż terz li fih l-istituzzjoni ta' kreditu tkun giet awtorizzata.";

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

"(2) L-awtorità kompetenti tista' biss tirrestringi

jew tirtira l-liċenza maħruġa lil istituzzjoni ta' kreditu f'xi wiehed mill-kazijiet li ġejjin meta istituzzjoni ta' kreditu bhal dik -

(a) ma tagħmilx użu mil-liċenza fi żmien tnax-il xahar, espressament tiffinunzja għal-liċenza jew tkun waqfiet milli tmexxi kummerċ għal aktar minn sitt xhur, jekk ma jkunx ġie provdut dwar il-liċenza li tiskadi f'kazijiet bhal dawk;

(b) tkun kisbet il-liċenza permezz ta' xi stqarrija falza jew b'xi mezzi oħra irregolari;

(ċ) ma tkunx aktar tissodisfa l-kondizzjonijiet li l-liċenza tkun ġiet maħruġa taħthom;

(d) ma tibqax iħares il-htigiet prudenzjali stabbiliti fit-Taqsimiet Tlieta, Erbgħa jew Sitta tal-CRR jew li jiġu imposti taħt ir-regolamenti 9(1)(a) u 10(1) u (2) tar-Regolamenti dwar l-Att dwar il-Kummerċ Bankarju (Revizjoni Superviżorja) jew ma tkunx tista' aktar tkun fdata biex twettaq l-obbligi tagħha lejn il-kredituri, u, b'mod partikolari, ma tkunx aktar tipprovdi sigurtà dwar l-attiv fdat lilha mid-depożitaturi tagħha;

(e) twettaq xi waħda mill-kontravvenzjonijiet imsemmija fir-regolament 7(1) tar-Regolamenti dwar Pieni Amministrattivi, Mizuri u Setgħat Investigatorji;

(f) taħbi minn, jew tonqos milli tinnotifika lill-awtorità kompetenti b'xi dokument jew informazzjoni jew xi bidla fihom li kellha d-dmir li tikxef jew tinnotifika taħt dan l-Att jew xi regolamenti magħmulin jew Regoli Bankarji maħruġin taħthom;

(g) tonqos milli tikkonforma ruħha ma' xi dispożizzjonijiet ta' dan l-Att jew ma' xi regolamenti magħmulin jew Regoli Bankarji maħruġin taħthom jew mal-kondizzjonijiet li taħthom tinhareg il-liċenza;

(h) ma jkollhiex attiv biżżejjed biex tkopri l-passiv tagħha;

(i) tkun issospendiet il-pagament jew tkun ser tissospendi l-hlas.";

(d) fis-subartikolu (5) tiegħu, minflok il-kliem "tkun bi ħsiebha tirrestringi jew tħassar liċenza", għandhom jidhlu l-kliem "tkun bi ħsiebha tirrestringi jew tirtira liċenza", u minflok il-kliem "ma għandhiex timponi jew tvarja xi restrizzjoni jew tħassar liċenza", għandhom jidhlu l-kliem "m'għandhiex timponi jew tvarja xi restrizzjoni jew tirtira liċenza";

(e) minflok is-subartikolu (6) tiegħu għandhu jidhol dan li ġej:

"(6) Meta liċenza biex titwaqqaf f'Malta fergħa ta' istituzzjoni ta' kreditu li jkollha liċenza jew awtorizzazzjoni ta' *holding* ekwivalenti f'xi pajjiż terz din tista' tiġi biss irtirata wara li ssir konsultazzjoni mal-awtoritajiet regolatorji barranin tal-pajjiż li fih tkun giet awtorizzata, kemm-il darba l-awtorità kompetenti ma tiddeċidix li l-kwistjoni tkun urgenti jew li jkun hemm ċirkostanzi fejn ikun impropriu li ssir dik il-konsultazzjoni minn qabel.";

(f) minflok is-subartikolu (7) tiegħu għandu jidhol dan li ġej:

"(7) Mar-restrizzjoni jew irtirar ta' liċenza ta' istituzzjoni ta' kreditu li jkollha liċenza f'Malta, l-awtorità kompetenti għandha tinnotifika lill-awtoritajiet regolatorji barranin tal-pajjiżi li fihom l-istituzzjoni ta' kreditu jew is-sussidjarji tagħha jkunu qegħdin jagħmlu kummerċ bankarju. L-awtorità kompetenti għandha tinnotifika lill-EBA b'kull irtirar ta' liċenza flimkien mar-raġunijiet għal dak l-irtirar.".

Sostituzzjoni tal-artikolu 10 tal-Att prinċipali.

**14.** L-artikolu 10 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"10. Kull min iħoss ruħu aggravat b'xi deċiżjoni u, jew xi mizura li tittiehed konformement mal-Att, u ma' kull regolamenti magħmul jew Regoli Bankarji mahruġin tahtu, jew mill-CRR mill-awtorità kompetenti, jista' jappella kontra d-deċiżjoni u, jew il-mizura lit-Tribunal għal Servizzi Finanzjarji f'dak iż-żmien u taht dawk il-kondizzjonijiet kif stabbiliti taht l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.".

Emenda tal-artikolu 11 tal-Att prinċipali.

**15.** L-artikolu 11 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "aġenzija ġdida jew ufficċju ġdid jew tistabbilixxi jew takkwista xi sussidjarju f'xi post barra minn Malta.", għandhom jidhlu l-kliem "aġenzija ġdida jew ufficċju rappreżentattiv ġdid jew tistabbilixxi jew takkwista xi sussidjarju f'xi post barra minn Malta:";

(b) minnufih wara s-subartikolu (2) tiegħu, għandu jiżdied il-proviso ġdid li ġej:

"Izda istituzzjoni ta' kreditu li jkollha liċenza f'Malta li jkollha l-intenzjoni li teżerċita d-drittijiet tagħha taht ir-Regolamenti dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet ta' Kreditu għandha biss tkun meħtieġa tinnotifika lill-awtorità kompetenti kif hemm f'dawk ir-Regolamenti.";

(ċ) fis-subartikolu (3) tiegħu, minflok il-kliem "Istituzzjoni ta' kreditu li jkollha liċenza f'Malta tkun projbita milli tiftaħ xi fergħa", għandhom jidhlu l-kliem "Istituzzjoni ta' kreditu li jkollha liċenza f'Malta m'għandhiex tistabbilixxi fergħa,";

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

"(4) Meta Malta tkun l-Istat Membru ospitanti, l-awtorità kompetenti m'għandhiex tkun teħtieġ awtorizzazzjoni jew kapital ta' dotazzjoni għal fergħat ta' istituzzjonijiet ta' kreditu awtorizzati fi Stati Membri oħra. It-twaqqif u s-supervizjoni ta' dawk il-friegħi għandhom isiru kif hemm fl-artikolu 17B, fir-Regolamenti dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet ta' Kreditu u fir-regolament 13 tar-Regolamenti dwar l-Att dwar il-Kummerċ Bankarju (Reviżjoni Superviżorja)."

**16.** L-artikolu 11A tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 11A tal-Att prinċipali.

"11A. (1) L-awtorità kompetenti ma tistax tapplika disposizzjonijiet li jirriżultaw fi trattament aktar favorevoli għal fergħa ta' istituzzjoni ta' kreditu li jkollha l-ufficċju prinċipali tagħha f'pajjiż terz, minn dak li jingħata lil fergħat ta' istituzzjonijiet ta' kreditu li jkollhom l-ufficċju prinċipali tagħhom fl-Unjoni Ewropea, meta jibdedw jew jissoktaw imexxu n-negozju tagħhom.

(2) L-awtorità kompetenti għandha tinnotifika lill-

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Kummissjoni Ewropea, lill-EBA u lill-Kumitat Bankarju Ewropew b'kull awtorizzazzjoni għal ferghat mogħtija lill-istituzzjonijiet ta' kreditu li jkollhom l-uffiċċju prinċipali tagħhom f' 'xi pajjiż terz.'".

Emenda tal-  
artikolu 13 tal-  
Att prinċipali.

għej:

**17.** L-artikolu 13 tal-Att prinċipali għandu jiġi emendat kif

(a) minflok is-subartikolu (5) tiegħu, għandu jidhol dan li għej:

"(5) L-istituzzjonijiet ta' kreditu għandhom, malli jsiru jafu b'xi akkwisti jew disponimenti ta' *holdings* fil-kapital tagħhom li jikkawżaw li l-*holdings* jeċċedu jew jaqgħu taħt xi wiehed mil-livelli msemmija fl-artikolu 13, jinformat lill-awtorità kompetenti ta' daww akkwisti jew disponimenti:

Iżda l-istituzzjonijiet ta' kreditu li jkunu ammessi għall-kummerċ f'suq regolat għandhom, mill-inqas ta' kull sena, jinnotifikaw lill-awtorità kompetenti bl-ismijiet tal-azzjonisti u tal-membri li jkollhom pussess ta' *holdings* kwalifikattivi u bid-daqs ta' daww il-*holdings* kif jidher mill-informazzjoni riċevuta fil-laqgħat ġenerali annwali tal-azzjonisti u tal-membri jew bħala riżultat ta' konformità mar-regolamenti li jirrigwardjaw kumpanniji ammessi għall-kummerċ f'suq regolat jew hekk kif mitlub mill-awtorità kompetenti.";

(b) fis-subartikolu (7) tiegħu, minflok il-kliem "*holding* kwalifikattiv ta' azzjonijiet tkun topera, jew x'aktarx li topera, kontra l-manigġ sod u prudenti ta' xi istituzzjoni ta' kreditu," għandhom jidhlu l-kliem "*holding* kwalifikattiv ta' azzjonijiet tkun topera, jew x'aktarx li topera, għad-detriment tal- manigġ sod u prudenti ta' xi istituzzjoni ta' kreditu,".

Emenda tal-  
artikolu 13A tal-  
Att prinċipali.

għej:

**18.** L-artikolu 13A tal-Att prinċipali għandu jiġi emendat kif

(a) minflok is-subartikolu (6) tiegħu, għandu jidhol dan li għej:

"(6) L-awtorità kompetenti tista' testendi ż-żmien ta' waqfien imsemmija fis-subartikolu (5) sa tletin jum tax-xogħol jekk l-akkwirent propost ikun:

(a) jinsab jew regolat f'xi pajjiż terz; jew



(b) ikun persuna mhux soġġett għal superviżjoni taht -

(i) l-CRD;

(ii) id-Direttiva 2009/65/KE tal-Parlament Ewropew u tal-Kunsill tat-13 ta' Lulju 2009 dwar il-koordinament ta' liġijiet, regolamenti u disposizzjonijiet amministrattivi li jirrelataw għal impriži għal investiment kollettiv f'titoli trasferibbli (UCITS) (abbozzata mill-ġdid), kif emendata minn żmien għal żmien;

(iii) id-Direttiva 2009/138/KE tal-Parlament Ewropew u tal-Kunsill tal-25 ta' Novembru 2009 dwar il-bidu u l-insewiment tal-kummerċ ta' Assigurazzjoni u Riassigurazzjoni (Likwidità II) (abbozzata mill-ġdid), kif emendata minn żmien għal żmien; jew

(iv) id-Direttiva 2004/39/KE.";

(b) is-subartikoli (9), (10), (11), (12), (13) u (14) tiegħu għandhom jiġi enumerati mill-ġdid bħala s-subartikoli (10), (11), (12), (13), (14) u (15) rispettivament;

(ċ) minnufih wara subartikolu (8) tiegħu, għandu jidhol is-subartikolu (9) ġdid li ġej:

"(9) Fl-istima tan-notifika li hemm provdut dwarha fl-artikolu 13(1) u l-informazzjoni msemmija fis-subartikoli (4) u (5) ta' dan l-artikolu, l-awtorità kompetenti għandha, sabiex tiżgura l-manigġ sod u prudenti tal-istituzzjoni ta' kreditu li jkun qed jiġi propost l-akkwist tagħja, u wara li titqies l-influwenza li l-akkwiredent propost x'aktarx ikollu fuq l-istituzzjoni ta' kreditu, tistma l-adattabilità tal-akkwiredent propost u s-sodezza finanzjarja tal-akkwiredent propost kif jidher f'dawn il-kriterji li ġejjin -

(a) il-fama tal-akkwiredent propost;

(b) il-fama, għarfien, hilet u esperjenza, kif hemm stabbilit fl-artikolu 14(2), ta' kull membru tal-bord tad-diretturi u kull membru tal-

amministrazzjoni għolja li ser imexxu l-kummerċ tal-istituzzjoni ta' kreditu bħala riżultat tal-akkwist propost;

(ċ) is-sodezza finanzjarja tal-akkwient propost, partikolarment fir-rigward tat-tip ta' kummerċ segwit u previst fl-istituzzjoni ta' kreditu li qed jiġi propost l-akkwist tagħha;

(d) jekk l-istituzzjoni ta' kreditu hijiex se tkun kapaċi tikkonforma ruħha u tkompli taqbel mar-rekwiżiti prudenzjali bażati fuq dan l-Att u kull regolament magħmul u Regoli Bankarju maħruġin taħtu, u l-CRR, u meta jkun japplika, liġijiet oħra tal-Unjoni Ewropea, partikolarment id-Direttiva 2002/87/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Diċembru 2002 dwar is-superviżjoni supplementari ta' istituzzjonijiet ta' kreditu, impriži ta' assigurazzjoni u ditti ta' investiment f'konglomerat finanzjarju u d-Direttiva 2009/110/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Settembru 2009 dwar il-bidu, l-insewiment u s-sorveljanza prudenti tal-kummerċ ta' istituzzjonijiet ta' flus elettronici, kif emendata minn żmien għal żmien, inkluż jekk il-grupp li ser tiffirma sehem minnu għandux struttura li jagħmilha possibbli li tiġi eżerċitata superviżjoni effettiva, li tiġi effettivament skambjata informazzjoni bejn l-awtorità kompetenti u l-awtoritajiet regolatorji barranin u li tiġi stabbilita l-allokkazzjoni tar-responsabbiltajiet bejn l-awtorità kompetenti u l-awtoritajiet regolatorji barranin;

(e) jekk ikunx hemm motivi raġonevoli ta' suspett li, b'konnessjoni mal-akkwist propost, ikun qed isir jew ikunu saru jew ġie ttentat li jsiru, jew li l-akkwist propost jista' jżid ir-riskju ta' hasil ta' flus jew finanzjament tat-terroriżmu fil-kuntast tat-tifsira tal-Artikolu 1 tad-Direttiva 2005/60/KE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ottubru 2005 dwar il-prevenzjoni tal-użu tas-sistema finanzjarja għall-iskop ta' hasil tal-flus u finanzjament tat-terroristi.";

(d) minflok is-subartikolu (10) tiegħu, kif enumerat mill-ġdid, jidhol dan li ġej:

"(10) L-awtorità kompetenti tista' topponi l-akkwist propost biss jekk ikun hemm motivi raġonevoli għala għandu jsir dan abbażi tal-kriterji stipulati fis-subartikolu (9) jew jekk l-informazzjoni provduta mill-akkwist propost ma tkunx kompluta.";

(e) fis-subartikolu (11) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "Jekk l-awtorità kompetenti tiddeċiedi li tiċhad l-akkwist propost," għandhom jidhlu l-kliem "Jekk, meta titlesta l-istima, l-awtorità kompetenti tiddeċiedi li topponi l-akkwist propost,";

(f) fis-subartikolu (12) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "Jekk l-awtorità kompetenti ma tiċhadx l-akkwist propost bil-miktub", għandhom jidhlu l-kliem "Jekk l-awtorità kompetenti ma topponix l-akkwist propost bil-miktub".

