

CHAPTER 376

FINANCIAL INSTITUTIONS ACT

To regulate the business of financial institutions.

15th November, 1994

ACT XXII of 1994 as amended by Acts XXIV and XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004 and XII of 2006; Legal Notice 425 of 2007; and Acts II of 2010, X of 2011, XX of 2013 and XI of 2014 and LII of 2016 .

PRELIMINARY

Short title.

1. The short title of this Act is the Financial Institutions Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"account information service" means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

"account information service provider" means a payment service provider that has been registered in accordance with this Act or that holds an equivalent registration in another country in terms of the Payment Services Directive, to provide solely account information services;

"account servicing payment service provider" means a payment service provider providing and maintaining a payment account for a payer;

"acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee;

"agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule, other than issuing electronic money;

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

"authentication" means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;

"average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

"body corporate" means a body of persons having a legal personality distinct from that of its members;

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

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;

"close links" shall have the same meaning as that assigned to it in point (38) of Article 4(1) of the CRR; means a situation in which two or more persons are linked in any of the following ways:-

~~(a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate;~~

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

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

"Commission Delegated Regulation (EU) No 241/2014" means Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, as may be amended from time to time;

"Common Equity Tier 1 capital" shall have the same meaning as that assigned to it in Article 50 of the CRR;

"company" means a limited liability company constituted in Malta in accordance with the Companies Act or any law which may from time to time be in force, ~~or a company incorporated outside Malta, provided that such company if not incorporated in Malta would qualify to be so incorporated under the laws of Malta;~~

~~"the competent authority"~~ means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

"consumer" means a natural person who, in payment service contracts covered by the provisions of the Payment Services Directive as transposed in directives issued by the Central Bank under the Central Bank of Malta Act, is acting for purposes other than his or her trade, business or profession;

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

"controller" is a person who, alone or together with others, exercises control in relation to a body corporate;

~~"court" means the Civil Court, First Hall;~~

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

"credit facility" means the lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances, bills of exchange endorsed *pour aval* and financial leasing;

"credit institution" shall have the same meaning as that assigned to it in the Banking Act;

"credit transfer" means a payment service for crediting a payer's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;

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

"digital content" means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;

"Directive 2002/21/EC" means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as may be amended from time to time;

"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;

"Directive 2008/48/EC" means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as amended from time to time;

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as may be amended from time to time;

"Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time;

"Directive 86/635/EEC" means Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, as amended from time to time;

"director" includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director and in respect of a company registered or incorporated outside Malta includes a member of a local board or agent or representative of that company;

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

"EBA" means the European Banking Authority established by Regulation (EU) No 1093/2010, as may be amended from time to time;

"EEA State" means a State which is a contracting party to the agreement on the European

Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"electronic communications network" means a network as defined in point (a) of Article 2 of Directive 2002/21/EC;

"electronic communications service" means a service as defined in point (c) of Article 2 of Directive 2002/21/EC;

"electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by a person other than the financial institutions that issued the electronic money;

"Electronic Money Directive" means [Directive 2009/110/EC](#) of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of

electronic money institutions amending Directives [2005/60/EC](#) and [2006/48/EC](#) and repealing Directive 2000/46/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder, ~~and "electronic money" shall have the meaning assigned to it in the Third Schedule;~~

"electronic money institution" means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money;

"European right" means the right of establishment and, or the freedom to provide services;

"European regulatory authority" means a body which is in another Member State and is empowered by law or regulation to supervise payment institutions, electronic money institutions and, or account information service providers;

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

"Financial Institutions Rule" means a Rule issued by the competent authority to regulate financial institutions in terms of the powers arising under this Act, and "Rule" shall be read accordingly;

"Financial Services Tribunal" or "Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act;

"framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

"funding of terrorism" has the same meaning as is assigned to it by the Prevention of Money Laundering Act;

"funds" means banknotes and coins, scriptural money and electronic money;

"group" means a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU or undertakings as defined in Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014, which are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of the CRR;

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

"holding company" or "parent company" has the same meaning as is assigned to the term "parent company" in the [Companies Act](#);

"home Member State" means either of the following:

- (a) the Member State in which the registered office of the payment service provider is situated; or
- (b) if the payment service provider has, under its national law, no registered office, the Member State in which its head office is situated;

"host Member State" means the Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;

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

"issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;

~~"licence" in relation to the business of a financial institution~~ means a licence granted under this Act to provide any of the activities listed in the First Schedule;

"Member State" means a Member State of the European ~~Communities~~Union and includes an EEA State;

"Minister" means the Minister responsible for the regulation of Financial Services;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act;

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

"officer", in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"outsourcing" means the use of a third party (the outsourcing service provider) by a financial institution, to perform activities that would normally be undertaken by the licensed or registered entity, now or in the future;

"outsourcing service provider" means the supplier of goods, services or facilities, and which may be an affiliated entity within a corporate group or an entity that is external to the group;

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

"own funds" means funds as defined in point 118 of Article 4(1) of the CRR, where at least 75 % of the Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 capital is equal to or less than one third of Tier 1 capital; has the same meaning as is assigned to it by a Financial Institutions Rule;

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

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

"payer" means a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a person who gives a payment order;

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

"payment initiation service" means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

"payment initiation service provider" means a payment service provider that has been licenced under this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive, to provide payment initiation services;

"payment institution" shall have the meaning assigned to it in the Second Schedule means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive, to provide and execute payment services throughout the European Union;

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

"payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

"payment service" means any business activity set out in the Second Schedule; "payment service provider" means;

- (a) credit institutions, including branches thereof as defined in article 2(1) of the Banking Act where such branches are located in the European Union, irrespective of whether the head offices of those branches are located within the European Union or, in accordance with Article 47 of the CRD and with national law, outside the European Union;
- (b) electronic money institutions, being a company, that have been granted authorisation under Title II of the Electronic Money Directive to issue electronic money, including, in accordance with Article 8 of that Directive and with national law, branches thereof, where such branches are located within the European Union and their head offices are located outside the European Union, in as far as the payment services provided by those branches are linked to the issuance of electronic money;
- (c) post office giro institutions which are entitled under national law of any Member State to provide payment services;
- (d) payment institutions and account information service providers;
- (e) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities; or
- (f) Member States or their regional or local authorities when not acting in their capacity as public authorities;

"payment service user" means a person making use of a payment service in the capacity of payer, payee, or both;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder; Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder;

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

"payment transaction" means an act, initiated by the payer or on his behalf by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

"personalised security credentials" means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;

"qualifying shareholding" shall have the same meaning as that assigned to it in point (36) of Article 4(1) of the CRR; means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights;

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, ~~taking into account~~, the voting rights ~~as set out~~ referred to in Articles 9 and 10 of [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending [Directive 2001/34/EC](#), ~~as well as~~ and the conditions regarding aggregation thereof ~~laid down~~ set out in Article 12(4) and (5) of that Directive, shall be taken into account; ~~or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly;~~

— Provided further that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments ~~and~~, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are ~~, on the one hand,~~ not exercised or

otherwise used to intervene in the management of the issuer and, ~~on the other,~~ are disposed of within one year of acquisition;

"reconstruction" has the same meaning as is assigned to it by the [Companies Act](#);

"registration" means a registration granted under this Act to provide solely account information services in accordance with article 5(1A);

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

"Regulation (EC) No 1606/2002" means Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, as amended from time to time;

"subsidiary" has the same meaning as "subsidiary undertaking" in the [Companies Act](#);

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

"Tier 1 capital" shall have the same meaning as that assigned to in Article 25 of the CRR;

"Tier 2 capital" shall have the same meaning as that assigned to it in Article 71 of the CRR;

"trade bills" means bills of exchange and promissory notes.

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

(3) The provisions of this Act shall be without prejudice to the provisions Directive 2008/48/EC as transposed in the Consumer Credit Regulations, other relevant European Union law or national measures regarding conditions for granting credit to consumers not harmonised by the Payment Services Directive that comply with European Union Law.

LICENSING AND REGISTRATION REQUIREMENTS

~~Licences for b~~Business of financial institutions.

3. (1) No business of a financial institution, other than of an account information service provider, shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the competent authority:-

Provided that the business of a financial institution, other than of an account information service provider, may also be transacted in or from Malta by a legal person which is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive.

(1A) No business of an account information service provider shall be transacted in or form Malta except by a natural person or a company which is in possession of a registration granted under this Act by the competent authority:

Provided that the business of an account information service provider may also be transacted from Malta by a natural or legal person which is in possession of a registration granted by another Member State under the Payment Services Directive, in exercise of its European rights and in accordance with the provisions of the Payment Services Directive;

Provided further that a licensed financial institution shall not require a registration in accordance with this sub-article in order to provide account information services.

(2) For the purposes of sub-article (1) and Ssubject to the provisions of sub-article (3), a person shall not be deemed to be a financial institution by reason of the fact that the person either:

- (a) belongs to a group ~~of companies~~ and provides any of the activities listed in the First Schedule, except for activities 4 and, or, 10 thereof, to companies which are not banks or financial institutions and which belong to the same group ~~of companies~~; or
- (b) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or, 10 thereof, to other undertakings, which are not banks or financial institutions, and all such undertakings are controlled directly or indirectly by the same person; or
- (c) is an undertaking and provides any of the activities listed in the First Schedule, except for activities 4 and, or, 10 thereof, to a person, which is not a bank or financial institution, that directly or indirectly controls it; or
- (d) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due:

Provided that for the purposes of this sub-article, a person shall be deemed to control an undertaking if such person:

- (i) is a 'parent company' as defined in article 2(2)(a) of the [Companies Act](#); or
- (ii) has all of the following characteristics:
 - (aa) power over the undertaking, based on the current ability to direct the relevant activities which significantly affect returns;
 - (bb) exposure, or right, to variable returns from its involvement with the undertaking; and
 - (cc) the ability to use its power over the undertaking to affect the amount of the person's returns.

For the purposes of this sub-article:

'person' means a natural person or an undertaking; and

'undertaking' means a body corporate or unincorporated which carries on a trade or business.

(2A) For the purposes of sub-article (1), and without prejudice to sub-articles (3) and (3A), a person who regularly or habitually carries out any of the following activities shall not be deemed to be a payment institution or an electronic money institution:

(a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;

(b) payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of only the payer or only the payee;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;

(f) cash-to-cash currency exchange operations where the funds are not held on a payment account;

(g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:

(i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(ii) paper cheques similar to those referred to in point (i) above and governed by the laws of Member States which are not party of the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(iii) paper-based drafts in accordance drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(iv) paper-based drafts similar to those referred to those referred to in point (iii) above and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(v) paper-based vouchers;

(vi) paper-based travellers' cheques;

(vii) paper-based postal money orders as defined by the Universal Postal Union;

(h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 35 of the Payment Services Directive as transposed in directives issued by the Central Bank under the Central Bank of Malta Act;

(i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;

(j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;

(k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;

(ii) instruments which can be used only to acquire a very limited range of goods or services;

(iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the

issuer:

Provided that, service providers carrying out either of the activities referred to in points (i) and (ii), or both, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of EUR 1 million, shall send an annual notification to the competent authority containing a description of the services offered, specifying under which exclusion referred to in points (i) and (ii) the activity is considered to be carried out:

Provided further that, on the basis of such a notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in this paragraph (k) where the activity does not qualify as a limited network, and shall inform the service provider accordingly; (PSDII Article 37(2) 2nd paragraph)

(l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:

(i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets:

Provided that the value of any single payment transaction referred to in points (i) and (ii) does not exceed EUR 50 and:

(i) the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or

(ii) where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month:

Provided that, service providers carrying out an activity referred to in this paragraph (l) shall send a notification to the competent authority and provide the competent authority with an annual audit opinion, testifying that the activity complies with the limits set out in this paragraph (l);

(m) payment transactions carried out between payment service providers, their agents or branches for their own account;

(n) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;

(o) cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issues, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as referred to in the Second Schedule;

Provided that any person providing such cash withdrawal service shall abide by any requirements as may be specified in a directive issued by the Central Bank under the Central Bank of Malta Act, transposing Article 3(o) of the Payment Services Directive.

(3) In the event of reasonable doubt as to whether an activity constitutes the business of a financial institution, or whether the business of a financial institution is or is not being transacted in or from Malta by any person, the matter shall be conclusively determined by the competent authority.

(3A) (a) A person that is neither a payment service provider, nor is explicitly excluded from the scope of this Act shall be prohibited from providing payment services.

(b) Notwithstanding paragraph (a) of this sub-article, the competent authority shall inform the EBA of the services notified pursuant to paragraphs (k) and (l) of sub-article (2A), stating under which exclusion the activity is carried out.

(c) The description of the activity notified under paragraphs (k) and (l) of sub-article (2A) shall be made publicly available in the public register referred to in article 8D and the central register developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive.

(4) The granting of a licence or of a registration as applicable, shall be subject to an annual fee as the competent authority may determine from time to time.

(5) A licensed or registered financial institution may not take deposits or other repayable funds from the public within the meaning of the [Banking Act](#).

