

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,108, 21 ta' Diċembru, 2018
Taqsim A

MALTA

ATT Nru XLIV tal-2018

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

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

ACT No. XLIV of 2018

AN ACT enacted by the Parliament of Malta.

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

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

21 ta' Dicembru, 2018

ATT Nru XLIV tal-2018

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

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

1. It-titolu fil-qosor ta' dan l-Att huwa Att tal-2018 li jemenda Diversi Liġijiet dwar is-Servizzi Finanzjarji (Emenda Nru 2). Titolu fil-qosor.

TAQSIMA I

Emendi għall-Att dwar is-Swieq Finanzjarji

2. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar is-Swieq Finanzjarji, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Emendi għall-Att dwar is-Swieq Finanzjarji. Kap. 345.
3. Minnufih wara t-tifsira "immobilizzazzjoni" fl-artikolu 2 tal-Att prinċipali għandha tiżdied din it-tifsira ġdida li ġejja: Emenda tal-artikolu 2 tal-Att prinċipali.

"irċevuti tad-depożiti" tfisser dawk it-titoli li huma negozjabbli fis-suq kapitali u li jirrapprezentaw sjeda tat-titoli ta'

A 2122

emittent mhux domiciljat filwaqt li jkunu jistgħu jigu ammessi għal negozjar f'suq regolat u negozjati indipendentement mit-titoli tal-emittent mhux domiciljat;"

TAQSIMA II

Emendi għall-Att dwar Servizzi ta' Investiment

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

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

Emenda tal-artikolu 2 tal-Att prinċipali.

5. Minnufih wara t-tifsira "impriza prinċipali" fl-artikolu 2 tal-Att prinċipali għandha tiżdied din it-tifsira ġdida li ġejja:

" "irċevuti tad-depożiti" tfisser dawk it-titoli li huma negozjabbli fis-suq kapitali u li jirrapprezentaw sjieda tat-titoli ta' emittent mhux domiciljat filwaqt li jkunu jistgħu jigu ammessi għal negozjar f'suq regolat u negozjati indipendentement mit-titoli tal-emittent mhux domiciljat;"

Emenda tal-artikolu 15 tal-Att prinċipali.

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

(a) fis-subartikolu (1) tiegħu, il-kliem "jew skema msemmija fis-subartikolu (1) tal-artikolu 13 ta' dan l-Att" għandhom jiġihassru; u

(b) minnufih wara s-subartikolu (1) tiegħu, għandhom jiżdiedu dawn il-provisos ġodda li ġejjin:

"Izda l-awtorità kompetenti tista' tagħti xi direttiva bħal dik ukoll meta detentur ta' liċenza, għal kwalunkwe raġuni, itemm milli jibqa' jkollu liċenza mogħtija kif hawn f'dan l-Att:

Izda wkoll kull direttiva mogħtija kif hawn f'dan l-artikolu għandha, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra, tibqa' tapplika wkoll meta detentur ta' liċenza, għal kwalunkwe raġuni, itemm milli jibqa' jkollu liċenza mogħtija kif hawn f'dan l-Att."

Emenda tal-artikolu 15A tal-Att prinċipali.

7. L-artikolu 15A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tas-subartikolu (1) tiegħu, minflok il-kliem "jew parti minnu, hekk kif tista' tordna l-awtorità kompetenti;" għandhom jidhlu l-kliem "jew parti minnu, inkluż li tittiehed kull azzjoni meħtieġa biex id-detentur ta' liċenza jiġi xolt jew stralċjat, hekk kif tista' tordna l-awtorità kompetenti;"

(b) il-paragrafu (ċ) tas-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "minn xi persuna oħra, inkluża r-rappreżentanza legali u ġudizzjarja ta' dik il-persuna legali" għandhom jidhlu l-kliem "minn xi persuna oħra, inkluż għall-fini tax-xoljiment u stralċjar tad-detentur ta' liċenza kif ukoll ir-rappreżentanza legali u ġudizzjarja ta' dik il-persuna legali"; u

(ii) minflok il-kliem, "b'esklużjoni ta' kull persuna oħra.", għandhom jidhlu l-kliem, "b'esklużjoni ta' kull persuna oħra:

Iżda l-persuna kompetenti m'għandha tiegħu ebda deċiżjoni għall-fini tax-xoljiment u stralċjar tad-detentur ta' liċenza kemm-il darba l-awtorità kompetenti ma toħroġx direttiva f'dak is-sens kif hemm fl-artikolu 15, u kull direttiva bħal dik jista' jkun fiha dawk l-istruzzjonijiet, f'itigiet u kondizzjonijiet hekk kif l-awtorità kompetenti tista' tqis li jkunu meħtieġa, inkluż dwar il-mod kif isir l-istralċjar.";

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

"(2A) Mingħajr preġudizzju għas-setgħat tal-awtorità kompetenti kif hawn fis-subartikolu (1), l-awtorità kompetenti tista' wkoll tagħmel rikors fil-qorti biex il-qorti xxolji u tistralċja lid-detentur ta' liċenza meta l-awtorità kompetenti jkun jidhrilha li detentur ta' liċenza għandu jkun xolt jew stralċjat mill-qorti għar-raġuni msemmija fl-artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji, u jekk il-qorti tilqa' dak ir-rikors, allura għandhom japplikaw id-dispożizzjonijiet rilevanti tal-Att dwar il-Kumpanniji dwar ix-xoljiment u l-istralċjar mill-qorti u kull dispożizzjoni oħra li tkun tapplika ta' kull liġi oħra."; u

Kap. 386.