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

Emenda tal-artikolu 13Ċ tal-Att prinċipali.

(a) fil-paragrafu (d) tas-subartikolu (1) tiegħu, minflok il-kliem "tagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni." għandhom jidhlu l-kliem "tagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni.";

(b) minnufih wara l-paragrafu (d) tas-subartikolu (1) tiegħu, għandu jidhol il-proviso ġdid li ġej:

"Izda dan ikun mingħajr preġudizzju għad-disposizzjonijiet tal-CRR fuq il-kondizzjonijiet għat-tnaqqis ta' fondi proprji.".

20. Minnufih wara l-artikolu 13Ċ tal-Att prinċipali, għandu jżied l-artikolu 13D ġdid li ġej:

Żieda tal-artikolu 13D ġdid mal-Att prinċipali.

"Kriterji għall-*holdings* li jikkwalifikaw.

13D. Meta jkun qed jiġi deċiż jekk il-kriterji għal *holding* kwalifikattiv ta' azzjonijiet ikunux qegħdin jiġu sodisfatti, għandhom jittieħdu f'konsiderazzjoni l-jeddijiet ta' votazzjoni msemmija fl-artikoli 9, 10 u 11 tad-Direttiva 2004/109/KE u l-kondizzjonijiet dwar l-aggregazzjoni tagħhom stabbiliti fl-Artikolu 12(4) u (5) ta' dik l-istess Direttiva:

Iżda meta jkun qed jiġi deċiż jekk il-kriterji għal *holding* kwalifikattiv ta' azzjonijiet ikunux qeghdin jiġu sodisfatti, l-awtorità kompetenti m'għandhiex tiegħu f'konsiderazzjoni l-jeddijiet ta' votazzjoni jew dawk l-azzjonijiet li istituzzjonijiet ta' kreditu jista' jkollhom għar-raġuni li huma jissottoskrivu strumenti finanzjarji fuq bażi ta' rabtiet sodi kif hemm fil-punt 6 tat-Taqsima A tal-Anness I mad-Direttiva 2004/39/KE, sakemm dawk id-drittijiet ma jkunux eżerċitati jew jintużaw mod ieħor użat biex isir intervent fil-manigġar tal-emittent u jsir minnhom fi żmien sena mill-akkwist tagħhom."

Emenda tal-artikolu 14 tal-Att prinċipali.

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

(a) is-subartikoli (2), (3), (4) u (5) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (8), (9), (10) u (11) rispettivament;

(b) minnufih wara s-subartikolu (1) tiegħu, għandhom jizdiedu is-subartikoli godda li ġejjin:

"(2) Id-diretturi għandhom f'kull waqt ikunu ta' fama tajba biżżejjed u jkollhom biżżejjed għarfien, ħiliet u esperjenza biex iwettqu d-dmirijiet tagħhom. Il-komposizzjoni ġenerali tal-bord tad-diretturi għandha tkun tirriflettu firxa wiesgħa tal-esperjenzi b'mod adegwat:

Iżda d-diretturi għandhom, b'mod partikolari, jissodisfaw dawn il-ħtiġiet li ġejjin:

(a) Id-diretturi kollha għandhom jiddedikaw ħin biżżejjed biex iwettqu l-funzjonijiet tagħhom fl-istituzzjoni ta' kreditu;

(b) L-għadd ta' karigi bħala direttur li direttur jista' jkollu fl-istess ħin għandu jieħu f'konsiderazzjoni ċ-ċirkostanzi individwali u n-natura, l-iskala u l-komplessità tal-attivitajiet tal-istituzzjoni ta' kreditu. Direttur ta' istituzzjoni ta' kreditu li hija sinifikanti minhabba fid-daqs tagħha, organizzazzjoni interna u natura, l-iskala u l-komplessità tal-attivitajiet tagħha m'għandux, mill-

1 ta' Lulju 2014, fl-istess hin ikollu aktar minn waħda minn dawn il-kombinazzjonijiet ta' karigi bħala direttur li ġejjin -

(i) kariga waħda bħala direttur li jkollha rwol eżekuttiv u żewġ karigi bħala direttur li ma jkollhomx rwol eżekuttiv;

(ii) erba' karigi bħala direttur li ma jkollhomx rwol eżekuttiv;

(ċ) Għall-finijiet tal-paragrafu (b), dan li ġej għandu jgħodd bħala kariga waħda bħala direttur -

(i) karigi bħala direttur li jkollhom jew ma jkollhomx rwol eżekuttiv fl-istess grupp;

(ii) karigi bħala direttur li jkollhom jew ma jkollhomx rwol eżekuttiv fi ħdan -

(aa) istituzzjonijiet ta' kreditu li jkunu membri tal-istess skema ta' protezzjoni istituzzjonali sakemm jiġu sodisfatti l-kondizzjonijiet stabbiliti fl-artikolu 113(7) tal-CRR; jew

(bb) impriži (inklużi entitajiet mhux finanzjarji) li l-istituzzjoni ta' kreditu jkollha fihom holding kwalifikattiv ta' azzjonijiet.

(3) Dawn il-karigi bħala direttur li ġejjin m'għandhomx jittieħdu f'konsiderazzjoni għall-finijiet tas-subartikolu (2)(b):

(a) diretturi li jkunu direttament jew indirettament maħtura biex jirrappreżentaw l-interessi tal-Gvern ta' Malta; u

(b) diretturi maħtura f'organizzazzjonijiet li ma jmorrux għal għanijiet ta' mod predominanti kummerċjali, inklużi karigi bħala direttur f'organizzazzjonijiet li ma jagħmlux qligħ jew filantropiċi.

(4) L-awtorità kompetenti tista' tawtorizza lid-diretturi jkollhom kariga addizzjonali bħala direttur li ma

jkollhiex rwol eżekuttiv. L-awtorità kompetenti għandha tinnotifika lill-EBA b'dawn l-awtorizzazzjonijiet fuq bażi regolari.

(5) Il-bord tad-diretturi għandu jkollu għarfien kollettiv, hiliet u esperjenza adegwati biex ikun jista' jifhem l-attivitajiet tal-istituzzjoni ta' kreditu, inklużi r-riskji prinċipali.

(6) Kull direttur għandu jaġixxi b'onestà, integrità u indipendenza tal-intellett biex ikun jista' effettivament jistma u jikkontesta d-deċiżjonijiet tal-amministrazzjoni għolja meta dan ikun meħtieġ u biex effettivament jissorvelja u jimmonitorja it-teħid ta' deċiżjonijiet dwar l-amministrazzjoni.

(7) Id-diretturi ta' kumpannija *holding* finanzjarja jew ta' kumpannija *holding* finanzjarja mħallta, li tkun kumpannija prinċipali għal istituzzjoni ta' kreditu, għandhom ikunu ta' fama tajba biżżejjed u jkollhom għarfien, hiliet u esperjenza biżżejjed kif imsemmi fis-subartikolu (2) biex iwettqu dawk id-dmirijiet, filwaqt li jqisu r-rwol speċifiku ta' kumpannija *holding* finanzjarja jew ta' kumpannija *holding* finanzjarja mħallta."

Emenda tal-artikolu 15 tal-Att prinċipali.

**22.** Is-subartikolu (1) tal-artikolu 15 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) il-paragrafu (d) tiegħu għandu jiġi mħassar; u

(b) il-paragrafi (e) u (f) tiegħu għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (d) u (e) rispettivament.

Thassir tal-artikolu 15A tal-Att prinċipali.

**23.** L-artikolu 15A tal-Att prinċipali għandu jiġi mħassar.

Thassir tal-artikolu 16 tal-Att prinċipali.

**24.** L-artikolu 16 tal-Att prinċipali jiġi mħassar.

Thassir tal-artikolu 16A tal-Att prinċipali.

**25.** L-artikolu 16A tal-Att prinċipali għandu jiġi mħassar.

Żieda tal-artikolu 16B ġdid mal-Att prinċipali.

**26.** Minnufih wara l-artikolu 16A tal-Att prinċipali, għandu jiżdied l-artikolu 16B ġdid li ġej:

"Rizervi ta' kapital.

16B. L-awtorità kompetenti għandha toħroġ Regola Bankarja hekk kif tqis li jkun xieraq biex tirregola r-rizervi kapitali."

27. L-artikolu 17 tal-Att prinċipali għandu jiġi mħassar. Thassir tal-artikolu 17 tal-Att prinċipali.
28. L-artikolu 17A tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej: Sostituzzjoni tal-artikolu 17A tal-Att prinċipali.
- "Mizuri mmirati biex jindirizzaw riskji ta' kreditu. 17A. L-awtorità kompetenti tista' toħroġ Regola Bankarja hekk kif tqis li jkun xieraq biex timplimenta mizuri mmirati biex jindirizzaw riskji ta' kreditu li joħorġu mill-istima tal-kwalità tal-portafoll tal-attiv ta' xi istituzzjoni ta' kreditu."
29. L-artikolu 17B tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 17B tal-Att prinċipali.
- (a) minflok in-nota marginali tiegħu, għandu jidhol dan li ġej:
- "Governanza interna u pjanijiet ta' rkupru.";
- (b) minnufih wara s-subartikolu (2) tiegħu, għandhom jiżdiedu s-subartikoli (3) u (4) ġodda li ġejjin:
- "(3) Kull istituzzjoni ta' kreditu għandha tiżgura wkoll li kull mekkaniżmi ta' kontroll intern u amministrattivi tagħha u proċeduri ta' kontijiet jippermettu l-verifika ta' konformità mar-regoli adottati kif hemm fid-dispożizzjonijiet ta' dan l-Att u f'kull regolament maħruġ jew Regoli Bankarji magħmulin tahtu, u l-CRR f'kull waqt.
- (4) Kull istituzzjoni ta' kreditu għandu jkollha disponibbli pjan ta' rkupru għar-restawr tas-sitwazzjoni finanzjarja tagħha wara deterjorament sinifikanti kif hemm f'kull regolament magħmul taht dan l-Att."
30. L-artikolu 17D tal-Att prinċipali għandu jiġi mħassar. Thassir tal-artikolu 17D tal-Att prinċipali.
31. Minnufih wara l-artikolu 17D tal-Att prinċipali, għandu jiżdied l-artikolu 17E ġdid li ġej: Żieda tal-artikolu 17E mal-Att prinċipali.
- "Mizuri tas-sorveljanza. 17E. (1) L-awtorità kompetenti għandha tehtieg lil istituzzjoni ta' kreditu tiegħu l-mizuri mehtieġa fi stadju bikri biex tindirizza l-problemi rilevanti f'ċirkostanzi meta -

(a) l-istituzzjoni ta' kreditu ma tissodisfax il-htigiet tal-Att, regolamenti magħmulin jew Regoli Bankarji maħruġin taħtu, jew tal-CRR;

(b) l-awtorità kompetenti jkollha provi li l-istituzzjoni ta' kreditu x'aktarx li tikser l-Att, ir-regolamenti magħmulin jew ir-Regoli Bankarji maħruġin taħtu, jew id-disposizzjonijiet tal-CRR, fi żmien it-tmax-il xahar li ġejjin.

(2) Għall-finijiet tas-subartikolu (1), il-poteri tal-awtorità kompetenti għandhom jinkludu s-setgħat superviżorji msemmija fir-regolament 9 tar-Regolamenti dwar l-Att dwar il-Kummerè Bankarju (Reviżjoni Superviżorja).

(3) L-awtorità kompetenti għandha tapplika miżuri superviżorji kif hemm fil-livell ta' applikazzjoni tal-htigiet tat-Taqsima Wiehed, Titolu II tal-CRR."

Emenda tal-artikolu 19 tal-Att prinċipali.

**32.** L-artikolu 19 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-paragrafu (ċ) tas-subartikolu (1) tiegħu, għandu jidhol dan li ġej:

"(ċ) kull informazzjoni meħtieġa għall-istima tal-konformità tagħha mar-regoli adottati kif hemm fil-CRR, f'dan l-Att u f'kull regolament magħmul jew Regoli Bankarji maħruġin taħtu;"

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

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

"(3) Istituzzjoni ta' kreditu għandha tirreġistra kull transazzjoni u sistema ta' dokumenti u proċessi, li huma soġġetti għall-CRR u għal dan l-Att u kull regolamenti jew Regoli Bankarji maħruġin taħtu, b'tali mod li l-awtorità kompetenti tkun tista' tivverifika konformità mal-htigiet tal-CRR u ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin taħtu



f'kull waqt."; u

(d) fis-subartikolu (4) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "għall-fergħat, aġenziji jew uffiċċji f'Malta kollha", għandhom jidhlu l-kliem "għall-fergħat jew aġenziji kollha f'Malta".

**33.** Minflok is-subartikolu (1) tal-artikolu 20 tal-Att prinċipali għandu jidhol dan li ġej:

Emenda tal-artikolu 20 tal-Att prinċipali.

"(1) Kull istituzzjoni ta' kreditu li jkollha liċenza kif hemm fl-Att, u meta jkun japplika, kumpannija *holding* finanzjarja jew kumpannija *holding* finanzjarja mħallta, għandha tipprezenta lill-awtorità kompetenti kull informazzjoni li hija tista' tkun raġonevolment teħtieġ fit-twettiq ta' dmirijietha taħt dan l-Att u kull regolament magħmul jew Regoli Bankarji mahruġin taħtu u l-CRR, u l-awtorità kompetenti tista' tistharreg u titlob għal kjarifika ta' kull informazzjoni li tkun ġiet hekk mogħtija."

**34.** Fis-subartikolu (1) tal-artikolu 21 tal-Att prinċipali, minflok il-kliem "Kull uffiċjal, impjegat jew aġent tal-awtorità kompetenti", għandhom jidhlu l-kliem "Kull uffiċjal, impjegat, aġent jew spettur tal-awtorità kompetenti".

Emenda tal-artikolu 21 tal-Att prinċipali.

**35.** fis-subartikolu (1) tal-artikolu 22 tal-Att prinċipali, minflok il-kliem "persuni kompetenti jew iżjed biex jinvestigaw u jirrapportaw dwar", għandhom jidhlu l-kliem "persuni kompetenti jew iżjed, bhala spetturi, biex jinvestigaw u jirrapportaw dwar".

Emenda tal-artikolu 22 tal-Att prinċipali.

**36.** Minflok is-subartikolu (1) tal-artikolu 23 tal-Att prinċipali, għandu jidhol dan li ġej:

Emenda tal-artikolu 23 tal-Att prinċipali.

"(1) Meta l-awtorità kompetenti jkollha motivi raġonevoli li tissuspetta li persuna tkun kisret jew naqset milli thares xi dispożizzjoni ta' dan l-Att u ta' xi regolamenti magħmulin jew Regoli Bankarji mahruġin taħtu, din tista' b'avviż bil-miktub teħtieġ lil dik il-persuna jew lil kull persuna oħra -

(a) tipprovdi f'dak il-post li jista' jiġi speċifikati fl-avviż u jew minnufih jew f'dak iż-żmien li jista' jiġi hekk speċifikat, dik l-informazzjoni li hija tista' tkun raġonevolment teħtieġ biex jiġu investigati dak il-ksur jew nuqqas ta' konformità suspettati;

(b) tipproduċi, f'dak il-post li jista' jiġi speċifikat fl-avviż u jew minnufih jew f'dak iż-żmien li jista' jiġi

hekk speċifikat, dawk id-dokumenti, jew dokumenti ta' tali deskrizzjoni li jistgħu jigu speċifikati u li hija tista' raġonevolment tkun teħtieġ għal dak l-għan;

(ċ) tattendi f'dak il-post u ħin li jistgħu jigu hekk speċifikati fl-avviż, u twieġeb għall-mistoqsijiet rilevanti sabiex jiġi deċiż jekk ikunux graw dak il-ksur jew nuqqas ta' konformità."