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

~~(7) The competent authority may, in relation to a licensed company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in this Act and in any Financial Institutions Rules applying to financial institutions authorised to issue electronic money, in cases where:~~

~~(a) the total business activities of the company generate an average outstanding electronic money that does not exceed the amount of two million euro (€2,000,000); and~~

~~(b) none of the natural persons responsible for the management or operation of the company's business has been convicted of offences relating to money laundering or the funding of terrorism or other financial crimes;~~

~~— Provided that, the underlying contractual arrangements of the company shall provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty euro (€250).~~

~~(8) A company that issues electronic money which has been granted a waiver in terms of the preceding sub-article shall be entered into a public register of financial institutions held in accordance with article 8D.~~

~~(9) The competent authority shall determine which of the activities in the Third Schedule may be provided by the companies registered in accordance with the provisions of sub-article (8).~~

~~(10) A company that has been granted a waiver in terms of sub-article (7) shall:~~

~~(a) notify the competent authority of any change in its situation which is relevant to the conditions laid down in sub-article (7); and~~

~~(b) report periodically, at least annually or during any other period which the competent authority may determine, on its average outstanding electronic money;~~

~~— Provided that, where the conditions laid down in sub-article (7) are no longer met, the company shall within thirty calendar days apply to the competent authority for a modification of the licence to reflect the new circumstances of the company;~~

~~— Provided further that where a company as referred to in the preceding proviso has not sought for the modification of the licence within such period, it shall be prohibited from issuing electronic money in accordance with this Act.~~

~~(11) A company as referred to in sub-article (7) shall be treated as a financial institution authorised to issue electronic money but shall not benefit from the freedom to provide services and the right of establishment.~~

~~(12) For the better carrying out of the provisions of this article on the granting of waivers, the competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on licence holders as specified therein.~~

(13) Notwithstanding anything provided for in this article, the application of the provisions of the any anti-money laundering and combatting the funding of terrorism legislation ~~Prevention of Money Laundering Act~~ shall not be waived.

Exemption for financial leasing of ships and aircraft.

3A. (1) Notwithstanding the provisions of article 3, any entity, whether established or operating in Malta or otherwise, carrying out the activity, in or from Malta, of financial leasing and all related transactions involving:

(a) an aircraft registered or to be registered in the National Aircraft Register as defined in the Aircraft Registration Act or registered in any other jurisdiction whatsoever and any aircraft engine; or

(b) a ship registered or to be registered in the register as defined in the Merchant Shipping Act or registered in any other jurisdiction whatsoever, shall not require a licence from the competent authority for the purposes of this Act, where:

(i) such entity is owned and controlled, or is a subsidiary of, or exclusively funded by; and

(ii) any relevant financial leasing transaction or the relevant underlying asset, being an aircraft, an aircraft engine or a ship, is exclusively financed by -

persons or entities as described in Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, or persons or entities who are recognised as eligible counterparties in accordance with Article 30 of such Directive 2014/65/EU:

Provided that in the interpretation and application of paragraphs (i) and (ii), and in order to ensure compliance with their requirements, where the ownership of such entity as described in the said paragraph (i), or of the entity financing the transaction in the said paragraph (ii) or its underlying assets, is vested in a trustee, or is otherwise held by another intermediary on a fiduciary basis, the criteria described in Annex II of Directive 2014/65/EU shall apply by reference to the beneficial interests involved and not to the said trustee or intermediary.

(2) The provisions of this article shall only apply to an entity where the business of such entity is limited to the financial leasing of aircrafts, aircraft engines or ships as described in sub-article (1) and to activities that are ancillary thereto, to the exclusion of other types of assets and activities otherwise falling within the purposes of this Act.

Application for a licence or a registration.

4. (1) Any company desirous of commencing the business of a financial institution in Malta, other than that of an account information service provider, shall, before commencing any such business, apply in writing to the competent authority for a licence under this Act:-

Provided that a legal person which is in possession of an authorisation granted by another Member State under the Payment Services Directive or the Electronic Money Directive may exercise its European rights in accordance with the provisions of the Payment Services Directive.

(1A) Any natural person or company desirous of commencing the business of an account information service provider shall, before commencing any such business, apply in writing to the competent authority for a registration under this Act:

Provided that a natural or legal person which is in possession of a registration granted by another Member State under the Payment Services Directive may exercise its European rights in accordance with the provisions of the Payment Services Directive.

(2) All applications for a licence or registration as applicable, shall be in such form and accompanied by such information and shall conform ~~to~~with such conditions as shall be prescribed from time to time by a Financial Institutions Rule and an application may only be withdrawn by written notice to the competent authority at a time before ~~the licence or registration being applied for~~ has been granted or refused.

(3) The competent authority shall have the power to require any person to provide such information as it shall deem necessary for the purposes of determining an application for a licence or a registration as applicable.

(4) The competent authority shall only grant a licence or a registration, if the information and evidence accompanying the application complies with all the requirements laid down in the Financial Institutions Rule referred to in sub-article (2) and if the competent authority's overall assessment, having scrutinised the application, is favourable.

(5) The competent authority may, where relevant, before granting a licence or a registration, consult the Central Bank or other relevant public authorities.

(6) A licence to provide payment services or to issue electronic money and a registration to provide account information services shall be valid in all Member States and shall allow the payment institution, the electronic money institutions or the account information service provider concerned to provide the services that are covered by the licence or registration throughout the European Union, pursuant to the freedom to provide services or the freedom of establishment.

~~Issuing~~ Granting of a licence or a registration.

5. (1) No company shall be granted a licence unless:—

- (a) its initial capital, whether in Euro or in any other currency acceptable to the competent authority, are equal to such amount established by the competent authority in a Financial Institutions Rule and as may be appropriate for the activities to be undertaken by the applicant;
- (b) there are at least two individuals, or any other number of individuals as may be otherwise determined by the competent authority, who will effectively direct the business of the financial institution ~~from~~ Malta;
- (c) ~~all~~shareholders having a qualifying holdingsshareholders, controllers and all persons who will effectively direct the business of the financial institution are suitable persons to ensure its sound and prudent management;
- (d) the competent authority is satisfied that the financial institution company has sound and prudent management, and has robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the institution company as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

- (e) the competent authority is satisfied that, where there are close links between that 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 that company under the provisions of this Act or any Financial Institutions Rule;

(f) it satisfies any other conditions for the granting of a licence as may be specified in a Financial Institutions Rule;

Provided that the company shall, after being licensed under this Act, inform the competent authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this ~~paragraph-sub-article~~ on a continuous basis. _

(1A) No natural person or company shall be granted a registration unless:

(a) Controllers and all persons who effectively direct the business of the account information service provider are suitable persons to ensure its sound and prudent management;

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

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the natural person or company as may be determined by the competent authority from time to time and, or as may be specified by a Financial Institutions Rule;

(c) the competent authority is satisfied that, where there are close links between that natural person or 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 that natural person or company under the provisions of this Act or any Financial Institutions Rule;

(d) it satisfies any other conditions for the granting of a registration as may be specified in a Financial Institutions Rule;

Provided that the natural person or company shall, after being registered under this Act, inform the competent authority forthwith of any change in circumstances concerning the application and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in this sub-article on a continuous basis.

(1B) Without prejudice to sub-articles (1) and (1A), a person who applies for a licence or a registration as applicable, to provide payment initiation services and, or, account information services, shall, as a condition for the granting of its licence or registration as applicable, also be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee. With respect to the provision payment initiation services, the required professional indemnity insurance or other comparable guarantee shall be required against liability to ensure that it can cover its liabilities as specified in Articles 73, 89, 90 and 92 of the Payment Services Directive as transposed in directives issued by the Central Bank under the Central Bank of Malta Act. With respect to the provision of account information services, the required professional indemnity insurance or other comparable guarantee shall be required against its liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorized or fraudulent access to or non-authorized or fraudulent use of payment account information;

Provided that the amount of the professional indemnity insurance or other comparable guarantee referred to in this sub-article shall be calculated in accordance with the method as may be laid out in a Financial Institutions Rule;

Provided further than any information required by the competent authority in order to calculate the amount of the required professional indemnity insurance or other comparable guarantee shall be notified to the competent authority in terms of a Financial Institutions Rule.

(2) The competent authority shall determine each application for a licence or for a registration within three months of receipt of the application or, if the application does not comply with article 4(2) or additional information is required, within three months of compliance with the said sub-article or the furnishing of the information as the case may be, whichever be the later. ~~In any event an application~~

~~shall be determined within six months of its receipt.~~

(3) The competent authority may grant or refuse to grant a licence or a registration applied for under this Act, and where it refuses an application it shall inform the applicant in writing with the reasons for the refusal.

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

(b) For the better carrying out of the provisions of this Act, ~~and~~ to better transpose the provisions of the Electronic Money Directive and the Payment Services Directive, and to implement any implementing technical standards, regulatory technical standards, guidelines, and, or any other similar measure issued under the Payment Services Directive, the competent authority may, from time to time, issue and publish Financial Institutions Rules which shall be binding on ~~licence holders~~ financial institutions and others as may be specified therein.

Such Rules may lay down additional requirements and conditions in relation to activities of ~~licence holders~~ financial institutions, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate.

(5) Where the competent authority for any reason fails to determine an application for a licence or a registration within the time prescribed under sub-article (2), such fact shall be deemed to constitute a refusal to grant a licence or a registration as applicable.

(6) (i) ~~Where a~~ licensed or registered financial institution as applicable, shall not propose to engage in business activities not listed in any of the Schedules, without the prior consent of the competent authority. Where a licensed or registered financial institution as applicable intends to engage in business activities not listed in any of the Schedules, it shall inform the competent authority in writing. may require the establishment of a separate entity, wWhere the proposed activities may, in the opinion of the competent authority, impair or threaten to impair either the financial soundness of the financial institution or the ability of the competent authority to monitor the financial institution's compliance with all the obligations laid down in this Act or any regulations and Rules issued thereunder, the competent authority may require the establishment of a separate entity.

(ii) Where a licensed or registered financial institutions provides any of the services referred to in the First Schedule and, at the same time, is engaged in other business activities, the competent authority may require the establishment of a separate entity for the carrying out of the business for which the financial institution is licensed or registered, where the other business activities in which the financial institution is engaged in impair, or are likely to impair, either the financial soundness of the financial institution or the ability of the competent authority to monitor the financial institution's compliance with all obligations laid down in this Act and any regulations and Rules issued thereunder.

(7) ~~Where the applicant is a financial institution licensed or holding an equivalent authorisation in another country, it shall have its head office in the same country where it is registered and, or licensed. A financial institution licensed or registered in Malta shall have its head office and its registered office in Malta and shall carry out at least part of its licensable activities in Malta:~~

Provided that where a registered account information service provider is a natural person, such a natural person shall have its contact address in Malta.

Own funds.

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

competent authority.

(2) Notwithstanding the initial capital requirements as may be set out in a Financial Institutions Rule, financial institutions providing any of the services listed in the Second or the Third Schedule shall, except for payment initiation services and account information services, hold, at all times, ~~hold~~ own funds calculated in accordance with one ~~or~~ more of the ~~three~~ methods laid down in the said Rule.

(2A) Where a payment institution or an electronic money institution belongs to the same group as another payment institution, electronic money institution, credit institution, investment firm, asset management company or insurance undertaking, or where a payment institution or an electronic money institution carries out activities other than providing payment services or issuing electronic money as applicable, the multiple use of elements eligible for own funds shall be prohibited.

(2B) In the event that the conditions laid down in Article 7 of the CRR are met, the competent authority may choose not to apply sub-article (2) to payment institutions or electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to the CRD.

(3) Where the amount of own funds of a financial institution other than an account information service provider falls below the amount established under sub-articles (1) and (2), the competent authority shall require that financial institution to take the necessary measures to restore the level of own funds within such period as the competent authority may determine:

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

Professional indemnity insurance or other comparable guarantee.

5B. (1) A financial institution providing payment initiation services and, or, account information services, shall hold the professional indemnity insurance or other comparable guarantee referred to in article 5(1B) at all times.

(2) Financial institutions required to hold a professional indemnity insurance or other comparable guarantee in accordance with sub-article (1) shall review, and if necessary recalculate, the minimum monetary amount of their professional indemnity insurance or other comparable guarantee at least on an annual basis.

(3) The amount of the professional indemnity insurance or other comparable guarantee referred to in this article shall be calculated in accordance with the method as may be laid out in a Financial Institutions Rule.

(4) A financial institution required to hold a professional indemnity insurance or other comparable guarantee in accordance with sub-article (1) shall submit to the competent authority any information which the competent authority may require in order to calculate the amount of the required professional indemnity insurance or other comparable guarantee.

Restriction, suspension and withdrawal/revocation of a licence or registration.