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

"(5) Kull miżura li tiġi adottata kif hawn fis-subartikolu (1) għandha tibqa' sseħħ minkejja li d-detentur ta' liċenza jtemm milli jibqa' jkollu liċenza għal kwalunkwe raġuni, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra.".

A 2124

TAQSIMA III

Emendi għall-Att dwar il-Kummerċ Bankarju

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

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

Emenda tal-artikolu 2 tal-Att prinċipali.

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

(a) fis-subartikolu (1) tiegħu, wara t-tifsira "fergħa", għandha tiżdied din it-tifsira ġdida li ġejja:

L.S. 330.09. "Fond ta' Riżoluzzjoni" tfisser l-arranġament ta' finanzjar bħala riżoluzzjoni taħt ir-Regolamenti dwar Rkupru u Riżoluzzjoni"; u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "d-dispożizzjonijiet rilevanti tal-CRD u l-CRR, u għandu jiġi interpretat u applikat skont hekk." għandhom jidhru l-kliem "d-dispożizzjonijiet rilevanti tal-BRRD, CRD u CRR, u għandu jiġi interpretat u applikat skont hekk."

Emenda tal-artikolu 4B tal-Att prinċipali.

10. Minnufih wara s-subartikolu (1) tal-artikolu 4B tal-Att prinċipali għandhom jizjed dawn il-provisos ġodda li ġejjin:

"Izda l-awtorità kompetenti tista' tagħti kull direttiva bhal dik ukoll meta istituzzjoni ta' kreditu ittemm milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttemm milli tibqa' fis-sehħ:

Izda wkoll kull direttiva mogħtija kif hawn f'dan l-artikolu għandha, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra, tibqa' tapplika wkoll meta istituzzjoni ta' kreditu ttemm milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttemm milli tibqa' fis-sehħ."

Emenda tal-artikolu 29 tal-Att prinċipali.

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

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

(i) minflok il-kliem, "tista' bla ħsara għad-dispożizzjonijiet tal-artikolu 9(2) -" għandhom jidhru l-kliem "tista' bla ħsara għad-dispożizzjonijiet tal-artikolu 9(2) u għal kull setgħa oħra mogħtija lill-awtorità kompetenti taħt dan l-Att jew taħt kull liġi oħra applikabbli –";

(ii) fil-paragrafu (d) tiegħu, minflok il-kliem "jew parti minnu, kif tordna l-awtorità kompetenti," għandhom jidhlu l-kliem "jew parti minnu, inkluż li tittiehed kull azzjoni meħtieġa għall-istituzzjoni ta' kreditu biex din tiġi xolta jew stralċjata, hekk kif tista' tordna l-awtorità kompetenti;"

(iii) fil-paragrafu (g) tiegħu, minflok il-kliem "lil kull persuna kompetenti nominata skont dan is-subartikolu." għandhom jidhlu l-kliem "lil kull persuna nominata taht dan is-subartikolu;" u

(iv) minnufih wara l-paragrafu (g) tiegħu, għandu jiżdied dan li ġej:

Kap. 383.

"(h) tinnomina persuna biex taġixxi bħala kontrullur u, jew tiegħu kontroll ta' xi istituzzjoni ta' kreditu għall-finijiet tal-Att dwar Kumpanniji Kontrollati (Proċedura ta' Stralċ);

u wara li tkun adottat xi miżura waħda jew aktar minn dawn imsemmija hawn qabel, l-awtorità kompetenti tista' aktar minn hekk tadotta xi miżura waħda jew aktar, sew b'żieda magħha jew minflokha.";

(b) il-paragrafu (ċ) tas-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "minn xi persuna oħra, inkluża r-rappreżentanza legali u ġudizzjarja tal-istituzzjoni ta' kreditu" għandhom jidhlu l-kliem "minn xi persuna oħra, inkluż għall-fini tax-xoljiment u stralċjar tal-istituzzjoni ta' kreditu kif ukoll ir-rappreżentanza legali u ġudizzjarja tal-istituzzjoni ta' kreditu"; u

(ii) minflok il-kliem "b'eskluzjoni ta' kull persuna oħra." għandhom jidhlu l-kliem "b'eskluzjoni ta' kull persuna oħra:

Iżda l-persuna kompetenti m'għandha tiegħu ebda deċiżjoni għall-fini tax-xoljiment u stralċjar tal-istituzzjoni ta' kreditu kemm-il darba l-awtorità kompetenti, wara li tikkonsulta lill-Bank Ċentrali, ma toħroġ direttiva għal dak

A 2126

il-għan kif hemm fl-artikolu 4B u kull direttiva bħal dik jista' jkun fiha dawk l-istruzzjonijiet, htigiet u kondizzjonijiet hekk kif l-awtorità kompetenti tista' tqis li jkunu meħtieġa, inkluż dwar il-mod kif isir l-istralċjar."; u

(ċ) minnufih wara s-subartikolu (9) tiegħu, għandhom jiżdedu dawn is-subartikoli ġodda li ġejjin:

Kap. 386.