Emenda tal-artikolu 25 tal-Att prinċipali.

**37.** L-artikolu 25 tal-Att prinċipali għandu jiġi emendat kif ġej:

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

"(1) Fuq bażi tal-obbligi internazzjonali ta' Malta, l-awtorità kompetenti tista' taqşam id-dmirijiet ta' sorveljanza tagħha ma' awtoritajiet regolatorji barranin fil-każ ta' istituzzjoni ta' kreditu li jkollha liċenza kif hawn f'dan l-Att u li tkun topera fil-pajjiż ta' dik l-awtorità regolatorja barranija jew fergħa stabbilita f'Malta li jkollha l-uffiċċju prinċipali tagħha fi Stat Membru ieħor.";

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

"(2) L-awtorità kompetenti tista' aktar minn hekk, abbazi tal-impenji internazzjonali ta' Malta, tiskambja informazzjoni mal-awtoritajiet regolatorji barranin jew twassal informazzjoni lill-ESRB, l-EBA jew lill-Awtorità dwar Titoli u Swieq Ewropej stabbilita bir-Regolament (UE) Nru. 1095/2010, kif hemm fl-Att u f'kull regolament magħmul u Regoli Bankarji maħruġin taħtu li jittrasponu l-CRD, u l-CRR u f'Direttivi oħra li japplikaw għal istituzzjonijiet ta' kreditu, fl-Artikolu 15 tar-Regolament (UE) Nru. 1092/2010, fl-artikoli 31, 35 u 36 tar-Regolament (UE) Nru 1093/2010 u fl-Artikoli 31 u 36 tar-Regolament (UE) Nru. 1095/2010. Dik l-informazzjoni għandha tkun soġġetta għas-segretezza professjonali li hemm provdut dwarha taħt dan l-Att u f'kull regolamenti maħruġin taħtu.";

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

"(3) L-awtorità kompetenti tista' wkoll tagħmel pattijiet ta' koperazzjoni, li jkunu jipprovdu dwar skambji ta' informazzjoni, ma' awtoritajiet regolatorji barranin ta'

pajjiżi terzi jew ma' awtoritajiet jew korpi ta' pajjiżi terzi kif hemm fis-subartikoli (7) u (8), biss jekk l-informazzjoni mikxufa tkun soġġetta għal garanzija li jiġu mharsa htigiet ta' segretezza professjonali li jkunu mill-inqas ekwivalenti għal dawk imsemmija fl-artikolu 34(4) u (5):

Iżda dak l-iskambju ta' informazzjoni għandu jsir għall-fini li jitwettqu l-kompiti superviżorji tal-awtoritajiet jew tal-korpi msemmija f'dan is-subartikolu:

Iżda wkoll meta l-informazzjoni toriġina fi Stat Memru ieħor, din tista' tiġi biss mikxufa bi ftehim espress mal-awtorità regolatorja barranija li tkun kixfitha, u meta jkun adatt, unikament għall-finijiet li dwarhom dik l-awtorità regolatorja barranija tkun tat il-kunsens tagħha.";

(d) fis-subartikolu (5) tiegħu, minflok il-kliem "istituzzjonijiet ta' kreditu li jkollhom l-uffiċċju prinċipali tagħhom fil-pajjiż tal-awtorità regolatorja estera li tagħmel l-ispezzjoni." għandhom jidhlu l-kliem "istituzzjonijiet ta' kreditu li jkollhom l-uffiċċju prinċipali tagħhom fil-pajjiż tal-awtorità regolatorja barranija li tagħmel l-ispezzjoni:";

(e) minnufih wara s-subartikolu (5) tiegħu, għandu jiżdied dan il-proviso ġdid li ġej:

"Iżda l-ispezzjonijiet fuq il-post u l-kontroll ta' fergħat stabbiliti f'Malta ta' istituzzjonijiet ta' kreditu awtorizzati fi Stat Membru ieħor, għandhom isiru kif hemm fir-Regolamenti dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet ta' Kreditu.";

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

"(6) Ebda haġa f'dan l-Att m'għandha tipprevjeni lill-awtorità kompetenti milli twassal informazzjoni lil dawn li ġejjin għall-finijiet tal-kompiti tagħhom -

(a) il-Bank Ċentrali, il-banek ċentrali tal-ESCB u korpi oħra li jkollhom funzjoni simili fil-kwalità tagħhom ta' awtoritajiet monetarji meta dik l-informazzjoni tkun rilevanti għall-eżerċizzju tal-ħidmiet statutorji rispettivi tagħhom, inkluża t-tmexxija ta' politika monetarja u l-provdiment ta'

likwidità relatata, is-sorveljanza ta' ħlas, sistemi ta' clearing u ta' ħlas assaldu u l-harsien tal-istabbiltà tas-sistema finanzjarja;

(b) skemi ta' protezzjoni kontrattwali jew istituzzjonali kif imsemmi fl-Artikolu 113(7) tal-CRR;

(ċ) meta jkun xieraq, awtoritajiet pubbliċi oħra responsabbli għas-sorveljanza ta' sistemi ta' ħlas;

(d) l-ESRB, l-Awtorità Ewropea dwar l-Assigurazzjoni u Pensjonijiet Okkupazzjonali stabbiliti bir-Regolament (UE) Nru 1094/2010 u l-Awtorità Ewropea dwar it-Titoli u s-Swieq imwaqqfa bir-Regolament (UE) Nru. 1095/2010, meta dik l-informazzjoni tkun rilevanti għall-eżerċizzju tal-hidmiet tagħhom taht Regolamenti (UE) Nru. 1092/2010, (UE) Nru. 1094/2010 jew (UE) Nru 1095/2010:

Iżda l-awtorità kompetenti għandha tiegħu l-miżuri xierqa biex jitnehhew ostakoli li jipprevjenuha milli twassal informazzjoni kif jgħid dan is-subartikolu:

Iżda wkoll l-informazzjoni li tasal kif hawn f'dan is-subartikolu għandha tkun soġġetta għall-htigiet ta' segretezza professjonali li jkunu mill-inqas ekwivalenti għal dawk imsemmija fl-artikolu 34(4) u (5):

Iżda wkoll f'sitwazzjoni ta' emergenza, inkluża sitwazzjoni bħal dik deskritta fl-Artikolu 18 tar-Regolament (UE) Nru. 1093/2010 jew jekk tqum sitwazzjoni ta' żviluppi kuntrarji fis-swieq, li potenzjalment tipperikola l-likwidità tas-suq u l-istabbiltà tas-sistema finanzjarja, l-awtorità kompetenti għandha mingħajr dewmien twassal l-informazzjoni lill-banek ċentrali tal-ESBC meta dik l-informazzjoni tkun rilevanti għall-eżerċizzju tad-doveri statutorji tagħhom, inkluża t-tmexxija tal-politika monetarja u l-provdiment ta' likwidità relatata, is-sorveljanza ta' pagamenti, clearing u l-ħlas assaldu, u lill-ESRB meta dik l-informazzjoni tkun rilevanti għall-eżerċizzju tal-funzjonijiet

statutorji tagħha." ;

(g) is-subartikoli (7) u (8) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (12) u (13) rispettivament;

(h) minnufih wara subartikolu (6) tiegħu, għandhom jiżdiedu is-subartikoli (7), (8), (9), (10) u (11) godda li ġejjin:

"(7) Id-dispożizzjonijiet tal-artikolu 34(4), (5) u (7) m'għandhomx jipprekludu l-iskambju ta' informazzjoni bejn l-awtorità kompetenti u awtoritajiet oħra f'Malta; bejn l-awtorità kompetenti u awtoritajiet regolatorji barranin fi Stati Membri oħra; jew bejn l-awtorità kompetenti u dawn li ġejjin, fil-qadi tal-funzjonijiet superviżorji tagħhom -

(a) awtoritajiet fdati bid-dover pubbliku li jissorveljaw entitajiet oħra fis-settur finanzjarju u l-awtoritajiet responsabbli għas-superviżjoni tas-swieq finanzjarji;

(b) l-awtoritajiet jew korpi inkarigati bir-responsabbiltà li jmantnu l-istabbiltà tas-sistema finanzjarja fl-Istati Membri bl-użu ta' regoli makro-prudenzjali;

(ċ) korpi jew awtoritajiet ta' riorganizzazzjoni li jkollhom bħala għan li jipproteġu l-istabbiltà tas-sistema finanzjarja;

(d) skemi ta' protezzjoni kontrattwali jew istituzzjonali kif imsemmi fl-Artikolu 113(7) tal-CRR;

(e) korpi involuti fil-likwidazzjoni u l-falliment ta' istituzzjonijiet ta' kreditu u fi proċedimenti oħra simili;

(f) persuni responsabbli li jagħmlu verifiki statutorji tal-kontijiet ta' istituzzjonijiet, impriżi tal-assigurazzjoni u istituzzjonijiet finanzjarji.

Izda d-dispożizzjonijiet tal-artikolu 34(4), (5) u (7) m'għandhomx jipprekludu l-kxif lil korpi li jamministraw skemi ta' garanzija ta' depożitu u skemi ta' kumpens lil investitur minn informazzjoni meħtieġa għall-eżerċizzju tal-funzjonijiet tagħhom:

Iżda wkoll l-informazzjoni li tasal għandha f'kull każ tkun soġġetta għall-htigiet ta' segretezza professjonali li tkun mill-inqas ekwivalenti għal dik imsemmija fl-artikolu 34(4) u (5).

(8) Minkejja d-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu u l-artikolu 34(4), (5) u (7), l-awtorità kompetenti tista' tiskambja informazzjoni mal-awtoritajiet responsabbli għas-superviżjoni -

(a) tal-korpi involuti fil-likwidazzjoni u l-falliment ta' istituzzjonijiet u fi proċeduri oħra simili;

(b) tal-iskemi ta' protezzjoni kontrattwali jew istituzzjonali kif imsemmi fl-Artikolu 113(7) tal-CRR;

(ċ) tal-persuni inkarigati li jagħmlu l-awditjar statutorju tal-kontijiet ta' istituzzjonijiet, impriži tal-assigurazzjoni u istituzzjonijiet finanzjarji:

Iżda fil-każijiet imsemmija f'dan is-subartikolu, l-awtorità kompetenti għandha tkun teħtieg li mill-inqas jitwettqu dawn il-kondizzjonijiet li ġejjin:

(i) li l-informazzjoni tiġi skambjata bil-għan li jitwettqu l-ħidmiet imsemmija f'dan is-subartikolu;

(ii) li l-informazzjoni li tasal tkun soġġetta għal htigiet ta' segretezza professjonali li tkun mill-inqas ekwivalenti għal dik imsemmija fl-artikolu 34(4) u 5;

(iii) meta l-informazzjoni toriġina f'xi Stat Membru ieħor, li din ma tiġix mikxufa mingħajr il-ftehim espress tal-awtoritajiet regolatorji barranin li jkunu kixfuha u, meta jkun xieraq, unikament għall-finijiet li dawk l-awtoritajiet ikunu qablu magħhom:

Iżda wkoll meta l-awtoritajiet jew korpi msemmija f'dan is-subartikolu jwettqu l-attività tagħhom ta' kxif jew investigazzjoni permezz tal-assistenza ta' persuni maħtura għal dak l-iskop minhabba fil-kompetenza speċifika

tagħhom u ma jkunux impjegati fis-settur pubbliku, l-awtorità kompetenti tista' tiskambja informazzjoni mal-awtoritajiet jew korpi responsabbli taht il-liġi għall-kxif u l-investigazzjoni ta' kontravvenzjonijiet tal-liġi dwar il-kumpanniji, lil dawk il-persuni, u għandha tehtieg li jitwettqu mill-inqas dawn il-kondizzjonijiet li ġejjin:

(i) li l-informazzjoni tiġi skambjata għall-fini li jinkixfu u jiġu investigati kontravvenzjonijiet tal-liġi dwar il-kumpanniji;

(ii) li l-informazzjoni li tasal tkun soġġetta għal htigiet ta' segretezza professjonali li tkun mill-inqas ekwivalenti għal dik imsemmija fl-artikolu 34(4) u (5);

(iii) meta l-informazzjoni toriġina f'xi Stat Membru iehor, li din ma tiġix mikxufa mingħajr il-ftehim espress tal-awtoritajiet regolatorji barranin li jkunu kixfuha u, meta jkun xieraq, unikament għall-finijiet li dawk l-awtoritajiet ikunu qablu magħhom.

(9) Minkejja d-dispożizzjonijiet tal-artikolu 34(4), (5) u (7), l-awtorità kompetenti tista' tawtorizza l-kxif ta' ċerta informazzjoni lil dipartimenti tal-gvern oħra ta' amministrazzjonijiet tal-gvern ċentrali ta' Stati Membri oħra li jkunu responsabbli għal leġislazzjoni dwar is-supervizjoni ta' istituzzjonijiet, istituzzjonijiet finanzjarji u imprizi ta' assigurazzjoni u għal spetturi li jaġixxu f'isem dawk id-dipartimenti:

Izda kxif bħal dak jista' jsir biss meta jkun mehtieg għal raġunijiet ta' supervizjoni prudenzjali u l-prevenzjoni u r-risolviment ta' istituzzjonijiet ta' kreditu li jkunu qegħdin jonqsu minn dmirijiethom. Mingħajr preġudizzju għas-subartikolu (10), persuni li jkollhom aċċess għall-informazzjoni jkunu soġġetti għall-htigiet ta' segretezza professjonali li jkunu mill-inqas ekwivalenti għal dawk imsemmija fl-artikolu 34(4) u (5):

Izda wkoll f'sitwazzjoni ta' emergenza, inkluża sitwazzjoni kif deskritta fl-artikolu 18 tar-Regolament (UE) Nru. 1093/2010 jew jekk tinqala' sitwazzjoni ta' żviluppi negattivi fis-swieq, li potenzjalment tipperikola l-likwidità tas-suq u l-istabbiltà tas-sistema finanzjarja, l-awtorità kompetenti tista' tikxef informazzjoni li tkun

rilevanti għad-dipartimenti msemmija f'dan is-subartikolu fl-Istati Membri kollha involuti.