6. (1) The competent authority may~~shall~~ withdraw, suspend or restrict a licence or registration issued to a financial institution where ~~the latter~~:

- (a) the financial institution expressly renounces the licence or registration;
- (b) the financial institution does not commence business pursuant to the licence or registration as applicable within twelve months of its issue or any such date as may be specified by the competent authority, or has ceased to engage in business for more than six months or ~~within~~ for such other period of time as may be ~~specified in the licence~~ determined by the competent authority;

- (c) (i) the financial institution has obtained the licence or registration through false statements or any other irregular means; or
- (ii) where~~if~~ any document or information accompanying an application for a licence or registration or any information given in connection therewith is false in any material particular; or
- (iii) where~~if~~ the ~~holder of a licence~~financial institution conceals from, or fails to notify or submit to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act and any regulations and Rules issued thereunder;
- (d) the financial institution no longer fulfils the conditions required for the granting of the licence or registration or in terms of any Financial Institutions Rule, or fails to inform the competent authority on major developments in this respect;
- (e) the financial institution is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved;
- (f) the financial institution has ceased to operate as a result of a merger with another financial institution;
- (g) the financial institution is a branch of an institution incorporated outside Malta and the overseas regulatory authority in the country of incorporation withdrew the authorisation or registration of the institution; ~~or~~
- (h) ~~would~~ the financial institution would constitute a threat to the stability of the payment system by continuing its payment services or electronic money~~within the meaning of the Second and Third Schedules;~~
- (i) the financial institution fails, or is likely to fail, to comply with any of the provisions of this Act or any regulations made or Financial Institutions Rules issued thereunder or with the conditions under which the licence or registration is issued;
- (j) the financial institution has insufficient assets to cover its liabilities; or
- (k) the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability or integrity of the financial system.

(2) Where the competent authority withdraws, suspends or restricts a licence or registration, it shall inform the financial institution of the reasons for the withdrawal, suspension or restriction of ~~the~~ licence or registration ~~and notice of such withdrawal shall be made public.~~

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

- ~~(a) if the holder no longer possesses sufficient own funds;~~
- ~~(b) if the holder is likely to become unable to meet its obligations;~~
- ~~(c) if the holder has insufficient assets to cover its liabilities; or~~
- ~~(d) if the competent authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, these would constitute a threat to the stability of the financial system.~~

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

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

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

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

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

(e) the requirement that the financial institution be permitted to undertake any transaction or transactions or any activity listed in the First Schedule only upon such terms and conditions as the competent authority may prescribe.

(5) The competent authority shall have the power to vary or remove any restrictions imposed under this article.

(5A) Where the competent authority varies or removes any restrictions imposed under this article, it shall inform the financial institution of the reasons for the variation or removal of any such restrictions.

(6) A licence granted to a branch of an institution incorporated outside Malta may only be ~~revoked~~ withdrawn after consultation with the overseas regulatory authority of the country of incorporation, unless the competent authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(7) Upon the restriction or ~~revocation-withdrawal~~ of a licence or registration of a financial institution incorporated in Malta, the competent authority shall inform the overseas regulatory authorities of the country in which the financial institution or its subsidiaries are carrying on any activity under the First Schedule or any other activity as the competent authority may deem complementary to the institution's activities in Malta.

(8) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any ~~action it has taken~~ restriction imposed under this article.

(9) The competent authority shall publish any withdrawal or suspension of a licence or registration, including in the public register referred to in article 8D and the central register developed, operated and maintained by the EBA in accordance with Article 15 of the Payment Services Directive.

Notification of proposed variation, restriction, suspension or ~~withdrawal~~ revocation of a licence or registration.

7. (1) Where the competent authority ~~intends~~ proposes:-

(a) in terms of articles 5(4)(a) and 6(4)(e), to vary any condition to which the licence or registration is subject or to impose a condition thereon; or

(b) ~~to in terms of article 6(1), to~~ restrict, suspend or ~~revoke~~ withdraw a licence or registration, or to vary any restriction thereon,

it shall serve written notice of its intention on the financial institution and shall specify the grounds upon which the competent authority ~~it~~ intends to take such action.

(2) Every notice given under sub-article (1) shall state that the financial institution concerned may, within such reasonable period after service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), specify a period in which the financial institution shall be entitled to make representations in writing to the competent authority giving reasons as to why such action should not be taken and the competent authority shall consider any representations so made before arriving at a final decision.

(3) Unless the competent authority ~~decides~~ considers that the matter is urgent, it shall not impose or

vary, any restriction or condition, or ~~suspend or revoke~~ ~~withdraw~~ a licence ~~or registration~~ before the expiry of the period as set under sub-article (2).

(4) The competent authority shall, as soon as practicable, notify its final decision in writing to any financial institutions to whom notice has been served under sub-article (1).

Changes in information.

7A. A financial institution licensed ~~or registered~~ under this Act shall provide the competent authority with particulars of any changes in the information provided under this Act, ~~and any Regulations and Rules issued thereunder~~, as soon as such financial institution becomes aware of such change.

Power to issue directives.

7B. (1) Without prejudice to any of the powers conferred in this Act, the competent authority may, in order to carry out the functions and duties prescribed by the Malta Financial Services Authority Act and by this Act and any regulations made or Rules issued thereunder, whenever it deems necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances.

(2) Any person to whom a notice is given in accordance with sub-article (1) shall 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.

Information to be provided to customers or potential customers.

7C. A licensed or registered financial institution shall provide its customers or potential customers, including in any promotional material, with a statement of the fact that the financial institution is licensed or registered, as applicable, by the competent authority, together with the address of the competent authority.

OBLIGATIONS OF ~~LICENCE HOLDERS~~ FINANCIAL INSTITUTIONS AND OTHERS

Opening of branches and ~~subsidiaries~~ ~~exercise of European Rights~~.

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

(2) A financial institution ~~incorporated in Malta~~ wishing to open a branch, ~~agency~~ or office outside Malta ~~and a financial institution incorporated in Malta wishing to set up or acquire any subsidiary in or outside Malta to provide any of the activities listed in the First Schedule to the exception of activities 4 or 10 thereof, and a financial institution wishing to open a branch or office in a third country to provide activities 4 and 10 of the Second Schedule,~~ shall require the prior written approval of the competent authority.

(2A) A financial institution wishing to provide the activities listed in the Second or Third Schedules in another Member State in exercise of a European right shall inform the competent authority in accordance with the procedure laid down in sub-articles (5) to (16).

Opening of subsidiaries.

(2B) A financial institution wishing to set up or acquire a subsidiary in or outside Malta shall require the prior written approval of the competent authority.

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

~~(a) provides any of the activities listed in the First Schedule, other than paragraphs 4 and 10 thereof,~~

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

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

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

Exercise of a European right by a payment institution or an electronic money institution licensed under this Act, or by an account information service provider registered under this Act.

~~(5) Licensed financial institutions~~A payment institution or an electronic money institution licensed under this Act, or an account information service provider registered under this Act wishing to provide payment services or electronic money services, as applicable, for the first time in another Member State, in the exercise of a European right, referred to in subarticle (4) shall inform the competent authority of its~~their~~ intention to exercise such a European right and shall communicate to the competent authority the following information: shall within one month of receiving this information, inform the overseas regulatory authority concerned of:

~~(a) the name, and address and, where applicable, the licence number of the financial institution;~~payment or electronic money institution, or the registration number of the account information service provider;

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

~~(c) its organisational structure; and~~

~~(d) the Member State or Member States in which the payment institution, electronic money institution or account information service provider intends to operate and the kind of services it intends to provide in the territory of the Member State or Member States concerned;~~or EEA State.

~~(e) where the payment institution, the electronic money institution or the account information service provider intends to make use of an agent, the information referred to in Article 8A(1);~~

~~(f) where the payment institution, the electronic money institution or the account information service provider intends to make use of a branch:~~

~~(i) a business plan including a forecast budget calculation for the first 3 financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly with regard to the payment service and, or the electronic money service, as applicable, in the host Member State;~~

~~(ii) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate with regards to the payment service and, or the electronic money service, as applicable, in the host Member State; and~~

(iii) a description of the organisational structure of the branch and the identity of those responsible for the management of the branch.

(6) ~~In this article:~~

~~(a) "European Right" refers to the rights described in the European Rights Regulations; and~~

~~(b) "European Rights Regulations" means the European Passport Rights for Credit Institutions Regulations.~~

(7) Where Malta is the home Member State, and a payment institution, an electronic money institution or an account information service provider intends to outsource operational functions of payment services or electronic money services, as applicable, to other entities in the host Member State, it shall inform the competent authority accordingly.

Procedure for the exercise of a European right – Malta home.

(8) The competent authority shall, within one month of receipt of all of the information referred to in sub-articles (5) and (7), send such information to the European regulatory authority of the host Member State.

(9) Where Malta is the home Member State and the European regulatory authority of the host Member state has, within one month of receipt of the information received from the competent authority in accordance with sub-article (8) and in accordance with the second subparagraph of Article 28(2) of the Payment Services Directive, assessed that information and provided the competent authority with relevant information in connection with the intended provision of payment services and, or electronic money services, as applicable, by the relevant payment institution, electronic money institution or account information service provider in the exercise of the freedom of establishment or the freedom to provide services, and informed the competent authority of any reasonable grounds for concern in connection with the intended engagement of an agent or establishment of a branch with regard to money laundering or the funding of terrorism, the competent authority shall, where it does not agree with the assessment carried out by the European regulatory authority of the host Member State, provide the latter with the reasons for its decision.

(10) If the assessment of the competent authority referred to in sub-article (9), particularly in light of the information received from the European regulatory authority of the host Member State, is not favourable, the competent authority shall refuse to register the agent or branch or shall withdraw the registration if already made.

(11) Within three months of receipt of the information referred to in sub-article (5) and (7), the competent authority shall communicate its decision to the European regulatory authority of the host Member States and to the payment institution, electronic money institutions or account information service provider concerned.

(12) Upon entry in the register referred to in article 8D, the agent or branch may commence its activities in the relevant host Member State.

(13) The payment institutions, electronic money institution or account information service provider shall notify to the competent authority with the date from which it commences its activities through the agent or branch in the relevant host Member State.

(14) The competent authority shall inform the European regulatory authority of the host Member State of the date referred to in sub-article (13).

(15) The payment institution, electronic money institution or account information service provider shall communicate to the competent authority, without undue delay, any relevant changes regarding the information communicated in accordance with sub-article (5) and (7), including additional agents, branches or entities to which activities are outsourced in the host Member States in which it operates. The procedure provided for under sub-articles (8) to (14) shall apply.

Procedure for the exercise of a European right – Malta host.

(16) Where Malta is the host Member State and the competent authority is, further to the first subparagraph of Article 28(2) of the Payment Services Directives, notified by a European regulatory authority that a payment institution, electronic money institution or an account information service provider licensed or registered, as applicable, in the Member State of the said regulatory authority, wishes to provide payment services or electronic money services for the first time in Malta in the exercise of a European right, the competent authority shall, within one month of receipt of the information referred to in Article 28(1) of the Payment Services Directive from the European regulatory authority of the home Member State in accordance with the first subparagraph of Article 28(2) of the Payment Services Directive, assess that information and provide the European regulatory authority of the home Member State with relevant information in connection with the intended provision of payment services or electronic money services, as applicable, by the relevant payment institution, electronic money institution or account information service provider in the exercise of a European right. The competent authority shall in particular inform the European regulatory authority of the home Member State of any reasonable grounds for concern in connection with the intended engagement of an agent or establishment of a branch with regard to money laundering or the funding of terrorism.

Information to customers and potential customers.

(17) Financial institutions shall ensure that branches acting on their behalf inform their customers and potential customers of this fact.

Agency arrangements.

8A. (1) ~~ANo~~ financial institution other than an electronic money institution wishing to provide any of the activities referred to in the Schedules to this Act through an agent, or an electronic money institution wishing to distribute or redeem electronic money through an agent or distributor shall enter into agency arrangements, with third parties, unless it has communicated the following information to the competent authority:

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that will be used by the agents in order to comply with the obligations in relation to money laundering and the funding of terrorism under any anti-money laundering and combatting the funding of terrorism legislationthe Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations; and
- (c) the identity of ~~the~~ directors and persons responsible for the management of the agent to be used in the provision of services, and, for agents other than payment service providers, evidence that they are suitable-fit and proper persons;
- (d) the services of the financial institution for which the agent is mandated; and
- (e) where applicable, the unique identification code or number of the agent.;

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

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

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

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

(1A) In the event of material changes to the particulars communicated to the competent authority at the initial notification pursuant to sub-article (1)(b), the financial institution concerned shall provide the competent authority with the updated information without delay.

(2) ~~An electronic money financial institution authorised to issue electronic money shall not issue electronic money through agents:~~

Provided that an electronic money financial institution authorised to issue electronic money may, subject to such conditions as may be established by the competent authority, distribute and redeem electronic money through agents or distributors.

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

(4) The competent authority shall may, within two months of receipt of the information referred to in sub-article (1), communicate to the financial institution whether ~~list~~ the agent has been entered in the public register as provided for referred to in article 8D and if it refuses to list such agent it shall inform the financial institution in writing of the reasons for the refusal:

Provided that if the competent authority is not satisfied that the information provided to it is correct, it shall take further action to verify the information before entering the agent in the register:

Provided further that if, after taking action to verify the information, the competent authority is not satisfied that the information provided to it pursuant to sub-article (1) is correct, it shall refuse to list the agent in the public register referred to in article 8D and shall inform the financial institution without undue delay refuse to list the agent in the public register as provided for in article 8D.