"(10) Mingħajr preġudizzju għas-setgħat tal-awtorità kompetenti kif hawn fis-subartikolu (1), l-awtorità kompetenti tista' wkoll tagħmel rikors fil-qorti biex il-qorti xxolji u tistralċja xi istituzzjoni ta' kreditu meta l-awtorità kompetenti jkun jidhrilha li l-istituzzjoni ta' kreditu għandha tkun xolta jew stralċjata mill-qorti għar-raġuni msemmija fl-artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji, u jekk il-qorti tilqa' dak ir-rikors, allura għandhom japplikaw id-dispożizzjonijiet rilevanti tal-Att dwar il-Kumpanniji dwar ix-xoljiment u l-istralċjar mill-qorti u kull dispożizzjoni oħra li tkun tapplika ta' kull liġi oħra.

(11) Kull miżura li tiġi adottata kif hawn fis-subartikolu (1) għandha tibqa' sseħħ minkejja li istituzzjoni ta' kreditu ttejjem milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttejjem milli tibqa' seħħ, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra."

Emenda tal-artikolu 29A tal-Att prinċipali.

12. L-artikolu 29A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) fis-subparagrafu (ii) tal-paragrafu (b) tiegħu, minflok il-kliem "skont ir-Regolamenti dwar Skema ta' Kumpens lid-Depożitant:" għandhom jidhlu l-kliem "skont ir-Regolamenti dwar Skema ta' Kumpens lid-Depożitant";

(ii) minnufih wara l-paragrafu (b) tiegħu għandu jiżded dan il-paragrafu ġdid li ġej:

L.S. 330.09.

"(ċ) il-Fond ta' Riżoluzzjoni fir-rigward ta' kull kontribuzzjoni jew kontribuzzjonijiet li jistgħu jkunu dovuti lilha mill-istituzzjoni ta' kreditu kif hemm fid-dispożizzjonijiet tar-Regolamenti dwar Rkupru u Riżoluzzjoni:"; u

(iii) fil-proviso li hemm miegħu, minflok il-kliem "msemmija fil-paragrafu (b)(i) u l-kontribuzzjoni/jiet dovuta/i lill-Iskema msemmija fil-paragrafu (b)(ii) għandhom jikklassifikaw *pari passu*." għandhom jidhlu l-kliem "msemmija fil-paragrafu (b)(i), il-kontribuzzjoni jew kontribuzzjonijiet dovuti lill-Iskema msemmija fil-paragrafu (b)(ii) u l-kontribuzzjoni jew kontribuzzjonijiet dovuti lill-Fond ta' Rizoluzzjoni msemmi fil-paragrafu (c) għandhom jikklassifikaw *pari passu*.";

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "prevista għal pretensjonijiet ta' kredituri ordinarji, mhux preferuti u mhux assigurati." għandhom jidhlu l-kliem "prevista għal pretensjonijiet ta' kredituri mhux assigurati ordinarji:";

(c) minnufih wara s-subartikolu (3) tiegħu għandu jizdied dan is-subartikolu li ġejj:

"(3A) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli (1), (2) u (3), il-pretensjonijiet mhux assigurati ordinarji għandu jkollhom klassifikazzjoni oġġla minn dik ta' pretensjonijiet mhux assigurati li joriginaw minn strumenti ta' debitu li jikkonformaw ma' dawn il-kondizzjonijiet li ġejjin:

(a) il-maturità kontrattwali originali tal-istrumenti ta' debitu tkun għal mill-inqas sena waħda;

(b) l-istrumenti ta' debitu ma jkun fihom ebda derivattivi inkorporati u ma jkunux huma nnifishom derivattivi:

Izda strumenti ta' debitu b'imgħax varjabbli derivati minn rata ta' referenza wżata ġeneralment u strumenti ta' debitu li ma jkunux denominati fil-munita domestika ta' min jorogħom, sakemm l-ammont prinċipali, il-ħlas lura u l-imgħax jiġu denominati fl-istess munita, m'għandhomx jitqiesu bħala strumenti ta' debitu li jkun fihom derivattivi inkorporati unikament minħabba f'dawk il-karatteristiċi;

(c) id-dokumentazzjoni kontrattwali rilevanti u, meta jkun japplika, il-prospett li jkollu x'jaqsam mal-ħruġ ikunu jirreferu b'mod esplicitu għall-klassifikazzjoni iktar baxxa taħt dan is-subartikolu.";

(d) fis-subartikolu (4) tiegħu, minflok il-kliem "l-oħra

A 2128

kollha li jkunu kredituri ordinarji, mhux preferuti u mhux assigurati" għandhom jidhlu l-kliem "l-oħra kollha li jkunu kredituri mhux assikurati"; u

(e) minnufih wara s-subartikolu (4) tiegħu għandu jiżdied dan is-subartikolu li ġej:

"(5) Għall-għanijiet ta' dan l-artikolu:

(a) "strumenti ta' debitu" ifissru bonds u kull għamla oħra ta' debitu trasferibbli u strumenti li johlqu jew jirrikonoxxu debitu;

(b) "derivattivi" tfisser dawk l-istrumenti finanzjarji mfissra fil-punt (44) (ċ) tal-Artikolu 4(1) tad-Direttiva 2014/65/UE; u msemmija fl-Anness I, Sezzjoni Ċ (4) sa (10) relattiv."