(10) L-awtorità kompetenti tista' tikkaxxer ċerta informazzjoni dwar is-superviżjoni prudenzjali ta' istituzzjonijiet ta' kreditu lill-kumitati ta' investigazzjoni parlamentari, lil qrati ta' awdituri u lil entitajiet oħra responsabbli minn investigazzjonijiet f'Malta, taħt dawn il-kondizzjonijiet li ġejjin -

(a) li l-entitajiet għandhom kompitu preċiż taħt il-liġi Maltija li jinvestigaw jew jiskrutinizzaw l-azzjonijiet tal-awtorità kompetenti jew għal liġijiet fuq is-superviżjoni ta' istituzzjonijiet ta' kreditu;

(b) li l-informazzjoni tkun strettament meħtieġa għat-twettiq tal-kompitu msemmi fil-paragrafu (a);

(c) il-persuni li jkollhom aċċess għall-informazzjoni jkunu soġġetti għal htigiet ta' segretezza professjonali li tkun mill-inqas ekwivalenti għal dawk imsemmija fl-artikolu 34(4) u (5);

(d) meta l-informazzjoni tkun toriġina fi Stat Membru ieħor, dik l-informazzjoni ma għandhiex tinkaxxer mingħajr il-ftehim espress tal-awtoritajiet regolatorji barranin li jkunu kixfuha u, unikament għall-għanijiet li għalihom dawk l-awtoritajiet regolatorji barranin ikunu taw il-kunsens tagħhom:

Izda meta l-kaxxer ta' informazzjoni dwar is-sorveljanza prudenzjali tkun tinvolvi l-ipproċessar ta' *data* personali, kull ipproċessar mill-entitajiet imsemmija f'dan is-subartikolu għandha tkun konformi mal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, u ma' kull regolament magħmul taħtu.

(11) L-awtorità kompetenti m'għandhiex tikkaxxer kif hemm fis-subartikoli (9) u (10), tagħrif li jaslilha taħt l-Artikolu 52, l-Artikolu 53(2) u l-Artikolu 56 tal-CRD, ħlief bil-kunsens espress tal-awtorità regolatorja barranija tal-Istat Membru li fih ikunu saru dik l-ispezzjoni fuq il-post jew kontroll jew tal-awtorità regolatorja barranija tal-



Istat Membru li jkun kixef dik l-informazzjoni mikxufa.";

(i) fl-ewwel proviso tas-subartikolu (12) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "tkun soġġetta għall-kondizzjonijiet ta' segretezza professjonali.", għandhom jidhlu l-kliem "tkun soġġetta għall-kondizzjonijiet ta' segretezza professjonali li jkunu mill-inqas ekwivalenti għal dawk imsemmija fl-artikolu 34(4) u (5)"; u

(j) minnufih wara s-subartikolu (13) tiegħu, kif enumerat mill-ġdid, għandu jiżdied is-subartikolu (14) ġdid li ġej:

"(14) Għall-finijiet ta' dan l-artikolu, "istituzzjoni finanzjarja" għandu jkollha l-istess tifsira bħal dik mogħtija lilha fil-punt (26) tal-Artikolu 4(1) tal-CRR."

**38.** L-artikolu 25A tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 25A tal-Att prinċipali.

"25A. L-awtorità kompetenti għandha tikkopera mill-qrib mal-awtoritajiet regolatorji barranin fl-affarijiet kollha li jkollhom x'jaqsmu mas-supervizjoni fuq bazi konsolidata. Dik il-koperazzjoni għandha tkun regolata permezz tar-Regolamenti Konsolidati dwar is-Supervizjoni."

**39.** L-artikolu 25B tal-Att prinċipali għandu jiġi mħassar.

Thassir tal-artikolu 25B tal-Att prinċipali.

**40.** L-artikolu 25Ċ tal-Att prinċipali għandu jiġi mħassar.

Thassir tal-artikolu 25Ċ tal-Att prinċipali.

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

Emenda tal-artikolu 26 tal-Att prinċipali.

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

"(1) Il-kxif *bona fide* lill-awtorità kompetenti minn -

(a) awditur ta' istituzzjoni ta' kreditu; jew

(b) persuna maħtura biex tagħmel rapport taht l-artikolu 20(3)(a) jew l-artikolu 22(1),

ta' xi fatt jew deċiżjoni msemija fl-artikolu 31(9) m'għandux jikkostitwixxi ksur ta' xi restrizzjoni jew il-

kxif ta' informazzjoni imposta b'kuntratt jew b'xi provvediment legiſlattiv, regolatorju jew amministrattiv u m'għandu jinvolti lil dawk il-persuni f'ebda responsabbiltà. Dak il-kxif għandu jitgħarraf fl-istess hin lill-bord tad-diretturi tal-istituzzjoni ta' kreditu kemm-il darba ma jkunx hemm raġunijiet serji biex ma jsirx hekk.";

(b) is-subartikolu (2) tiegħu għandu jiġi mħassar;

(c) is-subartikoli (3), (4) u (5) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2), (3) u (4) rispettivament;

(d) minnufih wara subartikolu (4) tiegħu, kif enumerat mill-ġdid, għandu jiżdied is-subartikolu (5) ġdid li ġej:

"(5) F'dak li għandu x'jaqsam ma' awditur ta' istituzzjoni ta' kreditu, dan l-artikolu għandu jkun japplika għal kull haġa li tinkwadra taht l-artikolu 31(9)."

Emenda tal-artikolu 28 tal-Att prinċipali.

**42.** Fil-paragrafu (a) tal-artikolu 28 tal-Att prinċipali, minflok il-kliem "fejn istituzzjoni ta' kreditu tikkonsidra li x'aktarx", għandhom jidhlu l-kliem "fejn l-istituzzjoni ta' kreditu li tistabbilixxi li x'aktarx".

Emenda tal-artikolu 29 tal-Att prinċipali.

**43.** L-artikolu 29 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (8) tiegħu għandu jiġi mħassar; u

(b) is-subartikolu (9) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (8).

Thassir tal-artikolu 29A tal-Att prinċipali.

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

Emenda tal-artikolu 30 tal-Att prinċipali.

**45.** L-artikolu 30 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem "Kull istituzzjoni ta' kreditu għandha, mhux mhux aktar tard minn", għandhom jidhlu l-kliem "Kull istituzzjoni ta' kreditu u, meta jkun japplika, kumpanniji *holding* finanzjarji u kumpanniji *holding* finanzjarji mħallta, għandhom, mhux aktar tard minn"; u

(b) minflok il-kliem "tar-reżokontijiet finanzjarji verifikati tagħha magħmula", għandhom jidhlu l-kliem "tar-reżokontijiet finanzjarji verifikati jew tar-reżokontijiet

finanzjarji konsolidati tagħha, kif jista' jkun japplika, magħmula".

46. Minnufih wara l-artikolu 30 tal-Att prinċipali, għandu jżied l-artikolu 30A ġdid li ġej:

Żieda tal-artikolu 30A ġdid mal-Att prinċipali.

"Htiġiet speċifiċi ta' pubblikazzjoni.

30A. (1) L-awtorità kompetenti tista' tkun teħtieġ lil istituzzjonijiet ta' kreditu -

(a) jipubblikaw informazzjoni msemmija fit-Taqsima Tmienja tal-CRR aktar minn darba fis-sena u li jiġu stabbiliti t-termini għall-pubblikazzjoni;

(b) jużaw il-mezzi u postijiet speċifiċi għal dawg il-pubblikazzjonijiet li ma jkunux stqarrijiet finanzjarji.

(2) L-awtorità kompetenti tista' teħtieġ lil imprizi prinċipali jipubblikaw ta' kull sena, jew kollhom kemm huma jew b'referenza għal informazzjoni ekwivalenti, deskrizzjoni tal-istruttura legali tagħhom u tal-governanza u tal-istruttura organizzattiva tal-grupp ta' istituzzjonijiet kif hemm fl-Artikolu 14(3), fl-Artikolu 74(1) u fl-Artikolu 109(2) tar-CRD."

47. Minflok is-subartikolu (9) tal-artikolu 31 tal-Att prinċipali, għandu jidhol dan li ġej:

Emenda tal-artikolu 31 tal-Att prinċipali.

"(9) Fil-kapaċità tiegħu bħala awditur ta' istituzzjoni ta' kreditu jew bħala riżultat ta' talba diretta tal-awtorità kompetenti taħt l-artikolu 20 jew taħt l-artikolu 22, awditur għandu minnufih jgħarraf lill-awtorità kompetenti b'kull fatt jew deċiżjoni li jolqtu lil dik l-istituzzjoni ta' kreditu u li huwa jkun sar jaf bihom fil-qadi ta' dmirijietu, u li jistgħu -

(a) ikunu jikkostitwixxu kontravvenzjoni materjali ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin taħtu li jkunu jstabilixxu l-kondizzjonijiet tal-liċenza jew li jkunu speċifikament jirregolaw l-attivitajiet tal-istituzzjonijiet ta' kreditu;

(b) jolqtu t-tħaddim kontinwu tal-istituzzjoni ta' kreditu;

(c) jolqtu lid-depożitaturi tal-istituzzjoni ta' kreditu, tal-friegħi f'Malta ta' istituzzjoni ta' kreditu awtorizzata minn awtorità regolatorja barranija jew ta' xi

persuna konnessa li tkun istituzzjoni ta' kreditu;

(d) iwasslu għal rifjut ta' ċertifikazzjoni tal-kontijiet jew li jingħataw riservi:

Iżda l-awditur ikollu wkoll id-dmir li jirraporta kull fatt jew deċiżjoni li jsir jaf bihom waqt li jkun qiegħed iwettaq il-kompiti tiegħu f'impriza li jkollha rabtiet mill-qrib u li jirriżultaw minn relazzjoni ta' kontroll ma l-istituzzjoni ta' kreditu li fiha jkun qiegħed iwettaq dak il-kompitu."

Emenda tal-artikolu 32 tal-Att prinċipali.

**48.** Fil-paragrafu (a) tas-subartikolu (1) tal-artikolu 32 tal-Att prinċipali, minflok il-kliem "li kellu l-liċenza tiegħu imħassra skont l-artikolu 9(2)," għandhom jidhlu l-kliem "li kellu l-liċenza tiegħu rtirata taht l-artikolu 9(2);".

Emenda tal-artikolu 33 tal-Att prinċipali.

**49.** Minflok il-paragrafu (b) tal-artikolu 33 tal-Att prinċipali, għandu jidhol dan li ġej:

"(b) biex jiżgura li ebda informazzjoni skorretta ma tiġi provduta lill-awtorità kompetenti sew xjentement sew b'riżultat ta' negliġenza gravi."

Emenda tal-artikolu 34 tal-Att prinċipali.

**50.** L-artikolu 34 tal-Att prinċipali għandu jiġi emendat kif ġej:

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

(i) il-paragrafu (b) tiegħu għandu jiġi mħassar;

(ii) il-paragrafi (ċ) u (d) tiegħu għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (b) u (ċ) rispettivament;

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

"(4) L-uffiċjali tal-awtorità kompetenti u tal-Bank Ċentrali, inklużi uffiċjali passati u preżenti, kif ukoll awdituri jew esperti li jaġixxu f'isem l-awtorità kompetenti jew il-Bank Ċentrali, għandhom ikunu regolati bl-obbligu tas-segretezza professjonali u m'għandhomx jikxfu informazzjoni miksuba minn istituzzjonijiet ta' kreditu fil-kors ta' twettiq ta' dmirijiet ta' sorveljanza u ta' dmirijiet oħra kemm-il darba dak il-kxiif ta' informazzjoni ma jsirx f'forma sommarja jew kollettiva, hekk li ma tkunx tista' tintgħaraf l-identità tal-istituzzjoni ta' kreditu li dik l-

informazzjoni tkun ingħatat dwarha, mingħajr preġudizzju għad-dispożizzjonijiet tal-Kodiċi Kriminali:

Iżda dawk l-uffiċjali, awdituri jew esperti jistgħu jikxfu informazzjoni bħal dik għall-iskop tat-twettiq ta' dmirijiethom jew tal-eżerċizzju tal-funzjonijiet tagħhom, jew meta dawn ikunu legalment meħtieġa jagħmlu dan minn xi Qorti jew taħt xi dispożizzjoni ta' xi liġi:

Iżda wkoll meta istituzzjoni ta' kreditu tkun giet dikjarata bħala falluta jew tkun qegħda tiġi xolta, tista' tinkixef informazzjoni kunfidenzjali li ma tkunx tolqot terzi involuti f'tentattivi li jsalvaw dik l-istituzzjoni ta' kreditu fi proċedimenti ċivili jew kummerċjali.";

(è) is-subartikolu (5) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (6);

(d) minnufih wara s-subartikolu (4) tiegħu, għandu jiżdied dan is-subartikolu (5) ġdid li ġej:

"(5) Id-dispożizzjonijiet tas-subartikolu (4) m'għandhomx jipprevjenu lill-awtorità kompetenti milli tiskambja informazzjoni mal-awtoritajiet regolatorji barranin jew milli twassal informazzjoni lill-ESRB, lill-EBA jew lill-Awtorità Ewropea dwar Titoli u Swieq imwaqqfa bir-Regolament (UE) Nru. 1095/2010, kif hemm fl-Att u f'kull regolament magħmul u Regoli Bankarji maħruġin taħt li jittrasponu l-CRD, u l-CRR u ma' Direttivi oħra li japplikaw għal istituzzjonijiet ta' kreditu, fl-artikolu 15 tar-Regolament (UE) Nru. 1092/2010, fl-artikoli 31, 35 u 36 tar-Regolament (UE) Nru. 1093/2010 u fl-Artikoli 31 u 36 tar-Regolament (UE) Nru. 1095/2010. Dik l-informazzjoni għandha tkun bla ħsara għad-dispożizzjonijiet tas-subartikolu (4):

Iżda d-dispożizzjonijiet ta' dak is-subartikolu (4) m'għandhomx jipprevjenu lill-awtorità kompetenti milli tippubblika l-eżitu tal-eżamijiet ta' tensjoni magħmulin kif hemm fir-Regolamenti dwar l-Att dwar il-Kummerċ Bankarju (Reviżjoni Superviżorja) jew l-Artikolu 32 tar-Regolament (UE) Nru. 1093/2010 jew milli twassal l-eżitu tal-eżamijiet ta' tensjoni lill-EBA għall-fini tal-pubblikazzjoni mill-EBA tar-riżultati tal-eżamijiet ta' tensjoni li jkunu saru mal-Unjoni kollha.";

(e) minnufih wara s-subartikolu (6) tiegħu, kif enumerat

mill-ġdid, għandhom jiżdiedu s-subartikoli (7), (8) u (9) ġodda li ġejjin:

"(7) Meta l-awtorità kompetenti tirċievi informazzjoni konfidenzjali taht dan l-artikolu, hija għandha tuża dik l-informazzjoni biss fil-kors ta' dmirijietha u biss għal xi wiehed minn dawn l-għanijiet li ġejjin -

(a) sabiex jiġi verifikat jekk ikunux qegħdin jiġu sodisfatti l-kondizzjonijiet li jirregolaw l-aċċess għall-attività tal-istituzzjonijiet ta' kreditu u sabiex tiġi faċilitata s-sorveljanza, fuq bażi mhux konsolidata jew konsolidata, dwar kif timxi dik l-attività, speċjalment fir-rigward tas-sorveljanza tal-likwidità, solvenza, riskji kbar u proċeduri amministrattivi u tal-kontijiet u mekkaniżmi interni ta' kontroll;

(b) sabiex jiġu imposti penali;

(ċ) f'appell kontra xi deċiżjoni tal-awtorità kompetenti inklużi l-proċedimenti fil-qorti kif hemm fl-artikolu 10;

(d) fi proċedimenti fil-qorti istitwiti kif hemm fid-disposizzjonijiet speċjali li hemm provdut dwarhom fil-liġijiet tal-Unjoni Ewropea kif adottati fil-qasam ta' istituzzjonijiet ta' kreditu.