(4A) An agent may only commence providing the relevant activities upon entry in the public register referred to in article 8D.

(4B) Where a payment institution or an electronic money institution wishes to provide payment services in another Member State by engaging an agent or establishing a branch it shall also follow the procedures set out in article 8(5) to (16).

(5) Where ~~the~~ financial institution licensed or holding an equivalent authorisation in another Member State ~~or EEA State~~ carries out the activities listed in any of the Schedules in Malta through a branch or by engaging an agent or distributor, the financial institution shall follow the procedures laid out in a Financial Institutions Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch, ~~or agent or distributor~~, money laundering or the funding of terrorism, ~~within the meaning of Council Directive 2005/60/EC~~, is being or has been committed or attempted, or that the engagement of such branch or agent could increase the risk of money laundering or the funding of terrorism, it shall inform the Member State ~~or EEA State~~ in which the financial institution is established, and may refuse to register the branch or agent, or may withdraw the registration of the branch or agent.

(6) Financial institutions shall, without undue delay and in accordance with the procedure provided for in sub-articles (4) and (4A), communicate to the competent authority any changes regarding the use of agents or distributors, including additional agents or distributors.

(7) A financial institution wishing to provide its activities through an agent in a third country, shall require the prior written approval of the competent authority.

(8) Financial institutions shall ensure that agents or distributors acting on their behalf inform their customers and potential customers of this fact.

Outsourcing of operational functions.

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

—Provided that the outsourcing of important operational functions, including IT systems, shall may not be undertaken in such way as to impair materially the quality of ~~its~~ the financial institution's internal control and the ~~ability of the~~ competent authority's ability to monitor and retrace the financial institution's compliance with all of the obligations ~~provided for under~~ laid down in this Act, and any ~~R~~regulations or Rules made thereunder.

(2) For the purpose of ~~this Act or any Regulations or Rules~~ sub-article (1) issued thereunder, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a financial institution with the requirements of its licence or registration, ~~or~~ its other obligations under this Act or any Regulations or Rules issued thereunder, ~~or~~ its financial performance, or the soundness or continuity of its services:

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

- (a) the outsourcing shall not result in the delegation by senior management of its responsibility;
- (b) the relationship and obligations of the financial institution towards any person making use of its services ~~users~~ under this Act, and the Rregulations or Rules issued thereunder ~~the Act~~, shall not be altered;
- (c) the conditions with which the financial institution ~~shall~~ must comply with in order to be licensed and remain so in accordance with this Act, and with the Rregulations or Rules issued thereunder ~~this Act~~, and to remain so, must ~~shall~~ not be undermined; and
- (d) none of the other conditions subject to which the financial institution's licence or registration was granted ~~shall~~ must be removed or modified.

(2A) Financial institutions shall, without undue delay, communicate to the competent authority any changes regarding the use of entities to which activities are outsourced.

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

Liability.

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

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

Registration Public register.

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

- (a) financial institutions licensed to provide any of the activities listed in the First Schedule;

- (b) branches of financial institutions, other than financial institutions providing activities 4 or 10 of the First Schedule, if those branches provide services in any territory outside Malta;
- (c) agents of financial institutions, other than financial institutions providing activities 4 or 10 of the First Schedule, in Malta or in another Member State;
- (d) payment institutions;
- (e) branches of payment institutions licensed under this Act if those branches provide services in another Member State;
- (f) branches in Malta of payment institutions authorised in another Member State;
- (g) agents of payment institutions providing services in Malta or in another Member State;
- (h) payment institutions licensed under this Act exercising their European right to provide services in another Member State;
- (i) payment institutions authorised in another Member State exercising their European right to provide services in Malta;
- (j) account information service providers;
- (k) branches of account information service providers registered under this Act if those branches provide account information services in another Member State;
- (l) branches in Malta of account information service providers authorised in another Member State;
- (m) agents of account information service providers;
- (n) account information service providers registered under this Act exercising their European right to provide services in another Member State;
- (o) account information service providers authorised in another Member State exercising their European right to provide services in Malta;
- (p) the institutions referred to in points (4) to (23) of Article 2(5) of the CRD that are entitled under national law to provide payment services;
- (q) electronic money institutions;
- (r) branches of electronic money institutions providing services in another Member State;
- (s) branches in Malta of electronic money institutions authorised in another Member State;
- (t) agents of electronic money institutions providing payment services in Malta or in another Member State;
- (u) electronic money institutions licensed under this Act exercising their European right to provide services in another Member State;
- (v) electronic money institutions authorised in another Member State exercising their European right

to provide services in Malta;

(w) service providers carrying out services under points (i) and (ii) of point (k) and point (l) of article 3(2A).

(2) Such register shall identify the services for which the financial institution is licensed or registered and shall be publicly available for consultation, shall be accessible online and shall be updated ~~on a regular basis~~without delay.

(3) Licensed payment institutions shall be listed in the register separately from account information service providers.

(4) The competent authority shall enter in the public register any withdrawal of a licence or registration.

(5) The competent authority shall notify the EBA of the reasons for withdrawal of any licence or registration.

(6) The competent authority shall, without delay, notify the EBA of the information entered in the public register.

(7) The competent authority shall be responsible for the accuracy of the information specified in sub-article (6) and for keeping that information up-to-date.

Opening of branches having their head office outside the European Union.

8E. (1) In the assessment of an application for the opening of a branch by an electronic money financial institution authorised to issue electronic money and having its head office outside the ~~Community~~European Union, the competent authority may not apply provisions which result in more favourable treatment than that accorded to an electronic money financial institution having its head office within the ~~Community~~European Union.

(2) The competent authority shall notify the European Commission of all authorisations for branches of ~~financial electronic money~~ institutions having their head office outside the ~~Community~~European Union as stated in sub-article (1).

Issuance and redeemability of electronic money.

8F. (1) ~~Financial institutions authorised to issue e~~Electronic money institutions shall issue electronic money at par value on the receipt of funds.

(2) ~~A financial institution authorised to issue e~~Upon request by the electronic money holder, electronic money institutions shall ~~redeem~~ensure that, at any moment, ~~upon request by the holder thereof, it is in a position to redeem the monetary value of any electronic money held, and~~ at par value, ~~the monetary value of the electronic money held and~~ without delay.

(3) For the better carrying out of the provisions of this article and to better transpose the provisions of the Electronic Money Directive ~~on issuance and redeemability of electronic money~~, the competent authority may, from time to time, ~~publish issue, amend or revoke~~ Financial Institutions Rules which shall be binding on ~~financial institutions authorised to issue~~ electronic money institutions as specified therein.

Record-keeping.

8G. Without prejudice to any anti-money laundering or combatting the funding of terrorism legislation, or other relevant European Union Law, financial institutions other than account information service providers, shall keep all appropriate records for the purposes of this Act and any regulations and

Rules issued thereunder for at least five years.

Notification of new or variation in participation or control.

9. (1) If -

- (a) any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution, or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by ~~him~~that person in that financial institution reaches, exceeds or falls below 20 per cent, 30 per cent or 50 per cent, or so that the financial institution becomes or ceases to be the subsidiary of such person; or
- (b) any financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital, or effect any material change in voting rights,

without obtaining the prior approval of the competent authority or, alternatively, if after having obtained such approval it subsequently appears to the competent authority that any of these actions, or the influence exercised by the person who intends to take such action, is operating, or is likely to operate, to the detriment of the prudent and sound management of the financial institution, then, without prejudice to any other administrative penalty or supervisory measures which may be imposed under this Act or any regulations or Rules issued thereunder, the competent authority shall express its opposition and shall have the power to take appropriate measures to rectify the situation.

(1A) The appropriate measures referred to in sub-article (1) may include: ~~make an order:~~

- (i) restraining the person or financial institution from taking or continuing the action;
- (ii) declaring the action to be void and of no effect;
- (iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;
- (v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraphs (a) and (b);~~:-~~
- (vi) the imposition of administrative penalties against the directors of the financial institution concerned or against the persons responsible for the management thereof; and
- (vii) the suspension of the exercise of the voting rights attached to the shares held by the shareholders of the financial institution in question.

(2) If, as a result of an acquisition of shares in a financial institution, the financial institution in which a person proposes to acquire the shareholding would become a subsidiary or be subject to the control of the person acquiring those shares, it shall be within the discretion of the competent authority to consider whether any request made by such person for the approval of the competent authority under the provisions of this article constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act or any regulations and Rules issued ~~thereunder~~this Act.

(3) Sub-article (1) shall apply whether or not any of the relevant shares are shares listed on a regulated market in terms of the Financial Markets Act, or on an equivalent market in a third country.

- (4) (a) Where a person intends to take any action as set out in sub-article (1)(a) ~~or~~and (b), such person shall notify the competent authority in writing of any such decision in advance, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Financial Institutions Rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person. ~~The competent~~

~~authority shall, within two months of receiving such notification, give its approval or otherwise and if such period elapses without the competent authority having notified its decision, such decision shall be deemed to be an approval.~~

(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the competent authority shall, regardless of any other ~~sanction-administrative penalty or other supervisory measure~~ which may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast or the possibility of annulling those votes.

(c) Where a person fails to comply with the obligation to provide prior information in accordance with point (a), the competent authority shall have the power to take appropriate measures in accordance with sub-article (1A).

(5) (a) A financial institution shall notify to the competent authority in writing the full particulars of any person who is proposed to become a controller or director of the financial institution or any person who is proposed to cease to be a controller or director of the financial institution.

(b) If the competent authority is of the opinion that any person who is or is proposed to become a controller or director of a financial institution is not a suitable person to be a controller or director, the competent authority may make an order requiring such a person to cease to be a controller or director, or restraining such a person from becoming a controller or director.

(6) The competent authority may, by means of a Financial Institutions Rule and subject to such criteria as may be established therein, provide that all or part of the provisions of this article be waived. The competent authority may also issue, amend or revoke Financial Institutions Rules as may be required in order to better implement the provisions of this article.

Assessment procedure.

9A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under article 9(4)(a) and all the documentation required by the competent authority to be attached to such notification, acknowledge receipt thereof in writing and inform the person who is proposing to take any action set out in article 9(1)(a) or (b) of the date of the expiry of the assessment period.

(2) The competent authority shall assess the information provided pursuant to article 9(4)(a) within 60 working days from the date of the written acknowledgement of receipt referred to in sub-article (1).

(3) The competent authority may, during the assessment period, if necessary and no later than on the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(4) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the person proposing to take any action set out in article 9(1)(a) or (b), the assessment period shall be interrupted:

Provided that such an interruption period shall not exceed twenty working days:

Provided further that any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(5) The competent authority may extend the interruption period referred to in sub-article (4) 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.

(6) The competent authority shall, upon completion of the assessment referred to in sub-article (2) and not later than the date of the expiry of the assessment period, issue a notice:

(a) granting unconditional approval to the proposed action;

(b) granting approval to the proposed action subject to such conditions as the competent authority may deem appropriate; or

(c) refusing the proposed action.

Prohibited transactions.

10. (1) Without prejudice to the provisions of paragraph 3(e) of the Second Schedule, a financial institution shall not -

(a) grant any credit facility against the security of its own shares or against any other securities issued by the financial institution itself or against any shares or any other securities of another body corporate in which the financial institution has control;

(b) grant or permit to be outstanding credit facilities or extend other services under terms and conditions more favourable than the financial institution would have otherwise applied -

(i) to any one of its directors or their spouses whether jointly or severally as well as with third parties:

Provided that, in any case where unsecured credit facilities are granted, these shall not in the aggregate exceed the sum of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73);

(ii) to any person in whom or in which the financial institution or any one or more of its directors is interested as a director, partner, manager, agent or member or to any person of whom or of which any one or more of the financial institution's directors is a guarantor;

(iii) to any body of persons in which the financial institution or any one or more of its directors jointly or severally maintains control, not being itself a financial institution or the parent undertaking of the financial institution, a subsidiary of this parent undertaking or a subsidiary of the financial institution;

and where the competent authority has reason to believe that such favourable terms and conditions have been applied, it shall have the power to require the financial institution to rectify the position and if the financial institution fails to take the necessary action to rectify the position as required, the competent authority shall take such measures as it deems appropriate until the position is rectified;

(c) grant to or permit to be outstanding in respect of any officer, other than a director, or any employee, unsecured credit facilities which in the aggregate exceed twelve months' emoluments of such officer or employee.

(2) In sub-article (1)(b) and (c) the expression "unsecured credit facilities" shall mean credit facilities made without security or, in respect of any credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the competent authority is satisfied that there is no established market value, on the basis of a valuation approved by the competent authority itself.

Prohibition of interest.

10A. The granting of interest or of any other benefit related to the length of time during which a n ~~electronic money-financial~~ institution ~~providing the services listed in the Third Schedule~~ holds electronic money shall be prohibited.

Safeguarding requirements.

10B. (1) A ~~financial payment~~ institution ~~and an electronic money institution~~ shall safeguard all funds received from ~~any person making use of its payment services users, or received through another payment service provider for the execution of payment transactions,~~ or in exchange for electronic money that has been issued.