TAQSIMA IV EMENDI GHALL-ATT DWAR IL-PREVENZJONI TA' ABBUŻ FIS-SWIEQ FINANZJARJI

Emendi għall-Att dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji. Kap. 476.

13. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda tal-artikolu 2 tal-Att prinċipali.

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

(a) fit-tifsira "post tan-negożjar" minflok il-kliem "fl-Artikolu 3(1)(24)" għandhom jidhlu l-kliem "fl-Artikolu 3(1)(10)"; u

(b) fit-tifsira "prodott tal-enerġija bl-ingrossa" minflok il-kliem "fl-Artikolu 2(4)" għandhom jidhlu l-kliem "fl-Artikolu 3(1)(22)".

Emenda tal-artikolu 4 tal-Att prinċipali.

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

(a) is-subartikolu (3) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "Dan l-Att m'għandux japplika għal:" għandhom jidhlu l-kliem "L-Artikoli 6, 6A u 8 m'għandhomx japplikaw għal:"; u

(ii) il-paragrafu (ċ) tiegħu għandu jithassar;

(b) minnufih wara s-subartikolu (3) tiegħu għandu

jizzied dan is-subartikolu ġdid li ġej:

"(3A) (a) Dan l-Att m'għandux japplika għal operazzjonijiet, ordnijiet jew komportamenti mwettqa konformement ma' xi politika monetarja, ta' rata ta' kambju jew maniġġar ta' dejn pubbliku kif hemm fl-Artikolu 6(1) tar-Regolament dwar l-Abbuż tas-Suq, operazzjonijiet, ordnijiet jew komportamenti mwettqa kif hemm fl-Artikolu 6(2) tiegħu, attivitajiet konformement mal-politika tal-Unjoni Ewropea dwar il-klima kif hemm fl-Artikolu 6(3) tiegħu, jew attivitajiet konformement mal-Politika Agrikola Komuni tal-Unjoni Ewropea jew mal-Politika Komuni tas-Sajd tal-Unjoni Ewropea kif hemm fl-Artikolu 6(4) tiegħu.

(b) Il-paragrafu (a) m'għandux japplika għal persuni li jkunu qegħdin jaħdmu taħt kuntratt ta' impjeg jew xort'oħra għall-entitajiet imsemmija f'dak il-paragrafu meta daww il-persuni jwettqu operazzjonijiet jew ordnijiet, jew jipparteċipaw f'komportamenti, direttament jew indirettament, akkont tagħhom infushom."; u

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

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

Emenda tal-artikolu 6 tal-Att prinċipali.

(a) minflok in-nota marginali tiegħu għandu jidhol il-kliem "*Insider dealing*";

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

"(1) (a) Persuna m'għandhiex tipparteċipa jew tipprowa tipparteċipa f'*insider dealing*, jew tirrakkomanda lil xi persuna oħra biex tipparteċipa f'*insider dealing*, jew iġġieghel lil xi persuna oħra biex tipparteċipa f'*insider dealing*.

(b) Kull persuna li intenzjonalment tipparteċipa jew tipprowa tipparteċipa f'*insider dealing*, jew tirrakkomanda lil xi persuna oħra biex tipparteċipa f'*insider dealing*, jew iġġieghel lil xi persuna oħra biex tipparteċipa f'*insider dealing*, tkun ha'tja ta' reat kriminali.";

(ċ) fis-subartikolu (6) tiegħu, minflok il-kliem "dak it-

A 2130

thassir jew dik l-emenda: Iżda l-użu ta' rakkomandazzjonijiet jew ġegħil jammonta għal *insider dealing* meta l-persuna li tkun qiegħda tuża r-rakkomandazzjoni jew ġegħil tkun taf li dawn ikunu msejsa fuq informazzjoni minn ġewwa." għandhom jidhlu l-kliem "dak it-thassir jew dik l-emenda.";

(d) minnufih wara s-subartikolu (6) tiegħu, kif emendat, għandu jizdied dan is-subartikolu (6A) ġdid li ġej:

"(6A) L-użu tar-rakkomandazzjonijiet jew ta' kull ġegħil imsemmi fis-subartikolu (6) jammonta għal *insider dealing* meta l-persuna li tkun qiegħda tuża r-rakkomandazzjoni jew ġegħil tkun taf li dawn ikunu msejsa fuq informazzjoni minn ġewwa."; u

(e) fis-subartikolu (8) tiegħu, minflok il-kliem "fis-subartikolu (5)" għandhom jidhlu l-kliem "fis-subartikolu (7)".