(8) L-awtorità kompetenti, meta tkun qegħda tipproċessa d-*data* personali għall-finijiet tal-Att u ta' kull regolament magħmul u Regoli Bankarju maħruġin tahtu għandha tagħmel dan kif hemm fl-Att dwar il-Protezzjoni u l-Privatezza tad-*Data* u f'kull regolament magħmul tahtu u, meta jkun relevanti, mar-Regolament (KE) Nru. 45/2001 tal-Parlament Ewropew u tal-Kunsill tat-18 ta' Diċembru 2000 dwar il-protezzjoni ta' individwi fl-ipproċessar ta' data personali minn istituzzjonijiet u korpi tal-Komunità u dwar il-moviment liberu ta' dik id-*data*.

(9) I-dispożizzjonijiet tal-artikolu 25(2) u s-subartikoli (4), (5) u (7) ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju għall-poteri ta' investigazzjoni mogħtija lill-Parlament Ewropew kif hemm fl-Artikolu 226 tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea."

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

Sostituzzjoni tal-artikolu 35 tal-Att prinċipali.

- "Reati. 35. (1) Kull persuna li -
- (a) tonqos milli tosserva xi direttiva maħruġa mill-awtorità kompetenti taħt dan l-Att;
  - (b) mingħajr ma jkollha skużanti raġonevoli tibdel, trażżan, taħbi, teqred jew tirrifjuta li ġgib xi dokument li jkun legittimament meħtieġ li jingieb minn xi persuna taħt dan l-Att u regolamenti magħmulin jew Regoli Bankarji maħruġin tahtu;
  - (ċ) tagħmel xi dikjarazzjoni, wegħda jew tbassira li tkun taf li tkun qarrieqa, falza jew li tinganna, jew dizonestament taħbi xi fatti materjali;
  - (d) bi traskuraġni tagħmel (dizonestament jew mod ieħor) stqarrija, wegħda jew tbassira li tkun qarrieqa, falza jew li tinganna; jew
  - (e) tikser jew tonqos milli tħares id-disposizzjonijiet tal-artikoli 2A, 5(1) u (2), 6(1), 12, 13, 21(2), 22(7), 23(4), 24, 28(a), 29(7), 32, 33(b), u 34 (2) u (4),

tkun hatja ta' reat:

Iżda, fir-rigward tal-paragrafi (ċ) u (d), persuna tkun hatja ta' reat jekk hija tagħmel id-dikjarazzjoni, wegħda jew tbassira jew taħbi l-fatti bil-għan li tħajjar, jew tkun negligenti dwar jekk tistax tħajjar, lil xi persuna oħra (sew jekk tkun il-persuna li tkun saritilha d-dikjarazzjoni, il-wegħda jew it-tbassira sew jekk tkun il-persuna li jinħbew minnha l-fatti) -

- (i) li tagħmel, jew iżzomm lura milli tagħmel, depożitu magħha jew ma' xi persuna oħra; jew
- (ii) li tidhol, jew iżzomm lura milli tidhol, fi ftehim bl-iskop li tagħmel xi depożitu bħal dak:

Iżda wkoll, kif hemm fil-paragrafi (ċ) u (d) persuna ma tkunx haġja ta' reat kemm-il darba -

(i) tid-dikjarazzjoni, wegħda jew tbassira ma ssirx f'Malta jew minnha, jew il-fatti ma jiġux moħbija f'Malta jew minnha, jew l-arrangamenti jsiru f'Malta jew minnha biex issir id-dikjarazzjoni, il-wegħda jew it-tbassira li jsiru jew biex jinħbew il-fatti;

(ii) il-persuna li tkun se tithajjar jew li tista' tiġi hekk imħajra tkun tinsab f'Malta; jew

(iii) id-depożitu jsir jew kien kieku jsir, jew il-ftehim isir jew kien kieku jsir, f'Malta.

(2) Kull persuna li xjentement tkun parti fl-għemil jew tipprokura jew tgħin u thajjar l-għemil ta' xi reat taħt is-subartikolu (1), tkun haġja ta' reat u tista' tehel l-istess pjeni bħall-hati prinċipali.

(3) Kull persuna li tinsab haġja ta' reat għandha, meta tinsab haġja, tehel multa ta' mhux iżjed minn żewġ miljun Euro (€2,000,000) jew żmien ta' prigunerija ta' mhux iżjed minn tliet snin jew dik il-multa u prigunerija flimkien.

(4) M'għandhom jinbdew ebda proċedimenti għal reat taħt dan l-Att mingħajr l-awtorizzazzjoni tal-Avukat Ġenerali."

Sostituzzjoni  
tal-artikolu 35A  
tal-Att  
prinċipali.

**52.** L-artikolu 35A tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:



"Penalitajiet amministrattivi u miżuri amministrattivi oħra imposti mill-awtorità kompetenti.

35A. (1) Mingħajr preġudizzju għall-artikoli 35 u 35B u għal kull regolament magħmul taħt l-artikolu 3(1)(e), meta xi persuna tonqos milli thares xi wahda mill-kondizzjonijiet imposti fil-liċenza, u, jew meta l-awtorità kompetenti tkun sodisfatta li l-imġieba ta' persuna tkun tammonta għal ksur ta' xi dispożizzjoni ta' dan l-Att, jew ta' xi regolament magħmul jew Regoli Bankarji maħruġin tahtu, jew tal-CRR, jew dik il-persuna tkun naqset milli tikkonforma ruħha ma' xi direttiva maħruġa mill-awtorità kompetenti taħt dan l-Att, jew ma' xi regolament magħmul jew Regoli Bankarji maħruġin tahtu, jew mal-CRR, l-awtorità kompetenti tista', b'avviż bil-miktub u mingħajr ma tgħaddi għal ebda smigh fil-qorti, timponi fuq dik il-persuna penali amministrattiva ta' -

(a) sa darbtejn l-ammont tal-benefiċċju miksub mill-ksur meta dak il-benefiċċju jkun jista' jiġi stabbilit;

(b) fil-każ ta' persuna naturali, sa ħames miljun Euro (€5,000,000); jew

(c) fil-każ ta' persuna legali, sa 10% tal-qligħ nett totali annwali tal-impriża matul is-sena kummerċjali preċedenti inkluż il-qligħ gross li jikkonsisti f'imghax irċevut u dħul simili, fi dħul minn ishma u titoli oħra varjabbli jew fissi, u kummissjonijiet jew miżati li għandhom jithallsu kif imsemmi fl-Artikolu 316 tal-CRR:

Iżda, fil-każ ta' xi kumpannija sussidjarja ta' impriża prinċipali, id-dħul gross relevanti ikun id-dħul gross li jirriżulta mill-kont konsolidat tal-impriża prinċipali aħħarija fis-sena kummerċjali preċedenti.

(2) Il-Ministru jista', bil-parir tal-awtorità kompetenti, jagħmel regolamenti hekk kif jitqiesu li jkunu xierqa li jipprovdu għall-għemil u l-imposizzjoni ta' penaltajiet amministrattivi u miżuri amministrattivi oħra fuq id-detenturi ta' liċenza jew oħrajn hekk kif jista' jigi speċifikat fihom.

(3) Meta l-awtorità kompetenti tiddeċiedi li timponi penali amministrattiva, hija għandha tinnotifika lill-persuna li tkun qegħda tiġi imposta l-penali fuqha permezz ta' avviż bil-miktub.

(4) Meta l-persuna li tiġi notifikata bl-avviż imsemmi fis-subartikolu (3) -

(a) tonqos milli tħallas lill-awtorità kompetenti l-ammont tal-penali fi żmien tletin jum min-notifika tal-avviż, u tonqos milli tappella mid-deċiżjoni tal-awtorità kompetenti quddiem it-Tribunal dwar Servizzi Finanzjarji; jew

(b) tappella quddiem it-Tribunal dwar Servizzi Finanzjarji u tonqos fi żmien hmistax-il gurnata mid-deċiżjoni tat-Tribunal milli tħallas il-penali amministrattiva kif konfermata jew imnaqqsa minn dak it-Tribunal,

għaldaqstant, f'kull każ, l-ammont tal-penali amministrattiva, kif orġinarjament imposta jew imnaqqsa, kif jista' jkun il-każ, għandhom ikunu dovuti lill-awtorità kompetenti bħala dejn ċivili, u japplikaw id-disposizzjonijiet tas-subartikolu (5).

(5) Avviż kif imsemmi fis-subartikolu (3), jew id-deċiżjoni tat-Tribunal dwar Servizzi Finanzjarji, kif jista' jkun il-każ, għandu malli ssir in-notifika permezz ta' kopja tal-att ġudizzjarji lill-persuna indikata fl-avviż, jikkostitwixxi titolu eżekuttiv għall-effetti u l-għanijiet kollha tat-Titolu VII tal-Parti I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(6) L-imposizzjoni mill-awtorità kompetenti ta' penali amministrattiva kif hawn f'dan l-artikolu għandu jkun mingħajr preġudizzju għal kull konsegwenza oħra ta' xi azzjoni jew ommissjoni tal-hati taħt id-dritt ċivili jew kriminali:

Izda fil-każijiet kollha fejn l-awtorità kompetenti timponi penali amministrattiva dwar xi haġa li ssir jew li tonqos milli ssir minn xi persuna u dik l-azzjoni jew ommissjoni jkunu jikkostitwixxu wkoll reat kriminali, ma jistgħu jinbdew jew jitkomplew ebda proċeduri kontra dik il-persuna dwar dak ir-reat kriminali."

**53.** Minnufih wara l-artikolu 35A tal-Att prinċipali, għandu jizzied l-artikolu 35B ġdid li ġej:

Żieda tal-artikolu ġdid 35B tal-Att prinċipali.

"Pubblikazzjoni ta' penalitajiet amministrattivi.

35B. (1) L-awtorità kompetenti għandha tippubblika, fuq is-sit elettroniku uffiċjali tagħha u fuq kull mezz oħra hekk kif jidhrilha xieraq, kull penali jew penalitajiet amministrattivi imposti taħt id-disposizzjonijiet ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin tahtu, u l-CRR. Dawk il-pubblikazzjonijiet għandhom ikunu jinkludu informazzjoni fuq it-tip u x-xorta tal-ksur u l-identità tal-persuna li fuqha tiġi imposta l-penali, mingħajr dewmien żejjed wara li dik il-persuna tiġi informata b'dawk il-penali:

Izda f'dawk il-każijiet fejn isir appell mill-persuna li fuqha jkunu ġew imposti dik il-penali jew dawk il-penalitajiet amministrattivi, l-awtorità kompetenti għandha, mingħajr ebda dewmien żejjed, tippubblika wkoll fuq is-sit elettroniku uffiċjali tagħha u fuq kull mezz oħra hekk kif jidhrilha xieraq, informazzjoni dwar l-istat tal-appell u r-riżultat tiegħu.

(2) L-awtorità kompetenti għandha tippubblika l-penalitajiet imposti taħt id-disposizzjonijiet ta' dan l-Att u ta' kull regolament magħmul jew Regoli Bankarji maħruġin tahtu, u tal-CRR, fuq bażi anonima, f'kull ċirkostanza minn dawn li ġejjin:

(a) meta l-penali tiġi imposta fuq persuna naturali u, wara stima obligatorja li ssir minn qabel, il-pubblikazzjoni ta' data personali tirriżulta li tkun sproporzjonata;

(b) meta l-pubblikazzjoni tkun tipperikola l-istabbiltà tas-swieq finanzjarji jew ta' xi investigazzjoni kriminali li tkun għaddejja;

(ċ) meta l-pubblikazzjoni tikkaguna, sakemm ikun jista' jiġi stabbilit, ħsara sproporzjonata lill-istituzzjonijiet ta' kreditu jew lill-persuni naturali involuti:

Iżda, fir-rigward tal-paragrafi (a), (b) u (ċ), il-pubblikazzjoni fuq bazi anonima f'xi ċirkostanzi bħal dawk għandha tkun miżura eċċezzjonali li jkun jeħtieġilha li tiġi gustifikata permezz ta' rapport dettaljat kompilat mill-awtorità kompetenti:

Iżda wkoll, meta ċ-ċirkostanzi msemmija f'dan is-subartikolu x'aktarx li jieqfu f'perjodu ta' zmien raġonevoli, il-pubblikazzjoni taht dan l-artikolu tista' tiġi posposta għal dak il-perjodu ta' zmien.

(3) L-informazzjoni pubblikata kif hawn f'dan l-artikolu għandha tibqa' fuq is-sit elettroniku uffiċjali tal-awtorità kompetenti għal perjodu ta' mhux inqas minn hames snin. Id-*data* personali għandha tinzamm fuq is-sit elettroniku uffiċjali tal-awtorità kompetenti u fuq kull mezz ieħor li jkun jidhrilha xieraq għall-perjodu meħtieġ biss, kif hemm fid-dispożizzjonijiet tal-ligijiet ta' Malta fuq il-protezzjoni tad-*data*."

Emenda tal-Iskeda li tinsab mal-Att prinċipali.

**54.** Fl-Iskeda li tinsab mal-Att prinċipali, minflok il-kliem "(Artikolu (2(3)))", għandhom jidhlu l-kliem "(Artikolu 2(2))".

### **Ghanijiet u Raġunijiet**

L-ghan ta' dan l-Abbozz huwa biex jittrasponi d-disposizzjonijiet rilevanti tad-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività tal-istituzzjonijiet ta' kreditu u s-superviżjoni prudenzjali ta' istituzzjonijiet ta' kreditu u ditti ta' investment, li temenda d-Direttiva 2002/87/KE u tħassar id-Direttivi 2006/48/KE u 2006/49/KE, kif ukoll li jipprovdi għal hwejjeġ ancillari jew incidentali għalihom.

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**BILL**  
**entitled**

*AN ACT to amend the Banking Act, Cap. 371, and to provide for matters ancillary or incidental thereto.*

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

Short title.

**1.** The short title of this Act is the Banking (Amendment) Act, 2015, and this Act shall be read and construed as one with the Banking Act, hereinafter referred to as "the principal Act".

Cap. 371.

Amendment of article 2 of the principal Act.