(2) For the better carrying out of the provisions of this Act on safeguarding requirements, the competent authority may, from time to time, ~~publish issue, amend or revoke~~ Financial Institutions Rules which shall be binding on financial institutions ~~authorised to issue electronic money~~ as specified therein.

Financial institutions unable to meet obligations.

11. Notwithstanding any investigation provided for in this Act,

- (a) where a financial institution considers that it ~~has failed to comply with, or that it is likely to fail to comply with, any of the provisions of this Act or any Regulations made or Financial Institutions Rules issued thereunder or with the conditions under which the license or registration was issued, is likely to become unable to meet its obligations~~ it shall forthwith inform the competent authority and the Central Bank in writing;
- (b) where the competent authority becomes aware that a financial institution is likely to become unable to meet its obligations it shall forthwith inform the Central Bank in writing;
- (c) where the Central Bank becomes aware that a financial institution is likely to become unable to meet its obligations it shall forthwith inform the competent authority in writing.

Management of operational and security risks.

11A. (1) Payment institutions, electronic money institutions and account information service providers shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks, relating to the payment services they provide. As part of that framework, payment institutions, electronic money institutions and account information service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Payment institutions, electronic money institutions and account information service providers shall provide to the competent authority on an annual basis, or at shorter intervals as may be determined by the competent authority, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) The competent authority may issue, amend or revoke Financial Institutions Rules as may be required in order to better implement the provisions of this article.

Incident reporting.

11B. (1) In the case of a major operational or security incident, payment institutions, electronic money institutions and account information service providers shall, without undue delay, where Malta is the home Member State, notify the competent authority and the Central Bank.

(2) Where the incident has or may have an impact on the financial interests of its payment service users, the payment institution, electronic money institution or the account information service provider concerned shall, without undue delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receipt of the notification referred to in sub-article (1), the competent authority shall, without

undue delay, provide the relevant details of the incident to EBA and to the European Central Bank. That competent authority shall, in cooperation with the Central Bank, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

(4) The competent authority shall in cooperation with the Central Bank, cooperate with the EBA and the European Central Bank for the purposes of assessing the relevance of the incident to other relevant European Union and national authorities in accordance with Article 96(2) of the Payment Services Directive.

(5) Where the competent authority receives a notification of a major operational or security incident in accordance with Article 96(2) of the Payment Services Directive, it shall, where appropriate, upon the basis of that notification and in cooperation with the Central Bank, take all of the necessary measures to protect the immediate safety of the financial system.(PSDII Article 96(2) 3rd paragraph)

(6) Payment institutions, electronic money institutions and account information service providers shall, at least on an annual basis, provide to the competent authority statistical data on fraud relating to different means of payment.

(7) The competent authority shall, in cooperation with the Central Bank, provide to the EBA and the European Central Bank the data received pursuant to sub-article (6) in an aggregated form.

(8) The competent authority may issue, amend or revoke Financial Institutions Rules as may be required in order to better implement the provisions of this article.

REGULATORY AND INVESTIGATORY POWERS

Powers and duties of the Minister.

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

- (a) amend any of the Schedules to this Act;
- (b) without prejudice to Article 3 of the Payment Services Directive, determine the circumstances under which a company may be exempted from requiring a licence or a registration under this Act;
- (c) without prejudice to Article 16 of the Electronic Money Directive and to Article 107 of the Payment Services Directive, transpose, implement and give effect to the requirements of the Electronic Money Directive and the Payment Services Directive;

Provided that, when any of the options referred to in Article 107(1) of the Payment Services Directive are made use of, the Minister shall inform the European Commission of the use of any such options as well as of any subsequent changes thereof;

- (d) ~~regulate the transposition, implementation and giving~~ effect to the provisions, requirements, obligations and commitments relating to the regulation of payment institutions and electronic money institutions, arising out of membership of, affiliation to or relationship with, international or regional organisations or groupings of countries or out of any treaty, convention or other international agreement whether bilateral, regional or multilateral, to which Malta is a party; ~~and~~
- (e) provide that any other law, or any provision thereof, shall not apply to matters falling under the regulations, and, in particular, may exempt activities as may be designated from the application of any article or provision of the Civil Code;

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

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

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

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

(g) without prejudice to Article 16 of the PAD, set up a specific mechanism to ensure that consumers who do not have a payment account as defined in Article 2(3) of the PAD in their territory and who have been denied access to a such a payment account for which a fee is charged by credit institutions, will have effective access to a payment account with basic features in terms of the PAD, free of charge.

(h) transpose, implement and, or give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified therein; any such regulations strictly related to transposition or implementation as aforesaid may contain provisions which are inconsistent with the provisions of this Act or any other law, and for this purpose may provide that any provision in this Act or in any other law shall not apply to matters falling under the regulations, and in case of such inconsistency, such provisions in any such regulations shall prevail.

(2) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may also be so specified.

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

Language of regulations.

12A. Regulations made under this Act and any amendment or revocation of such may be made in the English language only.

Powers and duties of the competent authority.

13. (1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and any regulations or Rules issued thereunder and to ensure that financial institutions carrying ~~out~~ business in or from Malta comply with this Act, regulations, ~~directives~~ and Rules issued thereunder this Act and with the conditions of their licences or registration. In carrying out such functions, the competent authority shall ensure that the controls exercised for checking continued compliance in terms of this Act, or any ~~R~~regulations and Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed. Such functions consist *inter alia* of the following:

(a) to require the financial institution in terms of article 14 to provide any information needed to monitor compliance either on a periodic, and, or on an ad hoc basis as may be required, specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;

(b) to carry out on-site inspections at the financial institution, at any agent or branch thereof

providing ~~licensable activities services~~ under the responsibility of the financial institution, or at any entity to which activities are outsourced;

- (c) to ~~restrict, suspend or withdraw authorisation any licence or registration in cases referred to in pursuant to~~ article 6; and
- (d) ~~to issue recommendations, guidelines and, if applicable, binding administrative provisions notwithstanding the requirements of articles 5 and 5A, to take all necessary steps to ensure sufficient capital for the activities carried out by a financial institution, in particular where activities of a financial institution other than those listed in the Schedules impair or are likely to impair the financial soundness of the institution.~~

~~(1A) Notwithstanding the requirements of article 5A(1), (2A) and (2) and of Articles 7 and 9 of the Payment Services Directive as transposed in a Financial Institutions Rule, the competent authority may take steps referred to in sub-article (1) to ensure sufficient capital for the activities carried out by a financial institution, and, or to ensure compliance with Article 5B, in particular where the activities of a financial institution other than those listed in the Schedules impair or are likely to impair the financial soundness of the financial institution concerned.~~

~~(1B) Without prejudice to the procedures for the withdrawal of a licence or a registration, to article 22, to national provisions of criminal law and to any other power granted to the competent authority under the provisions of this Act or any regulations or Rules issued thereunder or under the provisions of the Malta Financial Services Authority Act, where the competent authority is satisfied that a financial institution's conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, or of any directive, restriction and, or suspension imposed, or of any other request or order made by the competent authority pursuant to the provisions of this Act or any regulations or Rules issued thereunder, or the Malta Financial Services Authority Act, or of a licence condition, or of a condition required for the granting of a licence or registration, the competent authority may, adopt or impose on any such financial institution and, or, on those who effectively control the business of such financial institutions, any measures as it may deem appropriate aimed specifically at ending observed breaches or the causes of such breaches.~~

~~(1C) The competent authority shall possess all powers and adequate resources necessary for the performance of its duties and shall guarantee independence from economic bodies and avoid conflicts of interest.~~

~~(2) The competent authority may make issue, amend or revoke Financial Institutions Rules as may be required for carrying into effect any of the provisions of this Act and any regulations issued thereunder. The competent authority may amend or revoke such Financial Institutions Rules.~~

~~(2A) The competent authority may issue, amend or revoke Financial Institutions Rules as may be required for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the EBA as may be required.~~

~~(2B) Financial Institutions Rules shall be binding on financial institutions and others as may be specified therein.~~

(3) Financial Institutions Rules and any amendment or revocation thereof shall be officially communicated to all financial institutions and the competent authority shall make copies thereof available to the public upon request.

(4) Financial Institutions Rules made under this Act may provide for different regulatory requirements to be applicable to different classes of financial institutions, licensed under this Act, to ensure that business is conducted in a prudent manner.

~~(5) Where the competent authority has availed itself of the waiver provided for in article 3(7), it shall:~~

~~(a) notify the European Commission forthwith of any subsequent change;~~

~~(b) inform the European Commission of the number of legal persons concerned; and~~

~~(c) inform the European Commission, on an annual basis, of the total amount of outstanding electronic money issued as at 31 December of each calendar year.~~

~~(6) The competent authority shall, as soon as possible and in any event by 13 January 2018, notify the European Commission that it has been designated to, in part, ensure and monitor effective compliance with the Payment Services Directive. The competent authority shall inform the European Commission of the provisions of the Payment Services Directive for which it is responsible. The competent authority shall also immediately notify the European Commission of any subsequent change concerning its designation and competence.~~

~~(7) Nothing in this Act shall be taken to imply that the competent authority is required to supervise business activities of financial institutions other than for the provision of the services listed in the Schedules to the Act and the activities referred to in paragraph 3(a) of the Second Schedule.~~

~~(8) Unless otherwise stated, the powers, functions and duties conferred upon the competent authority in this Act and any regulations and Rules issued thereunder shall be vested in the competent authority only with regards to financial institutions licensed or registered in terms of this Act.~~

~~(9) Where any of the options referred to in Article 107(1) of the Payment Services Directive are made use of and implemented in this Act or any regulations or Rules issued thereunder, the competent authority shall inform the European Commission thereof as well as of any subsequent changes.~~

~~(10) The competent authority shall ensure that financial institutions do not derogate, to the detriment of their customers, from the provisions of this Act or any regulations or Rules issued thereunder except where explicitly provided for therein:~~

~~Provided that financial institutions may, without prejudice to article 10, decide to grant more favourable terms to their customers.~~

~~Supervision of payment institutions, electronic money institutions and account information service providers exercising the right of establishment and the freedom to provide services – Malta home.~~

~~**13A.** (1) Where Malta is the home Member State, in order to carry out the controls and take the necessary steps provided for in this Act and any regulations or Rules issued thereunder, the competent authority shall, in accordance with Article 100(4) of the Payment Services Directive, in respect of the agent or branch of a payment institution, electronic money institution or account information service provider located in the territory of another Member State, cooperate with the European regulatory authority of host Member State concerned:~~

~~Provided that in order to carry out the controls and take the necessary steps provided for in articles 11A and 11B in respect of the agent or branch of a payment institution, electronic money institutions or account information service provider located in the territory of another Member State, the competent authority shall also collaborate closely with the CBM.~~

~~(2) By way of cooperation in accordance with sub-article (1), where Malta is the home Member State and the competent authority intends to carry out an on-site inspection in the territory of the host Member State concerned, the competent authority shall notify the European regulatory authority of the host Member State concerned accordingly:~~

~~Provided that in such cases, the competent authority may delegate to the European regulatory authority of the host Member State concerned the task of carrying out the on-site inspection of the payment institution, electronic money institution or account information service provider concerned.~~

~~(3) Where Malta is the home Member State, the competent authority shall provide European regulatory authorities with all essential and, or relevant information, in particular in the case of infringements or suspected infringements by an agent or a branch of a payment institution, an electronic money institution and, or an account information service provider, and where such infringements occurred in the context of the exercise of the freedom to provide services. In that regard, the competent~~

authority shall communicate upon request, all relevant information and, on its own initiative, all essential information, including on the compliance with the conditions under article 5(7):

Provided that where Malta is the home Member State, in the event of infringement or suspected infringement of Titles III and IV of the Payment Services Directive by agents and branches conducted under the right of establishment, the authorities responsible for ensuring and monitoring effective compliance with the provisions of the Payment Services Directive shall, in accordance with Article 100(4) of the Payment Services Directive, be the European regulatory authorities of the host Member States concerned.

Supervision of payment institutions, electronic money institutions and account information service providers exercising the right of establishment and the freedom to provide services – Malta host.

13B. (1) Where Malta is the host Member State, the competent authority may require payment institutions, electronic money institutions and account information service providers having agents or branches in Malta to report periodically to the competent authority on the activities carried out in Malta.

(2) The reports referred to in sub-article (1) shall be required for information or statistical purposes and, as far as the agents and branches conduct their activities under the right of establishment, to monitor compliance with articles 11A, 11B and 26A:

Provided that when such reports are required to monitor compliance with Articles 11A and 11B, the powers granted by sub-article (1) to the competent authority shall be exercised in close collaboration with the Central Bank.

(3) Any information which payment institutions, electronic money institutions and account information service providers may be required to report to the competent authority in terms of sub-article (1) shall be established in a Financial Institutions Rule. Such information shall be submitted in such form and at such periods as the competent authority may from time to time prescribe in a Financial Institutions Rule. The competent authority may also amend or revoke the Financial Institutions Rule or Rules being referred to in this sub-article.