Emenda tal-artikolu 6A tal-Att prinċipali.

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

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

"(1) (a) Persuna m'għandhiex tiżvela kontra l-liġi informazzjoni minn ġewwa.

(b) Kull persuna li intenzjonalment u kontra l-liġi tiżvela informazzjoni minn ġewwa tkun haġja ta' reat kriminali."; u

(b) fis-subartikolu (3) tiegħu, il-kliem "kif hemm taht is-subartikolu (5)" għandhom jithassru.

Emenda tal-artikolu 8 tal-Att prinċipali.

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

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

"(1) (a) Hadd m'għandu jipparteċipa fi jew jipprova jipparteċipa fil-manipulazzjoni tas-suq.

(b) Kull persuna li intenzjonalment tipparteċipa fi jew tipprova tipparteċipa fil-manipulazzjoni tas-suq tkun haġja ta' reat kriminali."; u

(b) fil-proviso mas-subartikolu (4)(a) tiegħu, minflok il-kliem "Iżda r-ragunijiet" għandhom jidhlu l-kliem "Kemmil darba r-ragunijiet".

19. Fis-subartikolu (2) tal-artikolu 13 tal-Att prinċipali, minflok il-kliem "skont is-setgħat tagħha taħt din it-Taqsima għandha tara" għandhom jidhlu l-kliem "għandha tara, kif jagħtuha s-setgħat tagħha taħt dan l-Att, ir-Regolament dwar l-Abbuż tas-Suq jew kull liġi oħra li tapplika".

Emenda tal-artikolu 13 tal-Att prinċipali.

20. Minflok is-subartikolu (1) tal-artikolu 22 tal-Att prinċipali għandu jidhol dan li ġej:

Emenda tal-artikolu 22 tal-Att prinċipali.

"(1) Mingħajr preġudizzju għas-setgħat, funzjonijiet u dmirijiet mogħtija lill-awtorità kompetenti kif hawn f'dan l-Att, ir-Regolament dwar l-Abbuż tas-Suq jew kull liġi oħra li tapplika, meta l-awtorità kompetenti tkun sodisfatta li l-komportament ta' xi persuna jkun jammonta għal ksur ta' xi wieħed mill-Artikoli 14 u 15, l-Artikolu 16(1) u (2), l-Artikolu 17(1), (2), (4), (5) u (8), l-Artikolu 18(1) sa (6), l-Artikolu 19(1), (2), (3), (5), (6), (7) u (11) u l-Artikolu 20(1) tar-Regolament dwar l-Abbuż tas-Suq, l-awtorità kompetenti tista' b'avviż li jingħata bil-miktub u mingħajr il-ħtieġa ta' smiġħ fil-qorti, tiegħu dawn is-sanzjonijiet u miżuri amministrattivi li ġejjin:

(a) ordni li tkun teħtieġ lill-persuna responsabbli għall-ksur biex ittemm dak il-komportament u tieqaf milli ttenni dak il-komportament;

(b) l-eliminazzjoni tal-profitti miksuba jew tat-telf evitat minħabba f'dak il-ksur, sakemm dawn ikunu jistgħu jiġu stabbiliti;

(c) twissija pubblika li tkun turi min hi l-persuna responsabbli għall-ksur u x-xorta tal-ksur;

(d) l-irtirar jew is-sospensjoni tal-awtorizzazzjoni ta' impriża ta' investiment;

(e) projbizzjoni temporanja fuq il-persuna li tkun qiegħda twettaq responsabbiltajiet maniġerjali fi hdan xi impriża ta' investiment jew fuq kull persuna fiżika oħra, li titqies li tkun responsabbli għall-ksur, milli teżerċita funzjonijiet maniġerjali f'impriża ta' investiment;

(f) fil-każ ta' ksur imtenni tal-Artikolu 14 jew 15 tar-Regolament dwar l-Abbuż tas-Suq, projbizzjoni permanenti fuq il-persuna li tkun qiegħda twettaq responsabbiltajiet maniġerjali fi hdan xi impriża ta' investiment jew fuq kull persuna fiżika oħra li titqies responsabbli għall-ksur, milli teżerċita funzjonijiet maniġerjali f'impriża ta' investiment;

A 2132

(g) projbizzjoni temporanja fuq il-persuna li tkun qiegħda twettaq responsabbiltajiet maniġerjali fi hdan xi impriża ta' investiment jew fuq kull persuna fiżika oħra li titqies responsabbli għall-ksur, milli tmexxi għall-kont proprju;

(h) l-ogħla sanzjonijiet amministrattivi pekunjarji ta' mill-inqas tliet (3) darbiet il-profitti miksuba jew tat-telf evitat minhabba f'dak il-ksur, sakemm dawn ikunu jistgħu jiġu stabbiliti;

(i) dwar persuna fiżika, sanzjoni amministrattiva pekunjarja li ma tkunx ta' iżjed minn:

(i) ħames miljun euro (€5,000,000) għal kull ksur tal-Artikoli 14 u 15 tar-Regolament dwar l-Abbuż tas-Suq;