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

(a) the definition "Advanced Measurement Approach" shall be deleted;

(b) for the definition " "bank" or "credit institution" ", there shall be substituted the following:

" "bank" or "credit institution" "shall have the same meaning as that assigned to it in point (1) of Article 4(1) of the CRR;"

(c) for the definition "branch", there shall be substituted the following:

" "branch" shall have the same meaning as that assigned to it in point (17) of Article 4(1) of the CRR;"

(d) in the definition "business of banking", for the words "set out in subarticle (2)", there shall be substituted the words "set out in article 2A";

(e) the definition "Capital Adequacy Directive" shall be

deleted;

(f) the definition "Capital Requirements Directive" shall be deleted;

(g) for the definition "close links", there shall be substituted the following:

" "close links" shall have the same meaning as that assigned to it in point (38) of Article 4(1) of the CRR;"

(h) the definition "connected persons" shall be deleted;

(i) the definition "consolidating supervisor" shall be deleted;

(j) immediately after the definition "court", there shall be added the following new definition:

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

(k) immediately after the definition "credit facility", there shall be added the following new definition:

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

(l) immediately after the definition "deposit", there shall be added the following new definitions:

" "Directive 2004/39/EC" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as

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amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Directive 2004/109/EC" means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

(m) for the definition "EBA", there shall be substituted the following:

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

(n) the definition "EU parent credit institution" shall be deleted;

(o) the definition "EU parent financial holding company" shall be deleted;

(p) the definition "EU parent mixed financial holding company" shall be deleted;

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

" "ESCB central banks" shall have the same meaning as that assigned to it in point (45) of Article 4(1) of the CRR;

"ESFS" means European System of Financial Supervision;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010;

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

"financial instrument" shall have the same meaning as that assigned to it in point (50) of Article 4(1) of the CRR;



"financial sector entity" shall have the same meaning as that assigned to it in point (27) of Article 4(1) of the CRR;"

(r) for the definition "home Member State", there shall be substituted the following:

" "home Member State" shall have the same meaning as that assigned to it in point (43) of Article 4(1) of the CRR;"

(s) for the definition "host Member State", there shall be substituted the following:

" "host Member State" shall have the same meaning as that assigned to it in point (44) of Article 4(1) of the CRR;"

(t) for the definition "initial capital", there shall be substituted the following:

" "initial capital" shall have the same meaning as that assigned to it in point (51) of Article 4(1) of the CRR;"

(u) immediately after the definition "initial capital", there shall be added the following new definitions:

" "institution" shall have the same meaning as that assigned to it in point (3) of Article 4(1) of the CRR;

"insurance undertaking" shall have the same meaning as that assigned to it in point (5) of Article 4(1) of the CRR;

"investment firm" shall have the same meaning as that assigned to it in point (2) of Article 4(1) of the CRR;"

(v) the definition "Large Exposures Rule" shall be deleted;

(w) in the definition "Malta's international commitments", for the words "means commitments, responsibilities and obligations arising out of European Community law,", there shall be substituted the words "means commitments, responsibilities and obligations arising out of European Union law,";

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(x) for the definition "mixed financial holding company", there shall be substituted the following:

" "mixed financial holding company" shall have the same meaning as that assigned to it in point (21) of Article 4(1) of the CRR;"

(y) in the definition "outsourcing service provider", for the words "which may or may not be an licensed entity,", there shall be substituted the words "which may or may not be a licensed entity,";

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

" "own funds" shall have the same meaning as that assigned to it in point (118) of Article 4(1) of the CRR;

"parent undertaking" shall have the same meaning as that assigned to it in point (15) of Article 4(1) of the CRR;"

(aa) for the definition "qualifying shareholding", there shall be substituted the following:

" "qualifying holding" or "qualifying shareholding" shall have the same meaning as that assigned to it in point (36) of Article 4(1) the CRR;"

(bb) immediately after the definition "reconstruction", there shall be added the following new definitions:

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

"Regulation (EU) No 1093/2010" means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, as

amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

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

"Regulation (EU) No 1095/2010" means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"reinsurance undertaking" shall have the same meaning as that assigned to it in point (6) of Article 4(1) of the CRR;"

(cc) for the definition "representative office", there shall be substituted the following:

" "representative office" means, in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of Malta, premises outside Malta from which the business of banking is promoted or assisted in any way;"

(dd) immediately after the definition "representative office", as amended, there shall be added the following new definition:

" "senior management" means those natural persons who exercise executive function within a credit institution and who are responsible, and accountable to the board of directors, for the day-to-day management of the credit institution;"

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(ee) for the definition "subsidiary", there shall be substituted the following:

" "subsidiary" shall have the same meaning as that assigned to it in point (16) of Article 4(1) of the CRR;"

(ff) immediately after the definition "third country", there shall be added the following new definition:

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

(gg) sub-article (2) thereof shall be deleted;

(hh) sub-articles (3), (4) and (5) thereof shall be renumbered as sub-articles (2), (3) and (4) respectively; and

(ii) in sub-article (3) thereof, as renumbered, for the words "The objective of this Act is, in part, to implement the provisions of the Directive and the Capital Adequacy Directive," there shall be substituted the words "The objective of this Act is, in part, to transpose and implement the relevant provisions of the CRD and CRR,".

Addition of new article 2A to the principal Act.

**3.** Immediately after article 2 of the principal Act, there shall be added the following new article 2A:

"Prohibition from undertaking the business of banking.

2A. A person that is not a credit institution shall be prohibited from carrying on the business of taking deposits or other repayable funds from the public. A person shall be deemed to be accepting deposits of money as a regular feature of his business, if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

Provided that this article shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or European Union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors:

Provided further that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of this Act and any regulations made or Banking Rules issued thereunder."

4. Article 3 of the principal Act shall be amended as follows:
- (a) for sub-article (1)(a) thereof, there shall be substituted the following:

Amendment of article 3 of the principal Act.

"(1) The Minister, acting on the advice of the competent authority, may make, amend or revoke 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) transpose, implement and, or give effect to the requirements of the CRD and the CRR;"

(b) paragraphs (b) and (c) of sub-article (1) thereof shall be renumbered as paragraphs (c) and (e) respectively;

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

"(b) transpose Directive 2001/24/EC of the European Parliament and of the Council of the European Union of 4 April 2001 on reorganisation and winding-up of credit institutions with respect to credit institutions established in Malta and of branches of credit institutions established outside Malta, and different provisions may be made for different cases or classes of cases, and account shall be taken of Malta's international commitments in this regard. Such regulations may provide for the implementation of detailed re-organisation measures and procedures, including the following matters: the publication and submission of information in such language or languages and in such newspapers or other publications as may be prescribed; the submission of information to creditors, and the manner and procedure thereof; the notification to creditors and the procedure for the submission of claims or representations; measures for the protection of the rights of creditors and other third parties, including netting arrangements; consultation between the competent authority and any other regulatory, administrative or judicial authorities in Malta and outside Malta with competence over the winding-up or re-organisation of credit institutions or of branches thereof; the publication of decisions relating to such winding-up or re-organisation procedures; the establishment of Banking Rules governing the applicability of the proper or applicable law and other issues of conflict of laws;"

(d) in paragraph (c) of sub-article (1) thereof, as renumbered, for the words "The Minister, acting on the advice of the competent authority, may make regulations to transpose, implement and give effect", there shall be substituted the words "transpose, implement and, or give effect";

(e) immediately after paragraph (c) of sub-article (1) thereof, as renumbered, there shall be added the following new paragraph (d):

"(d) adopt, where necessary, any Communications issued by the European Commission;" and

(f) for paragraph (e) of sub-article (1) thereof, as renumbered, there shall be substituted the following:

"(e) prescribe that a breach of any regulations made under this Act may amount to a criminal offence as may be specified, and such regulations may impose punishments in respect of any breach, not exceeding a fine (*multa*) of two million Euro (€2,000,000) or imprisonment for a term not exceeding three years, or both such fine and imprisonment, and a higher fine (*multa*) may be imposed where deemed necessary or appropriate for any breach or failure of compliance with any EU Directive or EU Regulation or with any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation."

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

Amendment of article 4 of the principal Act.

(a) in sub-article (1) thereof, for the words "It shall be the duty of the competent authority to carry out the functions prescribed by this Act and any regulations or Banking Rules made thereunder and to ensure that credit institutions carrying on business in Malta comply with this Act and any regulations, directives and Banking Rules made thereunder and with the conditions of their licences.", there shall be substituted the words "It shall be the duty of the competent authority to carry out the functions and duties prescribed by this Act, any regulations made or Banking Rules issued thereunder and the CRR and to ensure that credit institutions carrying out their activities in Malta comply with this Act, any regulations, directives and Banking Rules made or issued thereunder, the CRR and with the conditions of their licences.";

(b) sub-articles (2), (3), (4) and (5) thereof shall be renumbered as sub-articles (6), (9), (10) and (11) respectively;

(c) immediately after sub-article (1) thereof, there shall be added the following new sub-articles (2), (3), (4) and (5) respectively:

S.L. 204.06.

"(2) The competent authority shall be the authority appointed for the purposes of Article 131(1) of the CRD and shall act jointly with the designated authority as appointed in terms of the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations.

(3) The competent authority shall notify the European Commission and the EBA of its functions and duties.

(4) The competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in the other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

(5) The competent authority shall monitor the activities of credit institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of the CRR and this Act and any regulations made or Banking Rules issued thereunder."

(d) in sub-article (6) thereof, as renumbered, for the words "of this Act and any regulations or Banking Rules made thereunder.", there shall be substituted the words, "of this Act and any regulations made thereunder.";

(e) immediately after sub-article (6) thereof, as renumbered, there shall be added the following new sub-articles (7) and (8):

"(7) The competent authority may make, amend or revoke Banking Rules as may be required for the purpose of implementing any guidelines, recommendations and individual decisions issued by the EBA under Articles 16, 17(3) and 18(3) of Regulation (EU) No 1093/2010.

(8) The competent authority may make, amend or revoke Banking Rules as may be required for the purpose



of implementing any opinions and recommendations issued by the ECB under Articles 127(4) and 132(1) of the Treaty on the Functioning of the European Union."; and

(f) sub-article (11) thereof, as renumbered, shall be deleted.

6. Article 4A of the principal Act shall be substituted by the following:

Substitution of article 4A of the principal Act.

"Supervisory practices.

4A. (1) In the exercise of its duties, the competent authority shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of this Act and any regulations made and Banking Rules issued thereunder transposing the CRD, and the CRR. For that purpose, the competent authority shall -

(a) as party to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between the competent authority and other parties to the ESFS in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;

(b) participate in the activities of the EBA and, as appropriate, in the colleges of supervisors;

(c) make every effort to comply with those guidelines and recommendations issued by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010;

(d) cooperate closely with the ESRB.

(2) The competent authority shall not be inhibited by other national legislative provisions in the performance of its duties as member of the EBA and the ESRB, or its duties under the CRD and the CRR."

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Addition of new article 4B to the principal Act.

7. Immediately after article 4A of the principal Act, there shall be added the following new article 4B:

"Power to issue directives.

4B. (1) Without prejudice to any of the powers conferred in this Act, the competent authority may, whenever it deems necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances in order to carry out the functions and duties prescribed by the Malta Financial Services Authority Act and by this Act and any regulations made or Banking Rules issued thereunder, and by the CRR.

(2) Any person to whom a notice is given in accordance with sub-article (1) shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article."

Amendment of article 5 of the principal Act.

8. Sub-article (2) of article 5 of the principal Act shall be amended as follows:

(a) for the words "open a branch, agency or office or set up any subsidiary in Malta", there shall be substituted the words "open a branch or agency or set up any subsidiary in Malta"; and

(b) in the proviso thereof, for the words "to exercise its rights under European Community Law.", there shall be substituted the words "to exercise its rights under European Union Law."

Amendment of article 6 of the principal Act.

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

(a) for sub-article (2) thereof, there shall be substituted the following:

"(2) All applications for a licence shall be in such form and accompanied by such information, including a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution, and shall conform with such requirements as may be prescribed from time to time by a Banking Rule. Such requirements shall be notified to the EBA:

Provided that before authorisation is granted or refused, an application may only be withdrawn by written notice to the competent authority.";

(b) in sub-article (3) thereof, for the words "whether to restrict or revoke a licence.", there shall be substituted the words "whether to restrict or withdraw a licence."; and

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

"(4) The competent authority shall not consider the economic needs of the market as a criterion when examining an application for a licence."

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

Amendment of article 7 of the principal Act.

(a) for sub-article (1) thereof, there shall be substituted the following:

"(1) No company shall be granted a licence unless -

(a) its initial capital amounts to not less than five million Euro (€5,000,000) or an equivalent amount in another currency as may be specified in a Banking Rule:

Provided that the competent authority may, by a provision contained in a Banking Rule or as required through a condition in a credit institution's licence, increase the amount laid down in this paragraph:

Provided further that the initial capital shall comprise only one or more of the items referred to in Article 26(1)(a) to (e) of the CRR;

(b) there are at least two individuals who effectively direct the business of the company;

(c) the competent authority is notified of the identities of the shareholders or members whether direct or indirect, that have qualifying holdings and of the amounts of those holdings or, where there are no qualifying holdings, of the twenty largest shareholders or members:

Provided that in determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account:

Provided further that voting rights or shares which institutions hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point (6) of Section A of Annex I to Directive 2004/39/EC shall not be taken into account, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition;

(d) the competent authority is satisfied that the shareholders or members mentioned in paragraph (c), controllers and all individuals who will effectively direct the business of the credit institution are suitable persons to ensure its sound and prudent management. The competent authority shall be satisfied with the suitability of the individuals who will effectively direct the business if the requirements referred to in article 14(2) are met. The competent authority shall be satisfied of the suitability of the shareholders or members mentioned in paragraph (c), in particular, where the criteria set out in article 13A(9) are met. Article 13A(8) and (10) and article 13B shall apply;

(e) the competent authority is satisfied that, where there are close links between the company and another person or persons, such links do not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of the company,

once in possession of a licence, under the provisions of this Act and any regulations made or Banking Rules issued thereunder:

Provided that the competent authority shall not grant authorisation where the laws, regulations or administrative provisions of a third country governing one or more persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations and administrative provisions, prevent the effective exercise of its supervisory functions:

Provided further that in respect of this paragraph (e), the credit institution shall inform the competent authority forthwith of any change in circumstances concerning the application of this said paragraph (e) and shall further provide the competent authority with the information necessary to monitor compliance with the conditions referred to in this paragraph (e) on a continuous basis.";

(b) in sub-article (5) thereof, for the words "such fact shall be deemed to constitute a refusal to grant a licence.", there shall be substituted the words "such fact shall be deemed to constitute a refusal to grant a licence and shall be subject to a right of appeal in accordance with article 10."; and

(c) for sub-article (7) thereof, there shall be substituted the following:

"(7) A credit institution licensed in terms of the Act shall have its head office and its registered office in Malta."

**11.** Immediately after article 7A of the principal Act, there shall be added the following new article 7B:

Addition of new article 7B to the principal Act.

"Prior consultation with overseas regulatory authorities.

7B. (1) The competent authority shall, before issuing a licence to a credit institution, consult the overseas regulatory authorities of another Member State where the credit institution is -

(a) a subsidiary of a credit institution authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a credit institution authorised in that other Member State;

(c) controlled by the same persons as those who control a credit institution authorised in that other Member State.

(2) The competent authority shall, before issuing a licence to a credit institution, consult the overseas regulatory authority that is responsible for the supervision of insurance undertakings or investment firms in the Member State concerned where the credit institution is -

(a) a subsidiary of an insurance undertaking or investment firm authorised in the European Union;

(b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the European Union;

(c) controlled by the same persons as those who control an insurance undertaking or investment firm authorised in the European Union.

(3) The competent authority shall consult with the relevant overseas regulatory authorities referred to in sub-articles (1) and (2) when assessing the suitability of the shareholders and the reputation and experience of the directors in terms of article 7(1)(d) involved in the management of another entity of the same group.

(4) The competent authority shall exchange any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance for the issuing of a licence and for the on-going assessment of compliance with the relevant overseas regulatory authorities referred to in sub-articles (1) and (2)."

Deletion of  
article 8 of the  
principal Act.