(4) Where Malta is the host Member State, the competent authority shall provide European regulatory authorities with all essential and, or relevant information, in particular in the case of infringements or suspected infringements by an agent or a branch of a payment institution, an electronic money institution and, or an account information service provider, and where such infringements occurred in the context of the exercise of the freedom to provide services. In that regard, the competent authority shall communicate upon request, all relevant information and, on its own initiative, all essential information, including on the compliance with the conditions under Article 11(3) of the Payment Services Directive:

Provided that where Malta is the host Member State, in the event of infringement or suspected infringement of Titles III and IV of the Payment Services Directive by agents and branches conducted under the right of establishment, and without prejudice to the powers of the European regulatory authority of the home Member State in accordance with Article 100(4) of the Payment Services Directive, the competent authority shall, in accordance with Article 100(4) of the Payment Services Directive, be responsible for ensuring and monitoring effective compliance with articles 11A, 11B and 26A by agents and branches conducted under the right of establishment:

Provided further that when ensuring and monitoring effective compliance with articles 11A and 11B, the competent authority shall act in close collaboration with the Central Bank.

(5) Where Malta is the host Member State, without prejudice to any provisions on anti-money laundering and combatting the funding of terrorism, and to facilitate supervision by the competent authority, the Central Bank and the European regulatory authorities of the home Member State, the competent authority may, in collaboration with the Central Bank, require payment institutions or account information service providers operating in Malta through agents under the right of establishment, or electronic money institutions providing payment services in Malta through agents under the right of establishment, the

head office of which is situated in another Member State, to appoint a central contact point in Malta to ensure adequate communication and information reporting on compliance with Articles 11A, 11B and 26A and the provisions of Titles III and IV of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act, and to provide the competent authority with documents and information upon request.

(6) The competent authority shall, upon the appointment of any central contact point by a payment institution, electronic money institution or an account information service provider, notify the Central Bank of such appointment.

(7) A central contact point appointed by a payment institution, an electronic money institution or an account information service provider pursuant to sub-article (5) shall provide the competent authority with any documents and, or information required pursuant to sub-article (5).

Measures in case of non-compliance, including precautionary measures – Malta home.

13C. (1) Where Malta is the home Member State, the competent authority may, in accordance with Article 30(1) of the Payment Services Directive, receive information from any European regulatory authority of a host Member State, that a payment institution, an electronic money institution or an account information service provider having agents or branches in the host Member State concerned, does not comply with Title II of the Payment Services Directive or with national law transposing Titles III or IV of the Payment Services Directive in the host Member State concerned. In such cases, the competent authority shall, after having evaluated the information received from the European regulatory authority of the host Member State, without undue delay, take all appropriate measures to ensure that the payment institution, electronic money institution or account information service provider concerned puts an end to its irregular situation:

Provided that where the information received from a European regulatory authority of a host Member States relates to a failure to comply with Articles 95 or 96 of the Payment Services Directive, the appropriate measure referred to in this sub-article shall be taken in close collaboration with the Central Bank.

(2) The competent authority, or with respect to Articles 95 or 96 of the Payment Services Directive, the competent authority in collaboration with the Central Bank, shall communicate without delay to the European regulatory authority of the host Member State, and to any other European regulatory authority of any other Member State concerned, any measures taken in accordance with sub-article (1).

Measures in case of non-compliance, including precautionary measures – Malta host.

13D.(1) Where Malta is the host Member State, without prejudice to the responsibility of the European regulatory authority of the home Member State, where the competent authority, and with respect to compliance with articles 11A or 11B, the competent authority in collaboration with the Central Bank, ascertains that a payment institution, an electronic money institution or an account information service provider having agents or branches in Malta does not comply with this Act or any regulations or Rules issued thereunder, it shall inform the European regulatory authority of the home Member State without delay:

Provided that, in emergency situations, where immediate action is necessary to address a serious threat to the collective interests of those making use of the services of the payment institution, electronic money institution, or account information service provider concerned in Malta through an agent or a branch, the competent authority may, in parallel to the cross-border cooperation between the competent authority and the European regulatory authority of the home Member State, pending measures by the said European regulatory authority as set out in Article 29 of the Payment Services Directive, and without prejudice to sub-article (5), take precautionary measures:

Provided further that such precautionary measures shall, with respect to articles 11A or 11B be taken

in close collaboration with the Central Bank.

(2) Any precautionary measures referred to in sub-article (1) shall be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of those making use of the services of the payment institution, electronic money institution or account information service provider concerned in Malta. The said precautionary measures shall not result in a preference for those making use of such service in Malta over those making use of such services in other Member States.

(3) Any precautionary measures referred to in sub-article (1) shall be temporary and shall be terminated when the serious threats identified are addressed, including with the assistance of, or in cooperation with, the European regulatory authority of the home Member State or, as provided for in Article 27(1) of the Payment Services Directive, with the EBA.

(4) Where compatible with the emergency situation referred to in sub-article (1), the competent authority, or with respect to articles 11A or 11B, the competent authority in collaboration with the Central Bank, shall inform the European regulatory authority of the home Member State and those of any other Member State concerned, the European Commission and the EBA in advance, and in any case without undue delay, of the precautionary measures taken under sub-article (1) and of their justification.

(5) Where Malta is the host Member State, in the event of an infringement or suspected infringement of Articles 11A, 11B or 26A, by an agent or branch of a payment institution, electronic money institution or account information service provider conducted under the right of establishment, the competent authority shall have the power to exercise all the powers granted to it under this Act and any regulations and Rules issued thereunder in relation to such agent or branch:

Provided that in relation to an infringement or suspected infringement of Articles 11A or 11B, in exercising the powers granted to it under this Act and any regulations or Rules issued thereunder, the competent authority shall collaborate closely with the Central Bank.

Reasons and communication.

13E. (1) Any measure taken by the competent authority or by the competent authority in collaboration with the Central Bank as applicable, pursuant to articles 13(1), 13(1A), 13(1B), 8(5) to (16), 13A to 13D and 23(1) involving administrative penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly justified and communicated to the payment institution, electronic money institution or account information service provider concerned.

(2) Articles 8(5) to (16) and 13A to 13D shall be without prejudice to the obligation of the competent authority under Directive (EU) 2015/849 and Regulation (EU) 2014/847, in particular under Article 48(1) of Directive (EU) 2015/849 and Article 22(1) of Regulation (EU) 2015/847, to supervise or monitor the compliance with the requirements laid down in those instruments.

Power of competent authority to require information.

14. (1) A financial institution shall submit to the competent authority such information and statements as the competent authority may require, either on a periodic and, ~~for~~ on ad hoc basis, in the discharge of its duties under this Act or any regulations and Rules issued thereunder or any other law, and the competent authority may enquire into and ask for clarification of any information submitted.

(2) All periodic information and statements required under sub-article (1) shall be submitted in such form and at such periods as the competent authority may from time to time prescribe by Financial Institutions Rules, and, or at such periods as the competent authority may require in writing.

(2A) Without prejudice to sub-articles (1) and (2), a financial institution shall also submit to the

competent authority any information which the competent authority may, by notice in writing, reasonably require on an ad hoc basis in the exercise of its duties under this Act and any regulations or Rules issued thereunder, and the competent authority may enquire into and ask for clarification of any information so submitted. Any such notice shall require the recipient to provide the information at such time or times or at such intervals or in respect of such period or periods as may be specified in such notice.

~~(3) Financial institutions providing the services listed in paragraphs 2 and 3 of the Second Schedule and financial institutions authorised to issue electronic money carrying out the additional activities listed in paragraphs 2(b) to (e) of the Third Schedule, shall provide separate accounting information as specified in a Financial Institutions Rule issued by the competent authority. The accounting information shall be subject to an auditor's report.~~

(4) The provisions of this article shall also apply to all branches, agencies or offices in Malta of a financial institution which is not incorporated in Malta.

(5) A financial institution shall submit to the Central Bank such information as the Central Bank may require in the discharge of its duties and the Central Bank may enquire into and ask for clarifications of any information so submitted.

(6) The competent authority may, by notice in writing, require a financial institution or any of its officers to do all or any of the following:

- (a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require and of such description as may be so specified in the notice;
- (b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify;
- (c) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation as the competent authority may reasonably require for the performance of its functions under this Act or any regulations and Rules issued thereunder.

(7) The competent authority may take copies of any documents furnished or provided under this article.

(8) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(9) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(10) Where the competent authority has appointed a person under sub-article (6)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

(11) The competent authority may require a person it has appointed under sub-article (6)(c) to submit a report in such form as it may specify.

(12) The competent authority may also exercise the powers conferred by sub-articles (1) and (6) in relation to any person who is or has at any relevant time been -

- (a) a holding company, subsidiary or a company which is a connected person of that financial institution;
- (b) a subsidiary or a company which is a connected person of a holding company of that

financial institution;

- (c) a holding company of a subsidiary of that financial institution;
- (d) a controller of that financial institution;
- (e) a qualifying shareholder of that financial institution; or
- (f) an agent appointed in terms of article 8A.

(13) The competent authority may also exercise its powers under this article where it has reasonable grounds for suspecting that a person is guilty of committing any offence under this Act or any regulations and Rules issued thereunder.

Appointment of inspectors.

15. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs, nature, conduct or state of a financial institution's business or any particular aspect of it, or to report on the ownership or control of the financial institution.

(2) An inspector appointed under sub-article (1) -

- (a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any other person as prescribed under article 14(12);
- (b) shall have and may exercise all the powers conferred on the competent authority by article 14, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;
- (c) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the competent authority.

(3) The competent authority shall have the power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the persons or financial institution concerned.

(4) Any investigation being carried out pursuant to sub-articles (1) and (2) shall be notified in writing to the person under investigation.

(5) It shall be the duty of every person who is or was an officer, employee, agent, or auditor of a person which is under investigation under this Act and any regulations and Rules issued thereunder, or any person appointed to make a report in respect of that person under this Act and any regulations or Rules issued thereunder and anyone who has a qualifying shareholding in, or is a controller of that person under investigation:

(a) to produce to the inspector or inspectors appointed under sub-article (1), within such time and at such place as may be required by the inspector or inspectors concerned, all documents relating to the person under investigation which is in his custody or power;

(b) to attend before the inspector or inspectors at such time and place as the inspector or inspectors may require;

(c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give, and the inspector or inspectors concerned may take copies of, or extracts from, any documents produced to them under paragraph (a) above.

(6) An inspector exercising powers by virtue of an appointment under this article shall, if so required, produce evidence of his authority.

(7) No person shall:

(a) without lawful excuse fail to produce any document which it is his duty to produce under sub-article (5);

(b) without lawful excuse fail to attend before the inspector or inspectors appointed under sub-article (1) when required to do so; or

(c) without lawful excuse fail to answer any question which is put to him by the inspector or inspectors appointed under sub-article (1) with respect to any person which is under investigation.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this article may be issued in evidence against him.

Right of entry.

16. (1) Any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), may, on producing, if required, evidence of his authority, ~~may~~ enter premises occupied by a person on whom a notice has been served under article 14 or whose affairs are being investigated under article 15, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority, or an inspector appointed under article 15(1), has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order:

Provided that where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.

Suspected breaches.

16A. (1) Where the competent authority has reasonable grounds for suspecting that a person has contravened or has failed to comply with any provision of this Act or any regulations or Rules issued thereunder, it may, by notice in writing, require that person or any other person:

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

(2) The competent authority or their duly authorised officer, employee or agent may take copies of or extracts from any documents produced under this article.

(3) Any officer, employee or agent of the competent authority may, between five o'clock in the morning and nine o'clock at night, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sub-article (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that sub-article or exercising the powers conferred by sub-article (2).

(4) No person shall without lawful excuse fail to comply with a requirement imposed on him under this article or intentionally obstruct a person in the exercise of the rights conferred by sub-article (3).

(5) A statement made by a person in compliance with a requirement imposed by virtue of this article may be issued in evidence against him.

Obstruction.

16B. No person who knows or suspects that an investigation is being or is likely to be carried out under this Act or into the suspected commission of any breach under this Act or any regulations or Rules issued thereunder may falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

Power of the competent authority to take control of financial institutions.

17. (1) If, whether from any report made under article 14 or article 15 or otherwise, it appears to the competent authority, that any of the circumstances indicated in article 6(~~3~~1) apply, the competent authority, after consulting with the Central Bank, may, without prejudice to the powers of the competent authority to impose restrictions, or to suspend or revoke~~withdraw~~ a licence or registration under the provisions of article 6(~~3~~1) -

- (a) require the financial institution forthwith to take such steps as the competent authority may consider necessary to remedy or rectify the matter;
- (b) appoint a competent person to advise the financial institution in the proper conduct of its business;
- (c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;
- (d) appoint a competent person to take over the business of the financial institution and either to carry on that business or to carry out such other function or functions in respect of such business or part thereof, as the competent authority may direct;
- (e) require the financial institution to wind up its business or to wind up its business in Malta;
- (f) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the financial institution;
- (g) fix the remuneration to be paid by the financial institution to any competent person appointed under this sub-article.