(ii) miljun euro (€1,000,000) għal kull ksur tal-Artikoli 16 u 17 tar-Regolament dwar l-Abbuż tas-Suq; u

(iii) ħames mitt elf euro (€500,000) għal kull ksur tal-Artikoli 18, 19 u 20 tar-Regolament dwar l-Abbuż tas-Suq;

(j) dwar persuni ġuridiċi, sanzjoni pekunjarja amministrattiva li ma tkunx ta' iżjed minn:

(i) ħmistax-il miljun euro (€15,000,000) jew 15% tal-fatturat annwali totali tal-persuna ġuridika kif ikunu juru l-aħħar kontijiet disponibbli approvati mill-bord tal-*management* għal kull ksur tal-Artikoli 14 u 15 tar-Regolament dwar l-Abbuż tas-Suq;

(ii) żewġ miljuni u ħames mitt elf euro (€2,500,000) jew 2% tal-fatturat annwali totali tagħha kif ikunu juru l-aħħar kontijiet disponibbli approvati mill-bord tal-*management* għal kull ksur tal-Artikoli 16 u 17 tar-Regolament dwar l-Abbuż tas-Suq;

(iii) miljun euro (€1,000,000) għal kull ksur tal-Artikoli 18, 19 u 20 tar-Regolament dwar l-Abbuż tas-Suq.

Għall-għanijiet tas-subparagrafi (i) u (ii) tal-paragrafu (j), meta l-persuna ġuridika tkun impriża prinċipali jew impriża sussidjarja li tkun

meħtieġa tnejn kontijiet finanzjarji konsolidati konformement mad-Direttiva 2013/34/UE, il-fatturat annwali totali rilevanti għandu jkun il-fatturat annwali totali jew ix-xorta ta' qligħ korrispondenti kif hemm fid-direttivi rilevanti dwar il-kontijiet – Direttiva tal-Kunsill 86/635/KEE għall-banek u Direttiva tal-Kunsill 91/674/KEE għall-kumpanniji tal-assigurazzjoni – kif ikun hemm fl-aħħar kontijiet konsolidati disponibbli approvati mill-bord tal-*management* tal-ogħla impriża prinċipali."

21. Minnufih wara l-artikolu 22 tal-Att prinċipali għandu jiżdied l-artikolu ġdid 22A kif ġej:

Żieda tal-artikolu 22A ġdid mal-Att prinċipali.

"22A. Meta jkun qed jiġi stabbilit it-tip u x-xorta ta' sanzjonijiet amministrattivi, l-awtorità kompetenti għandha tqis iċ-ċirkostanzi rilevanti kollha, inklużi, meta jkun xieraq:

- (a) il-gravità u t-tul ta' żmien tal-ksur;
- (b) il-grad ta' responsabbiltà tal-persuna responsabbli għall-ksur;
- (ċ) is-solidità finanzjarja tal-persuna responsabbli għall-ksur, kif ikun jidher, bħala eżempju, mill-fatturat totali ta' persuna ġuridika jew mill-qligħ annwali ta' persuna fiżika;
- (d) l-importanza tal-profitti miksuba jew telf evitat mill-persuna responsabbli għall-ksur, sa fejn dawn jistgħu jiġu determinati;
- (e) il-livell ta' koperazzjoni mill-persuna responsabbli għall-ksur mal-awtorità kompetenti, mingħajr preġudizzju għall-ħtieġa li jiġu żgurati l-eliminazzjoni tal-profitti miksuba jew tat-telf evitat minn dik il-persuna;
- (f) kull ksur preċedenti mill-persuna responsabbli għall-ksur; u
- (g) miżuri mittieħda mill-persuna responsabbli għall-ksur biex ma tħallix li dan jerga' jiġri."

A 2134

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru 181 tat-12 ta' Diċembru, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

21st December, 2018

ACT No. XLIV of 2018

AN ACT to further amend various financial services laws.

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

1. The short title of this Act is the Various Financial Services Laws (Amendment No. 2) Act, 2018. Short title.

PART I

Amendments to the Financial Markets Act

2. This Part amends and shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Financial Markets Act. Cap. 345.

3. Immediately after the definition "dematerialized form" in article 2 of the principal Act there shall be added the following new definition: Amendment of article 2 of the principal Act.

A 2136

" "depository receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;"

PART II

Amendments to the Investment Services Act

Amendments to the Investment Services Act. Cap. 370.

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

Amendment of article 2 of the principal Act.

5. Immediately after the definition "the CRR" in article 2 of the principal Act there shall be added the following new definition:

" "depository receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;"

Amendment of article 15 of the principal Act.

6. Article 15 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, the words "or scheme as is referred to in article 13(1)" shall be deleted; and

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

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

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

Amendment of article 15A of the principal Act.

7. Article 15A of the principal Act shall be amended as follows:

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

(b) paragraph (c) of sub-article (2) thereof shall be

amended as follows:

(i) for the words "or by any other person, including the legal and judicial representation of such legal person" there shall be substituted the words "or by any other person, including for the purpose of the dissolution and winding up of the licence holder as well as the legal and judicial representation of such legal person"; and

(ii) for the words "to the exclusion of any other person." there shall be substituted the words "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the licence holder unless the competent authority issues a directive to that effect in terms of article 15, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.";

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

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

and

Cap. 386.