**12.** Article 8 of the principal Act shall be deleted.

- 13.** Article 9 of the principal Act shall be amended as follows: Amendment of article 9 of the principal Act.
- (a) for the marginal note thereof, there shall be substituted the following:

"Withdrawal and restriction of a licence.";

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

(i) paragraph (b) thereof shall be deleted and paragraphs (c), (d) and (e) shall be renumbered paragraphs (b), (c) and (d) respectively; and

(ii) for paragraph (d) thereof, as renumbered, there shall be substituted the following:

"(d) in the case of a credit institution licensed or holding an equivalent authorisation in a third country and which has been granted a licence under this Act to open a branch in Malta, has had its authorisation withdrawn by the overseas regulatory authority in the third country within which the credit institution has been authorised.";

- (b) for sub-article (2) thereof, there shall be substituted the following:

"(2) The competent authority may only restrict or withdraw the licence issued to a credit institution in any of the following cases where such a credit institution -

(a) does not make use of the licence within twelve months, expressly renounces the licence or has ceased to engage in business for more than six months, if no provision was made for the licence to lapse in such cases;

(b) has obtained the licence through false statements or any other irregular means;

(c) no longer fulfils the conditions under which the licence was issued;

(d) no longer meets the prudential requirements set out in Parts Three, Four or Six of the CRR or imposed under regulations 9(1)(a) and 10(1) and (2) of the Banking Act (Supervisory Review) Regulations or can no longer be relied on

to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;

(e) commits one of the breaches referred to in regulation 7(1) of the Administrative Penalties, Measures and Investigatory Powers Regulations;

(f) conceals from, or fails to notify to the competent authority of any document or information or change therein which it was its duty to reveal or notify under this Act or any regulations or Banking Rules issued thereunder;

(g) fails to comply with any of the provisions of this Act or any regulations made or Banking Rules issued thereunder or with the conditions under which the licence is issued;

(h) has insufficient assets to cover its liabilities;

(i) has suspended payment or is about to suspend payment.";

(c) in sub-article (5) thereof, for the words "intends to restrict or revoke a licence", there shall be substituted the words "intends to restrict or withdraw a licence", and for the words "shall not impose or vary any restriction or revoke a licence", there shall be substituted the words "shall not impose or vary any restriction or withdraw a licence";

(d) for sub-article (6) thereof there shall be substituted the following:

"(6) A licence granted for the establishment in Malta of a branch of a credit institution licensed or holding an equivalent authorisation in a third country may only be withdrawn after consultation with the overseas regulatory authorities of the country within which it has been authorised, unless the competent authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate."; and

(f) for sub-article (7) thereof there shall be substituted the following:



"(7) Upon the restriction or withdrawal of a licence of a credit institution licensed in Malta, the competent authority shall inform the overseas regulatory authorities of the countries in which the credit institution or its subsidiaries are carrying on the business of banking. The competent authority shall notify the EBA of every withdrawal of a licence together with the reasons for such a withdrawal."

**14.** Article 10 of the principal Act shall be substituted by the following: Substitution of article 10 of the principal Act.

"10. Any person who is aggrieved by a decision and, or measure taken pursuant to the Act, and any regulations made or Banking Rules issued thereunder, or the CRR by the competent authority, may appeal against the decision and, or measure to the Financial Services Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act."

**15.** Article 11 of the principal Act shall be amended as follows: Amendment of article 11 of the principal Act.

(a) in sub-article (2) thereof, for the words "agency or office or set up or acquire any subsidiary in any place outside Malta.", there shall be substituted the words "agency or representative office or set up or acquire any subsidiary in any place outside Malta:";

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

"Provided that a credit institution licensed in Malta which intends to exercise its rights under the European Passport Rights for Credit Institutions Regulations shall only be required to notify the competent authority in terms of the said Regulations.";

(c) in sub-article (3) thereof, for the words "A credit institution licensed in Malta shall be prohibited from opening a branch,", there shall be substituted the words "A credit institution licensed in Malta shall not establish a branch,"; and

(d) for sub-article (4) thereof, there shall be substituted the following:

"(4) Where Malta is the host Member State, the competent authority shall not require authorisation or

endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with article 17B, the European Passport Rights for Credit Institutions Regulations and regulation 13 of the Banking Act (Supervisory Review) Regulations."

Amendment of article 11A of the principal Act.

**16.** Article 11A of the principal Act shall be substituted by the following:

"11A. (1) The competent authority shall not apply provisions which result in more favourable treatment to a branch of a credit institution having its head office in a third country, than that accorded to branches of credit institutions having their head office in the European Union, when commencing or continuing to carry out their business.

(2) The competent authority shall notify the European Commission, the EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office in a third country."

Amendment of article 13 of the principal Act.

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

(a) for sub-article (5) thereof, there shall be substituted the following:

"(5) Credit Institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in article 13, inform the competent authority of those acquisitions or disposals:

Provided that credit institutions admitted to trading on a regulated market shall, at least annually, notify the competent authority of the names of the shareholders and members possessing qualifying holdings and the sizes of such holdings as shown by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market or as requested by the competent authority."; and

(b) in sub-article (7) thereof, for the words "a qualifying shareholding is, or is likely to, operate against the sound and prudent management of the credit institution," there shall be substituted the words "a qualifying shareholding is, or is likely,

to operate to the detriment of the sound and prudent management of the credit institution,".

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

Amendment of article 13A of the principal Act.

(a) for sub-article (6) thereof, there shall be substituted the following:

"(6) The competent authority may extend the interruption period referred to in sub-article (5) up to thirty working days if the proposed acquirer is -

(a) situated or regulated in a third country;  
or

(b) is a person not subject to supervision under -

(i) the CRD;

(ii) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as amended from time to time;

(iii) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time; or

(iv) Directive 2004/39/EC.";

(b) sub-articles (9), (10), (11), (12), (13) and (14) thereof shall be renumbered as sub-articles (10), (11), (12), (13), (14) and (15) respectively;

(c) immediately after sub-article (8) thereof, there shall be added the following new sub-article (9):

"(9) In assessing the notification provided for in article 13(1) and the information referred to in sub-articles (4) and (5) of this article, the competent authority shall, in

order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria -

(a) the reputation of the proposed acquirer;

(b) the reputation, knowledge, skills and experience, as set out in article 14(2), of any member of the board of directors and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

(d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Act and any regulations and Banking Rules issued thereunder, and the CRR, and where applicable, other European Union laws, in particular Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, as amended from time to time, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authority and the overseas regulatory authorities and determine the allocation of responsibilities among the competent authority and the overseas regulatory authorities;

(e) whether there are reasonable grounds to

suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.";

(d) for sub-article (10) thereof, as renumbered, there shall be substituted the following:

"(10) The competent authority may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in sub-article (9) or if the information provided by the proposed acquirer is incomplete.";

(e) in sub-article (11) thereof, as renumbered, for the words "If the competent authority decides to refuse the proposed acquisition,", there shall be substituted the words "If the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition,";

(f) in sub-article (12) thereof, as renumbered, for the words "If the competent authority does not refuse the proposed acquisition in writing", there shall be substituted the words "If the competent authority does not oppose the proposed acquisition in writing".

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

Amendment of  
article 13C of  
the principal  
Act.

(a) in paragraph (d) thereof, for the words "effect any material change in the voting rights.", there shall be substituted the words "effect any material change in the voting rights:"; and

(b) immediately after paragraph (d) thereof, there shall be added the following new proviso:

"Provided that this will be without prejudice to the provisions of the CRR on the conditions for reducing own funds.".

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Addition of new article 13D of the principal Act.

**20.** Immediately after article 13C of the principal Act, there shall be added the following new article 13D:

"Criteria for qualifying holdings.

13D. In determining whether the criteria for a qualifying shareholding are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that same Directive, shall be taken into account:

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 credit institutions may hold as a result of providing the underwriting of financial instruments on a firm commitments basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition."

Amendment of article 14 of the principal Act.

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

(a) sub-articles (2), (3), (4) and (5) thereof shall be renumbered as sub-articles (8), (9), (10) and (11) respectively;

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

"(2) Directors shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the board of directors shall reflect an adequately broad range of experiences:

Provided that directors shall, in particular, fulfil the following requirements:

(a) All directors shall commit sufficient time to perform their functions in the credit institution;

(b) The number of directorships which may be held by a director at the same time shall take

into account individual circumstances and the nature, scale and complexity of the credit institution's activities. A director of a credit institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time -

(i) one directorship having an executive role with two directorships having a non-executive role;

(ii) four directorships having a non-executive role;

(c) For the purposes of paragraph (b), the following shall count as a single directorship -

(i) directorships having an executive or non-executive role held within the same group;

(ii) directorships having an executive or non-executive role held within -

(aa) credit institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of the CRR are fulfilled; or

(bb) undertakings (including non-financial entities) in which the credit institution holds a qualifying holding.

(3) The following directorships shall not be taken into consideration for the purposes of sub-article (2)(b):

(a) directors who are directly or indirectly appointed to represent the interests of the Government of Malta; and

(b) directors appointed in organisations which do not pursue predominantly commercial objectives, including directorships in non-profit-making or charitable organisations.

(4) The competent authority may authorise directors to hold one additional directorship having a non-executive role. The competent authority shall notify the EBA of such authorisations on a regular basis.

(5) The board of directors shall possess adequate collective knowledge, skills and experience to be able to understand the credit institution's activities, including the main risks.

(6) Each director shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

(7) The directors of a financial holding company or mixed financial holding company, being a parent to a credit institution, shall be of sufficiently good repute and possess sufficient knowledge skills and experience as referred to in subarticle (2) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company."

Amendment of article 15 of the principal Act.

**22.** Sub-article (1) of article 15 of the principal Act shall be amended as follows:

(a) paragraph (d) thereof shall be deleted; and

(b) paragraphs (e) and (f) thereof shall be renumbered paragraphs (d) and (e) respectively.

Deletion of article 15A of the principal Act.

**23.** Article 15A of the principal Act shall be deleted.

Deletion of article 16 of the principal Act.

**24.** Article 16 of the principal Act shall be deleted.

Deletion of article 16A of the principal Act.

**25.** Article 16A of the principal Act shall be deleted.

Addition of new article 16B to the principal Act.

**26.** Immediately after article 16A of the principal Act, there shall be added the following new article 16B:



"Capital buffers. 16B. The competent authority shall issue a Banking Rule as it shall consider appropriate for the regulation of capital buffers."

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

Deletion of article 17 of the principal Act.

**28.** Article 17A of the principal Act shall be substituted by the following:

Substitution of article 17A of the principal Act.

"Measures aimed at addressing credit risks. 17A. The competent authority may issue a Banking Rule as it considers appropriate for the implementation of measures aimed at addressing credit risks arising from the assessment of the quality of a credit institution's asset portfolio."

**29.** Article 17B of the principal Act shall be amended as follows:

Amendment of article 17B of the principal Act.

(a) for the marginal note thereof, there shall be substituted the following:

"Internal governance and recovery plans."; and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-articles (3) and (4):

"(3) Every credit institution shall also ensure that its internal control mechanisms and administrative and accounting procedures permit the checking of compliance with the rules adopted in accordance with the provisions of this Act and any regulations made or Banking Rules issued thereunder, and the CRR at all times.

(4) Every credit institution shall have in place a recovery plan for the restoration of its financial situation following a significant deterioration in accordance with any regulations made under this Act."

**30.** Article 17D of the principal Act shall be deleted.

Deletion of article 17D of the principal Act.

**31.** Immediately after article 17D of the principal Act, there shall be added the following new article 17E:

Addition of new article 17E to the principal Act.

"Supervisory measures.

17E. (1) The competent authority shall require a credit institution to take the necessary measures at an early stage to address relevant problems in circumstances where -

(a) the credit institution does not meet the requirements of the Act, regulations made or Banking Rules issued thereunder, or of the CRR;

(b) the competent authority has evidence that the credit institution is likely to breach the Act, regulations made or Banking Rules issued thereunder, or the provisions of the CRR, within the following twelve months.

(2) For the purposes of sub-article (1), the powers of the competent authority shall include the supervisory powers referred to in regulation 9 of the Banking Act (Supervisory Review) Regulations.

(3) The competent authority shall apply supervisory measures in accordance with the level of application of the requirements of Part One, Title II of the CRR."

Amendment of article 19 of the principal Act.

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

(a) for paragraph (c) of sub-article (1) thereof, there shall be substituted the following:

"(c) all the information necessary for the assessment of its compliance with the rules adopted in accordance with the CRR, this Act and any regulations or Banking Rules issued thereunder;"

(b) sub-articles (3), (4) and (5) thereof shall be renumbered as sub-articles (4), (5) and (6) respectively;

(c) immediately after sub-article (2) thereof, there shall be added the following new sub-article (3):

"(3) A credit institution shall register all its

transactions and document systems and processes, which are subject to the CRR and this Act and any regulations or Banking Rules issued thereunder, in such a manner that the competent authority would be able to verify compliance with the requirements of the CRR and this Act and any regulations or Banking Rules issued thereunder at all times."; and

(d) in subarticle (4) thereof, as renumbered, for the words "to all branches, agencies or offices", there shall be substituted the words "to all branches or agencies".

**33.** For sub-article (1) of article 20 of the principal Act there shall be substituted the following: Amendment of article 20 of the principal Act.

"(1) Every credit institution licensed in terms of the Act, and where applicable, a financial holding company or a mixed financial holding company, shall submit to the competent authority any information which it may reasonably require in the exercise of its duties under this Act and any regulations made or Banking Rules issued thereunder and the CRR, and the competent authority may enquire into and ask for clarification of any information so submitted."

**34.** In sub-article (1) of article 21 of the principal Act, for the words "Any officer, employee or agent of the competent authority", there shall be substituted the words "Any officer, employee, agent or inspector of the competent authority". Amendment of article 21 of the principal Act.

**35.** In sub-article (1) of article 22 of the principal Act, for the words "one or more competent persons to investigate and report on", there shall be substituted the words "one or more competent persons, as inspectors, to investigate and report on". Amendment of article 22 of the principal Act.

**36.** For sub-article (1) of article 23 of the principal Act, there shall be substituted the following: Amendment of article 23 of the principal Act.

"(1) Where the competent authority has reasonable grounds for suspecting that a person has contravened or has failed to comply with any provision of this Act and any regulations or Banking Rules issued thereunder, it may by notice in writing require that person or any other person -

(a) to provide at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected contravention or failure to comply;

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(b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description as may be specified which it may reasonably require for that purpose;

(c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such a contravention or failure to comply has occurred."

Amendment of  
article 25 of the  
principal Act.

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

(a) for sub-article (1) thereof, there shall be substituted the following:

"(1) On the basis of Malta's international commitments, the competent authority may share its supervisory duties with overseas regulatory authorities in the case of a credit institution licensed in terms of this Act and operating in the country of such overseas regulatory authority or a branch established in Malta and having its head office in another Member State.";

(b) for sub-article (2) thereof, there shall be substituted the following:

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

(c) for sub-article (3) thereof, there shall be substituted the following:

"(3) The competent authority may also conclude

cooperation agreements, providing for exchanges of information, with third country overseas regulatory authorities or with authorities or bodies of third countries in accordance with sub-articles (7) and (8), only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5) are complied with:

Provided that such exchange of information shall be for the purpose of performing the supervisory tasks of the authorities or bodies mentioned in this sub-article:

Provided further that where the information originates in another Member State, it shall only be disclosed with the express agreement of the overseas regulatory authority which has disclosed it, and where appropriate, solely for the purposes for which the overseas regulatory authority gave its agreement.";

(d) in sub-article (5) thereof, for the words "credit institutions having their head office in the country of the overseas regulatory authority making the inspection.", there shall be substituted the words "credit institutions having their head office in the country of the overseas regulatory authority making the inspection:";

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

"Provided that on-the-spot checking and inspection of branches established in Malta of credit institutions authorised in another Member State, shall be carried out in accordance with the European Passport Rights for Credit Institutions Regulations.";

(f) for sub-article (6) thereof, there shall be substituted the following:

"(6) Nothing in this Act shall prevent the competent authority from transmitting information to the following for the purposes of their tasks -

(a) the Central Bank, ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their

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respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;

(b) contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(c) where appropriate, other public authorities responsible for overseeing payment systems;

(d) the ESRB, the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 and the European Securities and Markets Authority established by Regulation (EU) No 1095/2010, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/2010 or (EU) No 1095/2010:

Provided that the competent authority shall take the appropriate measures to remove obstacles preventing it from transmitting information in accordance with this sub-article:

Provided further that information received in accordance with this sub-article shall be subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5):

Provided further that in an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system, the competent authority shall communicate without delay information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and to the ESRB where such information is relevant for

the exercise of its statutory tasks.";

(g) sub-articles (7) and (8) thereof shall be renumbered as sub-articles (12) and (13) respectively;

(h) immediately after sub-article (6) thereof, there shall be added the following new sub-articles (7), (8), (9), (10) and (11):

"(7) The provisions of article 34(4), (5) and (7) shall not preclude the exchange of information between the competent authority and other authorities in Malta; between the competent authority and overseas regulatory authorities in other Member States; or between the competent authority and the following, in the discharge of their supervisory functions -

(a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;

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

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

(d) contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(e) bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures;

(f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions:

Provided that the provisions of article 34(4), (5) and (7) shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions:

Provided further that the information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5).

