

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 Act II of 2010.

PRELIMINARY

1. The short title of this Act is the Financial Institutions Act. Short title.
2. (1) In this Act, unless the context otherwise requires - Interpretation.
Amended by:
XXIV. 1995.362;
XXV. 1995.434;
XVII. 2002.203;
XII. 2006.67;
II. 2010.8.
- "agent" means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule;
- "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 part of a financial institution not having a legal personality and which carries out directly some or all of the transactions, as authorised, inherent in the business of a financial institution; all the places of business set up in Malta by an institution with a head office in another Member State shall be regarded as a single branch;
- "Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act; Cap. 204.
- "close links" means a situation in which two or more persons are linked in any of the following ways:
- (a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate;
- (b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or Cap. 386.
- (c) permanently to one and the same third person by a control relationship;
- "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; Cap. 386.
- "the competent authority" means the body referred to in article

12(1);

"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;

"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;

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

"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;

"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;

"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 powers arising under this Act, and "Rule" shall be read accordingly;

Cap. 330. "Financial Services Tribunal" or "Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act;

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

Cap. 386. "holding company" or "parent company" has the same meaning as is assigned to the term "parent company" in the Companies Act;

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

"licence" in relation to the business of a financial institution means a licence granted under this Act;

"Member State" means a Member State of the European Communities;

"Minister" means the Minister responsible for finance;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act; Cap. 373.

"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;

"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" has the same meaning as is assigned to it by a Financial Institutions Rule;

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

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

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

"reconstruction" has the same meaning as is assigned to it by the Companies Act; Cap. 386.

"subsidiary" has the same meaning as "subsidiary undertaking" in the Companies Act; Cap. 386.

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

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

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

LICENSING REQUIREMENTS

Licences for
business of
financial
institutions.
*Amended by:
XII. 2006.68;
II. 2010.9.*

3. (1) No business of a financial institution 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.

(2) Subject to the provisions of subarticle (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 to companies which are not banks or financial institutions and which belong to the same group of companies; or
- (b) 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.

(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.

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

Cap. 371.

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

Cap. 371.
Cap. 370.

(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 for such an activity under this Act.

Application for a
licence.
*Amended by:
XVII. 2002.204;
II. 2010.8, 10.*

4. (1) Any company desirous of commencing the business of a financial institution in Malta shall, before commencing any such business, apply in writing to the competent authority for a licence under this Act.

(2) All applications for a licence shall be in such form and accompanied by such information and shall conform 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 it 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.

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 Rule and as may be appropriate for the activities to be undertaken by the applicant;
 - (b) there are at least two individuals who will effectively direct the business of the financial institution in Malta;
 - (c) all qualifying shareholders, controllers and all persons who will effectively direct the business of the financial institution are suitable persons to ensure its prudent management;
 - (d) the competent authority is satisfied that the financial institution has sound and prudent management, and has robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures:
Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the institution;
 - (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:

Issuing of a licence.
Amended by:
XVII. 2002.205;
L.N. 425 of 2007;
II. 2010.8, 11.

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

(2) The competent authority shall determine each application for a licence 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 subarticle 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 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 the competent authority may

subject a financial institution to such conditions as it may deem appropriate and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

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

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

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

(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.

Own funds.
Added by:
II. 2010.12.

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

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

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

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

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

- (a) expressly renounces the licence,
- (b) does not commence business pursuant to the licence within twelve months of its issue, or has ceased to engage in business for more than six months or within such other period of time as may be specified in the licence;
- (c) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act;
- (d) no longer fulfils the conditions required for the granting of the licence;
- (e) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved;
- (f) has ceased to operate as a result of a merger with another financial institution;
- (g) is a branch of an institution incorporated outside Malta and the overseas regulatory authority in the country of incorporation withdrew the authorisation of the institution; or
- (h) would constitute a threat to the stability of the payment system by continuing its payment services within the meaning of the Second Schedule.

Restriction and revocation of a licence.
Amended by:
XVII. 2002.206;
II. 2010.13.

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

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

- (a) the removal of any officer of the financial institution or the replacement of any officer by such person as the competent authority may designate;
- (b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the financial institution to divest himself of all or part of that holding;
- (c) the requirement for the financial institution to take or refrain from taking any action;
- (d) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the First Schedule 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.

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

(6) A licence granted to a branch of an institution incorporated outside Malta may only be revoked 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 of a licence 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 under this article.

Notification of proposed variation, restriction or revocation of a licence.
Amended by:
XVII. 2002.207.

7. (1) Where the competent authority intends -
- (a) to vary any condition to which the licence is subject or to impose a condition thereon; or
 - (b) to restrict or revoke a licence 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 it intends to take such action.

(2) Every notice given under subarticle (1) shall specify a period in which the financial institution shall be entitled to make representations to the competent authority as to why such action should not be taken.