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

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

A 2138

PART III
Amendments to the Banking Act

Amendments to
the Banking
Act.
Cap. 371.

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

Amendment of
article 2 of the
principal Act.

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

(a) in sub-article (1) thereof, after the definition "representative office" there shall be added the following new definition:

" "Resolution Fund" means the resolution financing arrangement under the Recovery and Resolution Regulations;"; and

S.L. 330.09.

(b) in sub-article (3) thereof, for the words "the relevant provisions of the CRD and CRR, and shall be interpreted and applied accordingly." there shall be substituted the words "the relevant provisions of the BRRD, the CRD and the CRR, and shall be interpreted and applied accordingly."

Amendment of
article 4B of the
principal Act.

10. Immediately after sub-article (1) of article 4B of the principal Act, there shall be added the following new provisos:

"Provided that the competent authority may give any such directive even where a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect."

Amendment of
article 29 of the
principal Act.

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

(a) sub-article (1) shall be amended as follows:

(i) for the words "may, without prejudice to the provisions of article 9(2) -" there shall be substituted the words, "may, without prejudice to the provisions of article 9(2) and to any other powers conferred on the competent authority under this Act or any other applicable law –";

(ii) in paragraph (d) thereof, for the words "or part thereof, as the competent authority may direct;" there shall be substituted the words "or part thereof, including to take the necessary action for the credit institution to be dissolved

and wound up, as the competent authority may direct;"

(iii) in paragraph (g) thereof, for the words "to any competent person appointed under this sub-article." there shall be substituted the words "to any person appointed under this sub-article"; and

(iv) immediately after paragraph (g) thereof, there shall be added the following:

Cap. 383. "(h) appoint a person to act as controller and, or to assume control of a credit institution for the purposes of the Controlled Companies (Procedure for Liquidation) Act;

and having adopted any one or more of the measures aforesaid, the competent authority may further adopt any one or more measures, whether in addition thereto or in substitution therefor.";

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

(i) for the words "any other person, including the legal and judicial representation of the credit institution" there shall be substituted the words "any other person, including for the purpose of the dissolution and winding up of the credit institution as well as the legal and judicial representation of the credit institution"; and

(ii) for the words "to the exclusion of any other person." there shall be substituted the words "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the credit institution unless the competent authority, after consulting with the Central Bank, issues a directive to that effect in terms of article 4B and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up."; and

(c) immediately after sub-article (9) thereof, there shall be

A 2140

added the following new sub-articles:

Cap. 386. "(10) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a credit institution where it appears to the competent authority that a credit institution should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

(11) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect, unless the competent authority otherwise directs."

Amendment of article 29A of the principal Act.

12. Article 29A of the principal Act shall be amended as follows:

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

(i) in sub-paragraph (ii) of paragraph (b) thereof, for the words "under the Depositor Compensation Scheme Regulations:" there shall be substituted the words "under the Depositor Compensation Scheme Regulations;"

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

S.L. 330.09. "(c) the Resolution Fund in relation to any contribution or contributions that may be due to it by the credit institution in accordance with the provisions of the Recovery and Resolution Regulations:"; and

(iii) in the proviso thereof, for the words "mentioned in paragraph (b)(i) and the contribution/s due to the Scheme mentioned in paragraph (b)(ii) shall rank *pari passu*." there shall be substituted the words "mentioned in paragraph

(b)(i), the contribution or contributions due to the Scheme mentioned in paragraph (b)(ii) and the contribution or contributions due to the Resolution Fund mentioned in paragraph (c) shall rank *pari passu*.";

(b) in sub-article (3) thereof, for the words "provided for the claims of ordinary unsecured, non-preferred creditors:" there shall be substituted the words "provided for the claims of ordinary unsecured creditors:";

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

"(3A) Without prejudice to the provisions of sub-articles (1), (2) and (3), ordinary unsecured claims shall have a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(a) the original contractual maturity of the debt instruments is of at least one year;

(b) the debt instruments contain no embedded derivatives and are not derivatives themselves:

Provided that debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features;

(c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this sub-article.";

(d) in sub-article (4) thereof, for the words "all other ordinary unsecured, non-preferred creditors" there shall be substituted the words "all other unsecured creditors"; and

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

"(5) For the purposes of this article:

(a) "debt instruments" shall mean bonds and other forms of transferable debt and instruments creating or

A 2142

acknowledging a debt;

(b) "derivatives" shall mean those financial instruments defined in point (44) (c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto."

PART IV
AMENDMENTS TO THE PREVENTION OF FINANCIAL
MARKETS ABUSE ACT

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

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

Amendment of article 2 of the principal Act.

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

(a) in the definition "trading venue" for the words "Article 3(1)(24)" there shall be substituted the words "Article 3(1)(10)"; and

(b) in the definition "wholesale energy product" for the words "Article 2(4)" there shall be substituted the words "Article 3(1)(22)".

Amendment of article 4 of the principal Act.