(8) Notwithstanding the provisions of sub-article (3) of this article and article 34(4), (5) and (7), the competent authority may exchange information with the authorities responsible for overseeing -

(a) the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(b) contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(c) persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions:

Provided that in the cases referred to in this sub-article, the competent authority shall require fulfilment of at least the following conditions:

(i) that the information is exchanged for the purpose of performing the tasks referred to in this sub-article;

(ii) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and 5;

(iii) where the information originates in another Member State, that it is not disclosed without the express agreement of the overseas regulatory authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement:

Provided further that where the authorities or bodies referred to in this sub-article perform their task of detection or investigation through the assistance of persons appointed for that purpose in view of their specific competence and not employed in the public sector, the



competent authority may exchange information with the authorities or bodies responsible under the law for the detection and investigation of breaches of company law, to such persons, and shall require the fulfilment of at least the following conditions:

(i) that the information is exchanged for the purpose of detecting and investigating breaches of company law;

(ii) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5);

(iii) where the information originates in another Member State, that it is not disclosed without the express agreement of the overseas regulatory authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(9) Notwithstanding the provisions of article 34(4), (5) and (7), the competent authority may authorise the disclosure of certain information to other government departments of other Member States' central government administrations responsible for legislation on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments:

Provided that such disclosures may be made only where necessary for reasons of prudential supervision and prevention and resolution of failing credit institutions. Without prejudice to sub-article (10), persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5):

Provided further that in an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system, the competent authority may disclose information which is relevant to the departments referred to in this sub-article in all Member States concerned.

(10) The competent authority may disclose certain information relating to the prudential supervision of credit institutions to parliamentary enquiry committees, courts of auditors and other entities in charge of enquiries in Malta, under the following conditions -

(a) that the entities have a precise mandate under Maltese law to investigate or scrutinise the actions of the competent authority or for laws on the supervision of credit institutions;

(b) that the information is strictly necessary for fulfilling the mandate referred to in paragraph (a);

(c) the persons with access to the information are subject to professional secrecy requirements at least equivalent to those referred to in article 34(4) and (5);

(d) where the information originates in another Member State, such information shall not be disclosed without the express agreement of the overseas regulatory authorities which have disclosed it and, solely for the purposes for which those overseas regulatory authorities gave their agreement:

Provided that where the disclosure of information relating to prudential supervision involves the processing of personal data, any processing by the entities referred to in this sub-article shall comply with the Data Protection Act and any regulations made thereunder.

(11) The competent authority shall not disclose in terms of sub-articles (9) and (10), any information received under Article 52, Article 53(2) and Article 56 of the CRD, except with the express consent of the overseas regulatory authority of the Member State in which such an on-the-spot check or inspection was carried out or of the overseas regulatory authority of the Member State which disclosed such information.";

(i) in the first proviso to sub-article (12) thereof, as renumbered, for the words "subject to the conditions of professional secrecy:", there shall be substituted the words "subject to the conditions of professional secrecy at least

equivalent to those referred to in article 34(4) and (5):"; and

(j) immediately after sub-article (13) thereof, as renumbered, there shall be added the following new sub-article (14):

"(14) For the purposes of this article, "financial institution" shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR."

**38.** Article 25A of the principal Act shall be substituted by the following:

Substitution of article 25A of the principal Act.

"25A. The competent authority shall cooperate closely with overseas regulatory authorities in all matters with respect to supervision on a consolidated basis. Such cooperation shall be regulated through the Supervisory Consolidation Regulations."

**39.** Article 25B of the principal Act shall be deleted.

Deletion of article 25B of the principal Act.

**40.** Article 25C of the principal Act shall be deleted.

Deletion of article 25C of the principal Act.

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

Amendment of article 26 of the principal Act.

(a) for sub-article (1) thereof, there shall be substituted the following:

"(1) The disclosure in good faith to the competent authority by -

(a) an auditor of a credit institution; or

(b) a person appointed to make a report under article 20(3)(a) or article 22(1),

of any fact or decision referred to in article 31(9) shall not constitute a breach of any restriction or disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability. Such disclosure shall be made simultaneously to the board of directors of the credit institution unless there are compelling reasons not to do so.";

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

(c) sub-articles (3), (4) and (5) thereof shall be renumbered sub-articles (2), (3) and (4) respectively; and

(d) immediately after sub-article (4) thereof, as renumbered, there shall be added the following new sub-article (5):

"(5) In relation to an auditor of a credit institution, this article shall apply to any matter falling within article 31(9).".

Amendment of article 28 of the principal Act.

**42.** In paragraph (a) of article 28 of the principal Act, for the words "where a credit institution considers that it is likely", there shall be substituted the words "where a credit institution establishes that it is likely".

Amendment of article 29 of the principal Act.

**43.** Article 29 of the principal Act shall be amended as follows:

(a) sub-article (8) thereof shall be deleted; and

(b) sub-article (9) thereof shall be renumbered as sub-article (8).

Deletion of article 29A of the principal Act.

**44.** Article 29A of the principal Act shall be deleted.

Amendment of article 30 of the principal Act.

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

(a) for the words "Every credit institution shall, not later than", there shall be substituted the words "Every credit institution and, where applicable, financial holding companies and mixed financial holding companies, shall, not later than"; and

(b) for the words "audited financial statements drawn up", there shall be substituted the words "audited financial statements or consolidated financial statements, as may be applicable, drawn up".

Addition of new article 30A to the principal Act.

**46.** Immediately after article 30 of the principal Act, there shall be added the following new article 30A:

"Specific  
publication  
requirements.

30A. (1) The competent authority may require credit institutions -

(a) to publish information referred to in Part Eight of the CRR more than once per year and to set deadlines for publication;

(b) to use specific media and locations for publications other than the financial statements.

(2) The competent authority may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Article 14(3), Article 74(1) and Article 109(2) of the CRD."

47. For sub-article (9) of article 31 of the principal Act, there shall be substituted the following:

Amendment of  
article 31 of the  
principal Act.

"(9) In his capacity as an auditor of a credit institution or due to a direct request by the competent authority under article 20 or under article 22, an auditor shall promptly notify the competent authority of any fact or decision concerning that credit institution of which he has become aware while carrying out his tasks, which is liable to -

(a) constitute a material breach of this Act and any regulations made or Banking Rules issued thereunder which lay down the licensing conditions or which specifically govern the activities of credit institutions;

(b) affect the ongoing functioning of the credit institution;

(c) affect the depositors of the credit institution, of the branches in Malta of a credit institution authorised by an overseas regulatory authority or of any connected person which is a credit institution;

(d) lead to refusal to certify the accounts or to the expression of reservations:

Provided that an auditor shall also have the duty to

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report any fact or decision of which he becomes aware in the course of carrying out his tasks in an undertaking having close links resulting from a control relationship with the credit institution within which he is carrying out that task."

Amendment of article 32 of the principal Act.

**48.** In paragraph (a) of sub-article (1) of article 32 of the principal Act, for the words "which has had its licence revoked under article 9(2)", there shall be substituted the words "which has had its licence withdrawn under article 9(2);".

Amendment of article 33 of the principal Act.

**49.** For paragraph (b) of article 33 of the principal Act, there shall be substituted the following:

"(b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence."

Amendment of article 34 of the principal Act.

**50.** Article 34 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

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

(ii) paragraphs (c) and (d) thereof shall be renumbered as paragraphs (b) and (c) respectively;

(b) for sub-article (4) thereof, there shall be substituted the following:

"(4) Officers of the competent authority and of the Central Bank, including past and present officers, as well as auditors or experts acting on behalf of the competent authority or the Central Bank, shall be governed by the obligation of professional secrecy and shall not disclose information obtained from credit institutions in the course of carrying out supervisory and other duties unless such disclosure of information be done in summary or collective form, so as not to enable the identity of the credit institution, to whom such information relates, to be ascertained, without prejudice to the provisions of the Criminal Code:

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:

Provided further that where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.";

(c) sub-article (5) thereof shall be renumbered as sub-article (6);

(d) immediately after sub-article (4) thereof, there shall be added the following new sub-article (5):

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

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

(e) immediately after sub-article (6) thereof, as renumbered, there shall be added the following new sub-articles (7), (8) and (9):

"(7) Where the competent authority receives confidential information under this article, it shall use such information only in the course of its duties and only for any of the following purposes -

(a) to check that the conditions governing

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access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures and administrative and accounting procedures and internal control mechanisms;

(b) to impose penalties;

(c) in an appeal against a decision of the competent authority including court proceedings pursuant to article 10;

(d) in court proceedings initiated pursuant to special provisions provided for in European Union law adopted in the field of credit institutions.

(8) The competent authority, when processing personal data for the purposes of the Act and any regulations and Banking Rules issued thereunder shall do so in accordance with the Data Protection Act and any regulations made thereunder and, where relevant, with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

(9) The provisions of article 25(2) and sub-articles (4), (5) and (7) of this article shall be without prejudice to the powers of investigation conferred on the European Parliament pursuant to Article 226 of the Treaty on the Functioning of the European Union."

Substitution of article 35 of the principal Act.

**51.** Article 35 of the principal Act shall be substituted by the following:

"Offences.

35. (1) Any person who -  
 (a) fails to comply with any directive issued by the competent authority under this Act;



(b) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act and any regulations made or Banking Rules issued thereunder;

(c) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts;

(d) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive; or

(e) contravenes or fails to comply with any of the provisions of articles 2A, 5(1) and (2), 6(1), 12, 13, 21(2), 22(7), 23(4), 24, 28(a), 29(7), 32, 33(b), and 34(2) and (4),

shall be guilty of an offence:

Provided that, with respect to paragraphs (c) and (d), a person shall be guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not to the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

(i) to make, or refrain from making, a deposit with him or any other person; or

(ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit:

Provided further that, with respect to paragraphs (c) and (d), a person shall not be guilty of an offence unless -

(i) the statement, promise or forecast is made in or from Malta, or the facts are concealed in or from Malta, or arrangements are made in or from Malta for the statement, promise or forecast to be made or the facts to be concealed;

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(ii) the person on whom the inducement is intended to or may have effect on is in Malta; or

(iii) the deposit is or would be made, or the agreement is or would be entered into, in Malta.

(2) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under sub-article (1), shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

(3) Any person found guilty of an offence shall, on conviction, be liable to a fine (*multa*) not exceeding two million Euro (€2,000,000) or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

(4) No proceedings for an offence under this Act shall be commenced without the sanction of the Attorney General."

Substitution of article 35A of the principal Act.

**52.** Article 35A of the principal Act shall be substituted by the following:

"Administra-  
tive penalties  
and other  
administrative  
measures  
imposed by the  
competent  
authority.

35A. (1) Without prejudice to the provisions of articles 35 and 35B and to any regulations made under article 3(1)(e), where any person fails to comply with any of the conditions imposed in a licence, and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, or any regulations made or Banking Rules issued thereunder, or the CRR, or such person has failed to comply with a directive issued by the competent authority under this Act, or any regulation made or Banking Rules issued thereunder, or the CRR, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty of -

(a) up to twice the amount of the benefit derived from the breach where that benefit can be determined;

(b) in the case of a natural person, up to five million Euro (€5,000,000); or

(c) in the case of a legal person, up to 10% of the total annual net turnover of the undertaking in the preceding business year including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of the CRR:

Provided that, in the case of a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

(2) The Minister may, acting on the advice of the competent authority, make regulations as shall be deemed appropriate to provide for the establishment and imposition of administrative penalties and other administrative measures on licence holders or others as may be specified therein.

(3) Where the competent authority decides to impose an administrative penalty, it shall notify the person on whom the penalty is being imposed by means of a notice in writing.

(4) Where the person upon whom the notice referred to in sub-article (3) is served -

(a) fails to pay to the competent authority the amount of the penalty within a period of thirty days of the service of the notice, and fails to appeal from the decision of the competent authority to the Financial Services Tribunal; or

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(b) appeals to the Financial Service Tribunal and fails within a period of fifteen days from the decision of the Tribunal to pay the administrative penalty as confirmed or as reduced by that Tribunal,

then, in every case, the amount of the administrative penalty, as originally imposed or as reduced, as the case may be, shall be due to the competent authority as a civil debt, and the provisions of sub-article (5) shall apply.

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(5) A notice as is referred to in sub-article (3), or the decision of the Financial Services Tribunal, as the case may be, shall upon the service by judicial act of a copy thereof on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

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

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

Addition of new article 35B to the principal Act.

**53.** Immediately after article 35A of the principal Act, there shall be added the following new article 35B:

"Publication of administrative penalties.

35B. (1) The competent authority shall publish, on its official website and in any other media as it considers appropriate, any administrative penalty or penalties imposed under the provisions of this Act and of any regulations made or Banking Rules issued thereunder, and the CRR. Such publications shall include information on the type and nature of the breach and the identity of the person on whom the penalty is imposed, without undue delay after that person is informed of those penalties:

Provided that in cases where an appeal has been filed by the person on whom such administrative penalty or penalties have been imposed, the competent authority shall, without undue delay, also publish on its official website and in any other media as it considers appropriate, information on the status of the appeal and the outcome thereof.

(2) The competent authority shall publish the penalties imposed under the provisions of this Act and of any regulations made or Banking Rules issued thereunder, and of the CRR, on an anonymous basis, in any of the following circumstances:

(a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

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

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

Provided that, with respect to paragraphs (a), (b) and (c), publication on an anonymous basis in any such circumstances shall be an exceptional measure which needs to be justified by a detailed report compiled by the competent authority:

Provided further that, where the circumstances referred to in this sub-article are likely to cease within a reasonable period of time, publication under this article may be postponed for such a period of time.

(3) Information published in terms of this article shall remain on the official website of the competent authority for a period of not less than five years. Personal data shall be retained on the official website of the competent authority and in any other media it considers appropriate only for the period necessary, in accordance with the provisions of Maltese legislation on data protection."

Amendment of  
the Schedule to  
the principal  
Act.

**54.** In the Schedule to the principal Act, for the words "(Article 2(3))", there shall be substituted the words "(Article 2(2))".

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### **Objects and Reasons**

The object of this Bill is to transpose the relevant provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and also to provide for matters ancillary or incidental thereto.