(3) Unless the competent authority decides that the matter is urgent, it shall not impose or vary any restriction or condition or revoke a licence before the expiry of the period as set under subarticle (2).

7A. A financial institution licensed under this Act shall provide the competent authority with particulars of any changes in the information provided under this Act as soon as such financial institution becomes aware of such change.

Changes in
information.
Added by:
XVII. 2002.208.

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

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

Opening of
branches and
exercise of
European Rights.
Substituted by:
II. 2010.14.

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

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

- (a) provides any of the activities listed in the First Schedule, other than paragraph 4 thereof,
- (b) fulfils the conditions of regulation 13 of the European Rights Regulations, and
- (c) wishes to provide services in a Member State or an EEA State, in exercise of a European right; and accordingly is subject to the European Rights Regulations.

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

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

- (a) the name and address of the financial institution;
- (b) the names of those responsible for the management of the branch;
- (c) its organisational structure; and

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

(6) In this article:

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

S.L. 371.11

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

Agency arrangements.
Added by:
XVII. 2002.209.
Substituted by:
II. 2010.15.

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

(a) the name and address of the agent;

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

Cap. 373.

S.L. 373.01

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

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

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

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

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

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

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

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

Outsourcing of operational functions.
Added by:
II. 2010.16.

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

Provided that the outsourcing of important operational

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

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

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

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

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

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

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

8C. (1) Where financial institutions rely on third parties for the performance of operational functions, those financial

Liability.
Added by:
II. 2010.16.

institutions shall take reasonable steps to ensure that the requirements of this Act are complied with.

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

Registration.
Added by:
II. 2010.16.

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

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

Notification of new
or variation in
participation or
control.
Amended by:
XVII. 2002.210;
XII. 2006.69;
II. 2010.17.

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 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 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 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 penalty which may be imposed under this Act or any regulations or Rules issued thereunder, the competent authority shall have the power to 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).

(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 under this Act.

(3) Subarticle (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. Cap. 345.

(4) Where a person intends to take any action as set out in subarticle (1)(a) and (b), he shall before taking such action notify the competent authority in writing. The competent authority shall within two months of receiving such notification give its approval or otherwise and if that period elapses without the competent authority having given its decision such fact shall be deemed to be a refusal.

- (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.

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

Prohibited transactions.
Amended by:
XVII. 2002.211;
L.N. 425 of 2007;
II. 2010.18.

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 subarticle (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.

Financial institutions unable to meet obligations.

11. Notwithstanding any investigation provided for in this Act,

- (a) where a financial institution considers that it 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.

REGULATORY AND INVESTIGATORY POWERS

12. (1) The Minister shall by order in the Gazette nominate a body to be the competent authority for the purposes of this Act to carry out the functions of the competent authority under this Act. Such body shall be nominated for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such nomination by order in the Gazette.

Powers and duties of the Minister.
Amended by:
XVII. 2002.212;
II. 2010.19.

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

- (a) amend any of the Schedules to this Act;
(b) transpose, implement and give effect to the requirements of the Directive.

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

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

Language of regulations.
Added by:
XIII. 2004.93.
Re-numbered by:
II. 2010.21.

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

Powers and duties of the competent authority.
Amended by:
II. 2010.8, 22.

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

outsourced;

- (c) to suspend or withdraw authorisation in cases referred to in article 6; and
- (d) notwithstanding the requirements of articles 5 and 5A, to take all necessary steps to ensure sufficient capital for the activities carried out by a financial institution, in particular where activities of a financial institution other than those listed in the Schedule impair or are likely to impair the financial soundness of the institution.

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

(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.

Power of competent authority to require information.
Amended by:
XVII. 2002.213;
II. 2010.8, 23.

14. (1) A financial institution shall submit to the competent authority such information and statements as the competent authority may require in the discharge of its duties under this Act or any regulations and Rules issued thereunder or any other law.

(2) All statements required under subarticle (1) shall be submitted in such form and at such periods the competent authority may from time to time prescribe by Financial Institutions Rules.

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

(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 subarticle (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 subarticle (6)(c) to submit a report in such form as it may specify.

(12) The competent authority may also exercise the powers conferred by subarticles (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.
Amended by:
XVII. 2002.214.

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 of a financial institution.

(2) An inspector appointed under subarticle (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.

Right of entry.

16. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 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 has reasonable cause to believe that if such notice as is referred to in subarticle (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 subarticle (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 subarticle (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.

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) apply, the competent authority, after consulting with the Central Bank, may, without prejudice to the powers to impose restrictions or revoke a licence under the provisions of article 6(3) -

Power of the competent authority to take control of financial institutions.
Amended by:
XVII. 2002.215;
II. 2010.24.

- (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) fix the remuneration to be paid by the financial institution to any competent person appointed under this subarticle.

(2) Upon receipt of a report or information otherwise received as is mentioned in subarticle (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.