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

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

(i) for the words "This Act shall not apply to:" there shall be substituted the words "Articles 6, 6A and 8 shall not apply to:"; and

(ii) paragraph (c) thereof shall be deleted;

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

"(3A) (a) This Act shall not apply to transactions, orders or behaviour carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of the Market Abuse Regulation, transactions, orders or behaviour carried out in accordance with Article 6(2) thereof, activities in pursuit of the European Union's climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the European Union's Common Agricultural Policy or of the European

Union's Common Fisheries Policy in accordance with Article 6(4) thereof.

(b) Paragraph (a) shall not apply to persons working under a contract of employment or otherwise for the entities referred to in the said paragraph where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account."; and

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

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

Amendment of article 6 of the principal Act.

(a) the marginal note thereof shall be substituted by the words "Insider dealing.";

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

"(1) (a) A person shall not engage or attempt to engage in insider dealing, or recommend that another person engage in insider dealing, or induce another person to engage in insider dealing.

(b) Any person who intentionally engages or attempts to engage in insider dealing, or recommends that another person engage in insider dealing, or induces another person to engage in insider dealing, shall be guilty of a criminal offence.";

(c) in sub-article (6) thereof, for the words "a cancellation or amendment: Provided that the use of the recommendations or inducements amounts to insider dealing where the person using the recommendation or inducement knows that it is based upon inside information." there shall be substituted the words "a cancellation or amendment.";

(d) immediately after sub-article (6) thereof, as amended, there shall be inserted the following new sub-article (6A):

"(6A) The use of the recommendations or inducements referred to in sub-article (6) amount to insider dealing where the person using the recommendation or inducement knows that it is based upon inside

A 2144

information."; and

(e) in sub-article (8) thereof, for the words "in sub-article (5)" there shall be substituted the words "in sub-article (7)".

Amendment of article 6A of the principal Act.

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

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

"(1) (a) A person shall not unlawfully disclose inside information.

(b) Any person who intentionally and unlawfully discloses inside information shall be guilty of a criminal offence."; and

(b) in sub-article (3) thereof, the words "as defined under sub-article (5)" shall be deleted.

Amendment of article 8 of the principal Act.

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

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

"(1) (a) A person shall not engage in or attempt to engage in market manipulation.

(b) Any person who intentionally engages in or attempts to engage in market manipulation shall be guilty of a criminal offence."; and

(b) in the proviso to sub-article (4)(a) thereof, for the words "Provided that the reasons" there shall be substituted the words "Unless the reasons".

Amendment of article 13 of the principal Act.

19. In sub-article (2) of article 13 of the principal Act, for the words "it shall in terms of its powers under this Part" there shall be substituted the words "it shall, in terms of its powers under this Act, the Market Abuse Regulation or any other applicable law".

Amendment of article 22 of the principal Act.

20. Sub-article (1) of article 22 of the principal Act shall be substituted by the following:

"(1) Without prejudice to the powers, functions and duties assigned to the competent authority in terms of this Act, the Market Abuse Regulation or any other applicable law, where the competent authority is satisfied that a person's conduct amounts to a breach of any of Articles 14 and 15, Article 16(1) and (2),

Article 17(1), (2), (4), (5) and (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1) of the Market Abuse Regulation, the competent authority may by notice in writing and without recourse to a court hearing, take the following administrative sanctions and measures:

(a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement, insofar as they can be determined;

(c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of an investment firm;

(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

(f) in the event of repeated infringements of Article 14 or 15 of the Market Abuse Regulation, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary sanctions of at least three (3) times the amount of the profits gained or losses avoided because of the infringement, insofar as those can be determined;

(i) in respect of a natural person, an administrative pecuniary sanction which does not exceed:

A 2146

(i) five million euro (€5,000,000) for infringements of Articles 14 and 15 of the Market Abuse Regulation;

(ii) one million euro (€1,000,000) for infringements of Articles 16 and 17 of the Market Abuse Regulation; and

(iii) five hundred thousand euro (€500,000) for infringements of Articles 18, 19 and 20 of the Market Abuse Regulation.

(j) in respect of legal persons, an administrative pecuniary sanction which does not exceed:

(i) fifteen million euro (€15,000,000) or 15% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Articles 14 and 15 of the Market Abuse Regulation;

(ii) two million five hundred thousand euro (€2,500,000) or 2% of its total annual turnover according to the last available accounts approved by the management body for infringements of Articles 16 and 17 of the Market Abuse Regulation;

(iii) one million euro (€1,000,000) for infringements of Articles 18, 19 and 20 of the Market Abuse Regulation.

For the purposes of sub-paragraphs (i) and (ii) of paragraph (j), where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives – Council Directive 86/635/EEC for banks and Council Directive 91/674/EEC for insurance companies – according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking."

Addition of new article 22A to the principal Act.

21. Immediately after article 22 of the principal Act, there shall be inserted a new article 22A as follows:

"22A. When determining the type and level of administrative sanctions, the competent authority shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;
- (e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous infringements by the person responsible for the infringement; and
- (g) measures taken by the person responsible for the infringement to prevent its repetition."

Passed by the House of Representatives at Sitting No. 181 of the 12th December, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