(2) Upon receipt of a report or information otherwise received as is mentioned in sub-article (1), the competent authority shall inform the Central Bank, ~~authority on whether it intends to take any action pursuant to such report and of any action it intends to take thereon.~~

(3) Where a competent person is appointed by the competent authority:

(a) under sub-article (1)(b), the financial institution shall act in accordance with the advice given by such person unless and until the competent authority otherwise directs;

(b) under sub-article (1)(c), the financial institution shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the financial institution in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the financial institution, shall be exercisable by and vest in him to the exclusion of the financial institution;

(c) under sub-article (1)(d), the financial institution shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the financial institution, whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the financial

institution in all matters, shall be exercisable by and vest in him to the exclusion of any other person.

(4) Where a person is appointed under sub-article (1)(c) or (d):

(a) any function, power or duty exercisable by any other person, including the curator of a bankrupt or any other person appointed by or under any other law, and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall, unless or until the competent authority otherwise directs or an express provision of law specifically provides otherwise, cease to be so exercisable;

(b) the person appointed under either of the paragraphs aforesaid shall, in respect of such property, partnerships, firms or other business as the competent authority may specify and in which the credit institution has an interest, whether directly or indirectly, including any interest arising from advances or loans made or credit facilities given or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the competent authority may direct, and any such power, function or duty shall be exercisable by and vest in such person to the exclusion of any other person:

Provided that:

(i) the competent authority shall have power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the competent authority may specify and unless and until the competent authority otherwise directs, the powers, functions and duties to which the direction of the competent authority applies shall be exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;

(ii) where the competent authority is of the opinion that the financial institution has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;

(c) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may deem necessary to carry out any of the powers, functions or duties under this article;

(d) the provision of law relating to bankruptcy and in particular Part III of the Commercial Code shall cease to apply to, and shall cease to operate in respect of any property, partnership, firm or other business specified by the competent authority under paragraph (b), unless and until, or except to the extent that, the competent authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the competent authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;

(e) any person appointed by the competent authority under any of the provisions of this article shall submit six-monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions audited by an independent auditor to the Minister who will place such reports and accounts on the table of the House of Representatives within fifteen days.

(5) Where a person is appointed under sub-article (1)(f), such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(6) The provisions of this article shall have effect notwithstanding any other provision of any enactment, and notwithstanding any deed, contract, instrument or other document whatsoever.

(7) The foregoing provisions of this article vesting exclusive powers of representation in a person appointed by the competent authority thereunder shall apply also to any act or proceedings commenced or instituted before such representation vested as aforesaid, and in respect of any such act or proceedings any other person acting or purporting to act, or in respect of whom action is taken, in that capacity shall cease to be a party to, and shall be excluded from, any such act or proceedings.

(8) No person shall in any way obstruct a person appointed under sub-article (1) in the performance of any of his functions, powers or duties under this article.

ACCOUNTING, STATUTORY AUDIT AND AUDITORS

Accounting and statutory audit.

17A. (1) Directive 86/635/EEC, Directive 2013/34/EU and Regulation (EC) No 1606/2002 shall apply to financial institutions *mutatis mutandis*.

(2) Unless exempted under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC, the annual accounts and consolidated accounts of financial institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, as amended from time to time.

(3) Payment institutions and electronic money institutions shall provide separate accounting information for payment services and for the activities referred to in paragraph 3(a) of the Second Schedule, which shall be subject to an auditor's report.

(4) The auditor's report referred to in sub-article (3) shall be prepared, where applicable, by the statutory auditors or an audit firm.

Publication of audited financial statements.

17B. Every financial institution shall, not later than four months from the closing of its financial year or at any other time as may be authorised in writing by the competent authority:

- (a) forward to the competent authority and to the Central Bank, and
- (b) make available to the public, in paper or in electronic form,

a copy of its audited financial statements or consolidated financial statements, as may be applicable, drawn up and published in such manner as may be specified in accordance with a Rule.

Appointment and duties of auditors.

18. (1) (a) Every financial institution shall each year appoint an approved statutory auditor or auditors firm whose duty shall be to ~~report on~~audit the financial statements~~annual accounts and consolidated accounts~~ of the financial institution in accordance with article 17A~~examined by them and on all financial statements prepared by the financial institution~~.

(b) For the purpose of this article an approved auditor shall be a person who is qualified to be an auditor in accordance with the Companies Act:

Provided that in the case of a financial institution not incorporated in Malta the competent authority may grant an exemption from paragraph (b) subject that the same does not materially detract

from the main objects of this article.

(2) If a financial institution fails to appoint an auditor under sub-article (1) or, at any time fails to fill any vacancy in the office of an auditor, the competent authority shall have the power to appoint an auditor for that institution and shall fix the remuneration to be paid by that financial institution to such auditor.

(3) A financial institution shall forthwith give written notice to the competent authority:

- (a) on the appointment of its auditors;
- (b) if it proposes to give notice to its shareholders to -
 - (i) replace its auditors at the expiration of their term of office;
 - (ii) remove its auditors before the expiration of their term of office;
- (c) if the auditors cease to be auditors of the financial institution for any reason other than those in paragraph (b).

(4) The competent authority may require a financial institution to change its appointed auditors where, in the competent authority's opinion, such auditors are considered unfit for this appointment, at any time during their term of office.

(5) An auditor shall immediately inform the competent authority in writing if:

- (a) he resigns;
- (b) he does not seek to be re-appointed; or
- (c) he decides to qualify the audit report.

(6) If, in his capacity as an auditor of a financial institution or due to a direct request by the competent authority under article 14 or under article 15, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the financial institution, or a branch or office in Malta of a financial institution not incorporated in Malta, or the integrity of the financial system in Malta, he shall immediately inform the competent authority through the financial institution's management or, if circumstances so warrant, directly to the competent authority.

(6A) In his capacity as an auditor of a financial institution or due to a direct request by the competent authority, an auditor shall promptly notify the competent authority of any fact or decision concerning that financial institution of which that auditor has become aware while carrying out his tasks, which is liable to:

- (a) constitute a material breach of this Act or any regulations or Rules issued thereunder which lay down the licensing conditions or which specifically govern the activities of financial institutions;
- (b) affect the ongoing functioning of the financial institution;
- (c) lead to refusal to certify the accounts or to the expression of reservation:

Provided that an auditor shall also have the duty to report any fact or decision of which that auditor becomes aware in the course of carrying out his tasks in an undertaking having close links resulting from a control relationship with the financial institution within which he is carrying out that task.

(6B) Any disclosure in good faith to the competent authority pursuant to sub-article (6A) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability. Unless there are compelling reasons not to do so, such disclosure shall be made simultaneously to the board of directors of the financial institution.

(7) In so far as the provisions of this article are inconsistent with the provisions of the [Companies Act](#), the provisions of this article shall prevail and the provisions of the said Act shall, to the extent of

the inconsistency, not apply to financial institutions.

Communication by auditors, etc. with the competent authority.

19. No duty (including the duty of professional secrecy) to which -

- (a) an auditor of a financial institution may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that institution and which is relevant to any functions of the competent authority under the provisions of this Act or is required to be communicated by virtue of this Act or any regulations and Rules issued thereunder;
- (b) a person appointed to make a report under article 14 or article 15 may be subject, shall be regarded as contravened by reason of communicating in good faith to the competent authority any matter which relates to the business or affairs of the financial institution in relation to which the report is made.

CO-OPERATION AND SHARING OF INFORMATION

Co-operation and sharing of information.

20. (1) Without prejudice to sub-article (1A) and ~~On~~ on the basis of international agreements, or upon reciprocity agreements, the competent authority may, ~~share its supervisory duties with other overseas regulatory authorities~~ in the case of a financial institution, or branch, operating in Malta which is fully or partly owned by a foreign person, or in the case of a financial institution fully or partly owned by Maltese residents which is operating abroad, share its supervisory duties with an overseas regulatory authority.

(1A) The competent authority shall cooperate with European regulatory authorities and, where appropriate with the European Central Bank, the Central Bank and the national central banks of the other Member states, the EBA and other relevant authorities designated under European Union or national law applicable to payment service providers.

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

- (a) overseas regulatory authorities responsible for the licensing and, or registration, and for the supervision of ~~financial payment institutions, carrying out payment services or issuing electronic money institutions and, or account information service providers or both~~ solely for their supervisory and regulatory purposes and, or for such other purposes as may be specifically agreed upon with the competent authority;
- (b) the European Central Bank, other Member States' central banks and the Central Bank, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other relevant authorities designated under ~~Directive 2007/64/EC the Payment Services Directive, Directive 2009/110/EC Directive 2015/849, Directive 95/46/EC, Directive 2005/60/EC~~ and other ~~Community European Union law~~ legislation applicable to ~~financial institutions payment service providers authorised to provide payment services and to issue electronic money, including measures regulating the protection of individuals with regard to the processing of personal data and such as laws applicable to the prevention of money laundering and funding of terrorism.~~
- (d) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in point (a) of Article 1(5) of Regulation (EU) No 1093/2010.

(3) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, disclose information to ~~the~~ overseas regulatory authorities, in particular, in the

case of infringements or suspected infringements by an agent, a branch, or an entity to which activities are outsourced:

Provided that the competent authority may exchange information and communicate with ~~other~~ such overseas regulatory authorities either upon their request or on its own initiative:

Provided further that in the case of cross-border consumer disputes, the competent authority may use any of its powers under this article and shall co-operate and exchange information for the purpose of investigating and resolving any such disputes. _

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

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

(5) The competent authority shall further, upon a request in writing, disclose to the European Central Bank and, or the Central Bank any information in the possession of or accessible to the competent authority which is required for the discharge of the duties of the European Central Bank and, or the Central bank under the law.

(6) A person appointed under article 14 or article 15 shall be given access to any accounts, returns, or other information with regard to any financial institution which are in the possession of the competent authority.

(7) There shall be meetings held between a financial institution, its appointed auditors and the competent authority on a trilateral or bilateral basis as circumstances may warrant. These meetings may be called by any of the parties concerned but shall always be chaired by the competent authority.

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

Settlement of disagreements between the competent authority and European regulatory authorities.

20A. (1) Where the competent authority considers that, in a particular matter, cross-border cooperation with European regulatory authorities referred to in Articles 26, 28, 29, 30 or 31 of the Payment Services Directive does not comply with the relevant conditions set out in those provisions, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where the competent authority has referred the matter to the EBA and requested its assistance in accordance with sub-article (1), or where a European regulatory authority has referred a matter to the EBA and requested its assistance in accordance with Article 27(1) of the Payment Services Directive, it shall defer its decision pending resolution by the EBA under Article 19 of Regulation (EU) No 1093/2010.

Collaboration with the Central Bank and the Arbiter.

20B. In ensuring and monitoring effective compliance with the provisions of this Act and any regulations and Rules issued thereunder transposing the Payment Services Directive, the competent authority shall collaborate closely with the Central Bank and with the Arbiter as may be required, in order to ensure that each such authority may discharge its respective duties effectively.

APPEALS, REMEDIES, DISQUALIFICATION AND CONFIDENTIALITY

Appeals.

21. Any person who is aggrieved by:

(i) a directive issued by, or a decision of, the competent authority; or

(ii) the competent authority's failure to act under this Act or any regulations or Rules issued thereunder, —

~~(a) under article 3(3);~~

~~(b) to refuse an application for a licence;~~

~~(c) to impose any condition of the licence;~~

~~(d) to impose or vary any restriction;~~

~~(e) to revoke a licence;~~

~~(f) to make any order under article 9;~~

~~(g) to make a public statement, under the provisions of article 6(8), as to a person's misconduct;~~

~~(h) to impose an administrative penalty under the provisions of article 23; or~~

~~(i) by the failure of the competent authority to determine an application for a licence under article 5(5), —~~

may appeal ~~against the decision~~ to the Tribunal within such period and under such conditions as established under the [Malta Financial Services Authority Act](#). ~~(PSDII Article 25(1) and (2))~~

Offences.

22. (1) Any person who -

~~(a) contravenes or fails to comply with any of the provisions of this Act;~~

~~(b) contravenes or fails to comply with the provisions of any Financial Institutions Rule, regulations or licence condition;~~

(c) fails to comply with any lawful order, directive or requirement of the competent authority or the Central Bank;

(d) fails to comply with any lawful order or requirement of the Financial Services Tribunal;

(e) fails to comply with any lawful order or requirement of any other person made under this Act;

(f) 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 or any regulations and Rules issued thereunder; or

(g) contravenes or fails to comply with any of the provisions of articles 3(1) and (1A), 9, 16A(4), 16B, 24A(b), 25(2) and (4).

shall be guilty of an offence.

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

(3) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under sub-article (1) and (2) shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

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

(5) No criminal proceedings for an offence against this Act shall be commenced without the consent of the Attorney General.

(6) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

Administrative penalties and their publication.

23. (1) Without prejudice to the procedures for the withdrawal of a licence or a registration, to article 22, to national provisions of criminal law, and to any other power granted to the competent authority under the provisions of this Act or any regulations or Rules issued thereunder or under the provisions of the Malta Financial Services Authority Act, ~~W~~where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, or of any directive, restriction and, or suspension imposed, or of any other request or order made by the competent authority pursuant to the provisions of this Act or any regulations or Rules issued thereunder, or the Malta Financial Services Authority Act, or of any licence condition, or of any condition required for the granting of a licence or a registration, the competent authority may, by notice in writing and without recourse to a court hearing, impose on any person as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be, aimed specifically at ending such breaches or the causes of such breaches.