AUDITORS

18. (1) (a) Every financial institution shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the financial institution examined by them and on all financial statements prepared by the financial institution.

Appointment and duties of auditors.
Amended by:
XXV. 1995.434;
XVII. 2002.216.

(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:

Cap. 386.

Provided that in the case of a financial institution not incorporated in Malta the competent authority may grant 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 subarticle (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.

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(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.
Amended by:
II. 2010.25.

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

20. (1) 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.

Co-operation and sharing of information.
Amended by:
XVII. 2002.217;
IV. 2003.186;
II. 2010.26.

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

- (a) overseas regulatory authorities responsible for the licensing and supervision of financial institutions carrying out payment services solely for their supervisory and regulatory purposes or for such other purposes as may be specifically agreed upon with the competent authority;
- (b) the European Central Bank, other Member States' central banks and the Central Bank, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other relevant authorities designated under Directive 2007/64/EC, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to payment service providers, including measures regulating the protection of individuals with regard to the processing of personal data and the prevention of money laundering and terrorist financing.

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

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

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

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

(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.

APPEALS, REMEDIES, DISQUALIFICATION AND CONFIDENTIALITY

Appeals.
Substituted by:
XVII. 2002.218.
Amended by:
XII. 2006.70.

21. Any person who is aggrieved by a decision of the competent authority -

- (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 25A, 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),

Cap. 330.

may appeal against the decision to the Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act.

Offences.
Amended by:
XVII. 2002.219;
L.N. 425 of 2007;
II. 2010.8, 27.

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 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,

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 subarticle (1) 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.

23. (1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any person as the case may be, an administrative penalty which may not exceed ninety-three thousand and one hundred seventy four euro and ninety-four cents (€93,174.94).

Administrative penalties.
Substituted by:
XVII. 2002.220.
Amended by:
II. 2010.28.

(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 subarticle (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 Organisation and Civil Procedure.

Cap. 12.

Disqualification of officers.
Amended by:
II. 2010.29.

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 revoked under article 6(3) 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.

Confidentiality.
Amended by:
XVII. 2002.221;
II. 2010.30.

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, 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) When an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with the regulations laid down under the Prevention of Money Laundering Act and any guidelines provided by the competent authority. Compliance with the provisions of this subarticle shall not constitute a breach of confidentiality. Cap. 373.

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

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

(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 subarticle (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. Cap. 371.

(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.

CONSUMER COMPLAINTS

*Substituted by:
II. 2010.31.*

- 26.(1)(a)** The Consumer Complaints Manager appointed under article 20 of the Malta Financial Services Authority Act shall have the function of investigating complaints from a payment service user arising out of, or in connection with, any alleged infringement by a service provider of the provisions of this Act implementing the Directive. Investigation of complaints by the Consumer Complaints Manager. *Substituted by:
II. 2010.32.
Cap. 330.*
- (b)** The provisions of article 20 of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, to complaints made under this article. Cap. 330.

- Cap. 387.
- (c) Complaints from a payment service user under paragraph (a) may include complaints from interested parties, within the meaning of the Directive, as well as complaints from consumer associations.
- (2) (a) A dispute between a payment service user and payment service provider may, at the discretion of the payment service user, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.
- (b) Reference of a dispute to arbitration in accordance with paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.
- (c) The Consumer Complaints Manager shall, in his reply to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article:

Cap. 378.

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

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

Added by:
II. 2010.33.

MISCELLANEOUS

Objective.
Substituted by:
II. 2010.34.

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

FIRST SCHEDULE
(Article 2)

*Substituted by:
II. 2010.35.*

ACTIVITIES OF FINANCIAL INSTITUTIONS

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

SECOND SCHEDULE
FINANCIAL INSTITUTIONS CARRYING OUT
PAYMENT SERVICES

*Added by:
II. 2010.36.*

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 Directive to provide and execute payment services;

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

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

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

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

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

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

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

List of Activities

2. Payment institutions may engage in the following activities:

- (a) Services enabling cash to be placed on a payment account as well as all

-
- the operations required for operating a payment account;
- (b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
 - (c) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
 - (d) Execution of payment transactions where the funds are covered by a credit line for a payment service user:
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
 - (e) Issuing and/or acquiring of payment instruments;
 - (f) Money remittance;
 - (g) Execution of payment transactions where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user and the supplier of the goods and services.
3. The following additional activities may also be carried out by a payment institution:
- (a) The provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services strictly in relation to payment services, safekeeping activities, and storage and processing of data;
 - (b) The operation of payment systems;
 - (c) Without prejudice to the provisions of article 5(6) of 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 Banking Act;
 - (e) Payment institutions may grant credit related to payment services referred to in paragraph (2)(d), (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, to the satisfaction of the supervisory authority, appropriate in view of the overall amount of credit granted.
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