(1A) Any administrative penalty imposed by the competent authority under sub-article (1) shall be effective, proportionate and dissuasive, and shall be imposed in accordance with the Fines and Penalties for Offences Regulations.

(2) Where the competent authority decides to impose an administrative penalty on a person in lieu of criminal proceedings, no proceedings in respect of the same offence may be brought against the same person before a court of criminal jurisdiction and the competent authority shall notify such decision by notice in writing served on the person on whom the administrative penalty is so imposed.

(3) Where within thirty days of service of a notice as is referred to in sub-article (1), the person on whom the notice is served has not paid the administrative penalty or has not appealed against the decision of the competent authority before the Tribunal as provided in article 21, or where within fifteen days of the decision of the Tribunal such person has not paid the administrative penalty as confirmed or reduced by the Tribunal, then the competent authority may with respect to the recovery of the amount due to it as administrative penalty serve a copy of the notice or of the decision of the Tribunal, as the case may be, on the person by whom the administrative penalty is due, by means of a judicial Act, and such notice or decision, as the case may be, shall thereupon 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.

(5) The competent authority may, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved, publish any administrative penalty imposed in terms of this article and, or, in terms of the Fines and Penalties for Offences Regulations:

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.

Disqualification of officers.

24. (1) No person -

- (a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a financial institution which has had its licence ~~or registration revoked~~ withdrawn under article 6(13) and who has not been exempted in writing by the competent authority from the provision of this article; or
- (b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud,

shall act or continue to act as an officer of a financial institution.

Duties of officers.

24A. Every officer of a financial institution shall take all reasonable steps:

(a) to secure compliance by the financial institution with all of the provisions of this Act and any regulations and Rules issued thereunder, and with the conditions of its licence or registration; and

(b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence.

Confidentiality.

25. (1) Nothing in this Act or any regulations and Rules issued thereunder shall authorise the competent authority to enquire or cause an enquiry to be made in a financial institution into the affairs of any individual customer of a financial institution except -

- (a) for the purpose of ensuring compliance with any of the provisions of this Act; or
- (b) where it is believed that the customer's exposure could contribute a threat to the integrity of the country's financial system.

(2) No person, including past and present officers ~~or agents~~ of a financial institution ~~or of a branch thereof, and agents of a financial institutions~~, shall disclose any information relating to the affairs of that institution or of a customer of that institution which he has acquired in the performance of his duties or the exercise of his functions under this Act or any regulations and Rules issued thereunder except -

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of his duties or the exercise of his functions;
- (c) when lawfully required to do so by any court or under a provision of any law.

(3) Where an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the any anti-money laundering and combatting the funding of terrorism legislation~~regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder~~, and such disclosure shall not constitute a breach of confidentiality.

(4) ~~Officers~~ Without prejudice to the provisions of article 20, persons who work or who have worked for the competent authority, ~~including past and present officers~~, as well as ~~auditors or~~ experts acting on behalf of the competent authority, are, without prejudice to the case covered by criminal law, bound by the obligation of professional secrecy. Such persons and experts shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties and which is governed by the obligation of professional secrecy, unless such disclosure of information be done in

summary or collective form, so as not to enable the identity of the financial institution, to whom such information relates, to be ascertained:

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

(5) Notwithstanding the provisions of any other law, a financial institution may, if circumstances so warrant, communicate any information which is in its possession and which relates to the affairs of a customer, to other members of the group ~~of companies~~ of which that financial institution forms part.

(6) For the purposes of sub-article (5), the term "group ~~of companies~~" shall include any body corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group ~~of companies~~ and which is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction to carry out any activity equivalent to the business of banking or of the issuing of electronic money or any of the activities referred to in the Schedule to the [Banking Act](#).

(7) Exchange of information on mutual or connected customers between the financial institution, its holding company or its subsidiaries where a credit facility has been or may be granted to that customer shall not constitute a breach of confidentiality.

(8) Without prejudice to the provisions of article 20, any exchange of information between the competent authority and any European regulatory authority, the European Central Bank, the Central Bank, national central banks of other Member States, the EBA or any other relevant authorities designated under European Union or national law applicable to payment services providers in accordance with article 20(1A) and (2) shall, in order to ensure the protection of individual and business rights, also be subject to the obligation of professional secrecy.

(9) The provisions of sub-articles (4) and (8) shall be applied taking into account, mutatis mutandis, Articles 53 to 61 of the CRD.

CONSUMER COMPLAINTS

~~Investigation of eComplaints by the Consumer Complaints Manager.~~

~~26.(1) (a) Without prejudice to the generality of article 20 of the Malta Financial Services Authority Act, the Consumer Complaints Manager shall also have the function of investigating complaints from a payment service user and a holder of electronic money arising out of, or in connection with, any alleged infringement by a financial institution of the provisions of this Act implementing the Payment Services Directive and the Electronic Money Directive.~~

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

~~(c) Complaints as described in sub article (1) may include complaints from interested parties, within the meaning of the Payment Services Directive and the Electronic Money Directive, as well as complaints from registered consumer associations as defined in the Consumer Affairs Act.~~

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

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

~~(c) The Consumer Complaints Manager shall, when replying to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article.~~

~~(3) Any action taken by the Consumer Complaints Manager under this article shall be without prejudice to the right of a consumer, within the meaning of the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal established under that Act, or to exercise any other rights under that Act.~~

DATA PROTECTION

Data protection.

26A.(1) Financial institutions may, when necessary to safeguard the prevention, investigation and detection of payment fraud, process personal data.

(2) The provision of information to individuals about the processing of personal data, and the processing of such personal data shall be carried out in accordance with any applicable data protection legislation.

(3) Financial institutions shall only access, process and retain personal data necessary for the provision of their services with the explicit consent of those making use of their services.

MISCELLANEOUS

Objective.

27. The objective of this Act is, in part, to implement the provisions of ~~Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market~~the Payment Services Directive, in particular Titles I, II, Chapter ~~4~~5 of Title IV, Articles 95, 96, 100, 103 and 107 in part, Articles 109, 111 and 115, and the Annex and of the Electronic Money Directive ~~Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions~~ and shall be interpreted and applied accordingly.

Transitional provisions.

28. (1) Payment institutions that have taken up activities in accordance with the provisions of this Act and any regulations and Rules issued thereunder transposing Directive 2007/64/EC by 13 January 2018, may, until 13 July 2018, continue those activities in accordance with such provisions without being required to seek a licence in accordance with article 5 or to comply with the other provisions laid down or referred to in this Act and any regulations and Rules issued thereunder.

(2) Payment institutions referred to in sub-article (1) shall submit to the competent authority all relevant information in order to allow the latter to assess, by 13 July 2018, whether those payment institutions comply with the requirements laid down in this Act and any regulations and Rules issued thereunder and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of a licence is appropriate.

(3) Payment institutions which upon verification by the competent authority comply with the requirements laid down in this Act and any regulations and Rules issued thereunder, shall be entered in the public register referred to in article 8D and in the register referred to in Article 15 of the Payment Services Directive.

(4) Payment institutions which do not comply with the requirements laid down in this Act and any regulations and Rules issued thereunder by 13 July 2018, shall be prohibited from providing payment services

in accordance with article 3(3A), the provisos to article 3(2A)(k) and the proviso to article 3(2A)(l).

(5) Payment institutions referred to in sub-article (1) shall be automatically entered in the public register referred to in article 8D and in the register referred to in Article 15 of the Payment Services Directive if the competent authority already has evidence that the requirements laid down in articles 3(1), 4(4), 4(5), 4(6) and 5 are complied with. In such cases, the competent authority shall inform the payment institutions concerned before effecting the automatic registration.

(6) Notwithstanding the provisions of sub-articles (1) to (4), payment institutions that have been granted a licence to provide payment services as referred to in point (7) of the Annex of Directive 2007/64/EC shall retain that licence for the provision of those payment services which are considered to be payment services as referred to in paragraph 2(c) of the Second Schedule where, by 13 January 2020, the competent authority has evidence that the requirements laid down in point (c) of Article 7 and in Article 9 of the Payment Services Directive are complied with.

(7) Legal persons that have performed in Malta, before 12 January 2016, activities of payment initiation service providers and account information service providers shall, until the 13 of January 2018 or until eighteen months after the date of entry into force of the regulatory technical standards referred to in Article 98 of the Payment Services Directive, whichever is the later, not be prohibited from continuing to perform such activities in Malta in accordance with the currently applicable regulatory framework.

(8) Until individual account servicing payment service providers comply with the regulatory technical standards referred to in Article 115(4) of the Payment Services Directive, account servicing payment service providers shall not abuse their non-compliance to block or obstruct the use of payment initiation services or account information services for the account that they are servicing.

(9) Electronic money institutions that have, before 13 January 2018, taken up activities in accordance with the provisions of this Act and any regulations and Rules issued thereunder transposing Directive 2007/64/EC and the Electronic Money Directive may, until 13 July 2018, continue those activities in Malta or in another Member state without being required to seek a licence in accordance with Article 3 of the Electronic Money Directive or to comply with other requirements laid down or referred to in this Act and any regulations and Rules issued thereunder.

(10) Electronic money institutions referred to in sub-article (9) shall submit to the competent authority all relevant information in order to allow the latter to assess, by 13 July 2018, whether those electronic money institutions comply with the requirements laid down in this Act and any regulations and Rules issued thereunder, and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of a licence is appropriate.

(11) Electronic money institutions referred to in sub-article (9) which upon verification by the competent authority comply with the requirements laid down in this Act and any regulations and Rules issued thereunder, shall be entered in the public register referred to in article 8D and in the register referred to in Article 15 of the Payment Services Directive.

(12) Where the electronic money institutions referred to in sub-article (9) do not comply with the requirements laid down in this Act and any regulations and Rules issued thereunder by 13 July 2018, they shall be prohibited from issue electronic money.

FIRST SCHEDULE

(Article 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including ~~forfeiting~~forfaiting);
2. Financial leasing;
3. Venture or risk capital;
4. Payment services as ~~defined~~set out in the Second Schedule;
5. Issuing and administering other means of payment (travellers cheques and bankers' drafts and similar instruments) in so far as this activity is not covered by point 4 above;
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposit and similar instruments);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable ~~instruments~~securities;
8. Underwriting share issues and participation in such issues;
9. Money broking;
10. Issuing of electronic money as defined in the Third Schedule.

SECOND SCHEDULE

FINANCIAL INSTITUTIONS CARRYING OUT PAYMENT SERVICES

Objective

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

Interpretation

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

~~"direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, or payee's~~

payment service provider or to the payer's own payment service provider;

"funds" means banknotes and coins, scriptural money and electronic money;

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

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

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

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

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

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

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

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

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

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

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

~~"payment service provider" means undertakings referred to in this Act;~~

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

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

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

List of Activities

2. Payment institutions may engage in the following activities:

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

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

operating a payment account;

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

- (i) execution of direct debits, including one-off direct debits;
- (ii) execution of payment transactions through a payment card or a similar device;
- (iii) execution of credit transfers, including standing orders;

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

- (i) execution of direct debits, including one-off direct debits;
- (ii) execution of payment transactions through a payment card or a similar device;
- (iii) execution of credit transfers, including standing orders;

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

(f) Money remittance;

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

(h) Payment initiation services;

(i) Account information services.

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

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

(b) The operation of payment systems without prejudice to Article 35 of the Payment Services Directive as transposed in a directive issued by the Central Bank under the Central Bank of Malta Act;

(c) Without prejudice to any applicable European Union or Maltese law and without prejudice to the provisions of article 5(6) of this Act, business activities other than the provision of payment services;

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

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

- (i) the credit is ancillary and granted exclusively in connection with the execution of a transaction; and
- (ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months; and
- (iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

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

4. When payment institutions engage in the provision of one or more payment services, they may only hold payment accounts used exclusively for payment transactions.

5. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2 of this Act.

THIRD SCHEDULE

(Article 2)

FINANCIAL INSTITUTIONS ISSUING ELECTRONIC MONEY

Objective

The purpose of this Schedule is to set out the activities that may be undertaken by financial institutions that issue electronic money in terms of this Act.

Interpretation

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

~~— "electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in paragraph 1 of the Second Schedule and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money;~~

~~— "electronic money institution" means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money.~~

Activities

2. In addition to issuing electronic money, electronic money institutions may also engage in any of the following activities:

- (a) the provision of payment services listed in paragraph 2 of the Second Schedule;
- (b) the granting of credit related to payment services referred to in paragraph 2(d), and (e) ~~and (g)~~ of the Second Schedule, where the conditions laid down in paragraph 3(e) of the Second Schedule are met;
- (c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);
- (d) the operation of payment systems as defined in the Second Schedule;
- (e) business activities other than the issuance of electronic money, having regard to the applicable law regulating such activities.

Credit referred to in point (b) above shall not be granted from the funds received in exchange of electronic

money and held in accordance with safeguarding requirements prescribed.