

MALTA

ATT Nru XXXII tal-2024

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

ATT sabiex jipprovdi għat-twaqqif ta' qafas għar-regolamentazzjoni tax-xerrejja ta' kreditu, kif ukoll ta' persuni li jipprovdu servizzi ta' kreditu li jaġixxu f'isem tali xerrejja ta' kreditu, tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew ta' kuntratt ta' kreditu mhux produttiv innifsu, maħruġ minn istituzzjoni ta' kreditu stabbilita fl-Unjoni Ewropea; u sabiex jemenda l-Att dwar il-Kummerċ tal-Assigurazzjoni u l-Att dwar Servizzi ta' Investiment.

ACT No. XXXII of 2024

AN ACT enacted by the Parliament of Malta.

AN ACT to provide for the establishment of a framework for the regulation of credit purchasers, as well as credit servicers acting on behalf of such credit purchasers, of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the European Union; and to amend the Insurance Business Act and the Investment Services Act.

Nagħti l-kunsens tiegħi.

(L.S.)

MYRIAM SPITERI DEBONO
President

30 ta' Lulju, 2024

ATT Nru XXXII tal-2024

ATT sabiex jipprovdi għat-twaqqif ta' qafas għar-regolamentazzjoni tax-xerrejja ta' kreditu, kif ukoll ta' persuni li jipprovdu servizzi ta' kreditu li jaġixxu f'isem tali xerrejja ta' kreditu, tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew ta' kuntratt ta' kreditu mhux produttiv innifsu, mahruġ minn istituzzjoni ta' kreditu stabbilita fl-Unjoni Ewropea; u sabiex jemenda l-Att dwar il-Kummerċ tal-Assigurazzjoni u l-Att dwar Servizzi ta' Investiment.

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

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2024 dwar Persuni li jipprovdu Servizzi ta' Kreditu u dwar Xerrejja ta' Kreditu. Titolu fil-qosor u għan.

(2) L-għan prinċipali ta' dan l-Att huwa li jittrasponi d-dispożizzjonijiet rilevanti tad-Direttiva (UE) 2021/2167 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2021 dwar is-servizzjanti tal-kreditu u x-xerrejja tal-kreditu u li temenda d-Direttivi 2008/48/KE u 2014/17/UE (Direttiva NPL), u għandu jiġi interpretat u applikat skont l-imsemmija Direttiva.

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Tifsir.

2. (1) F'dan l-Att, sakemm ir-rabta tal-kliem ma tkunx teħtieġ xort'ohra:

"applikant" tfisser persuna ġuridika stabbilita f'Malta li tapplika mal-awtorità kompetenti sabiex taġixxi bħala persuna li ttiprovdi servizzi ta' kreditu skont l-artikolu 7;

"attivitajiet ta' ġestjoni ta' kreditu" tfisser waħda (1) jew aktar mill-attivitajiet li ġejjin:

(a) il-ġbir jew l-irkupru mingħand il-mutwatarju, f'konformità mal-liġi nazzjonali, ta' kwalunkwe pagament dovut relatat mad-drittijiet ta' kreditur skont kuntratt ta' kreditu jew tal-kuntratt ta' kreditu nnifsu;

(b) in-negozjar mill-ġdid mal-mutwatarju, f'konformità mal-liġi nazzjonali, ta' kwalunkwe termini u kondizzjonijiet relatati mad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, f'konformità mal-istruzzjonijiet mogħtija mix-xerrej ta' kreditu, fejn il-persuna li ttiprovdi servizzi ta' kreditu ma tkunx intermedjarju ta' kreditu kif definit fl-Artikolu 3(f) tad-Direttiva 2008/48/KE jew fl-Artikolu 4(5) tad-Direttiva 2014/17/UE;

(ċ) l-amministrazzjoni ta' kwalunkwe lmenti relatati mad-drittijiet ta' kreditur skont kuntratt ta' kreditu jew tal-kuntratt ta' kreditu nnifsu; u, jew

(d) l-infurmar lill-mutwatarju bi kwalunkwe bidla fir-rati tal-imġħax, fl-imposti jew fi kwalunkwe pagament dovut relatati mad-drittijiet ta' kreditur skont kuntratt ta' kreditu jew tal-kuntratt ta' kreditu nnifsu;

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"awtorità kompetenti" tfisser l-Awtorità għas-Servizzi Finanzjarji ta' Malta stabbilita permezz tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;

"awtorità regolatorja Ewropea" tfisser korp jew korpi maħtura minn Stat Membru għajr Malta skont l-Artikolu 21(3) tad-Direttiva NPL sabiex iwettqu l-funzjonijiet u d-dmirijiet stipulati fl-istess Direttiva;

"CRD" tfisser id-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività tal-istituzzjonijiet ta' kreditu u s-superviżjoni prudenzjali tal-istituzzjonijiet ta' kreditu, li temenda d-Direttiva 2002/87/KE u li tħassar id-Direttivi 2006/48/KE u 2006/49/KE,

kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nharġu jew li jistgħu jinharġu taħtha;

"CRR" tfisser ir-Regolament (UE) Nru 575/2013 tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar ir-rekwiżiti prudenzjali għall-istituzzjonijiet ta' kreditu u d-ditti tal-investment u li jemenda r-Regolament (UE) Nru 648/2012, kif emendat minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nharġu jew li jistgħu jinharġu tahtu;

"detentur ta' liċenzja" tfisser persuna li għandha liċenzja;

"Direttiva 98/5/KE" tfisser id-Direttiva 98/5/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Frar 1998 sabiex tiġi iffacilitata l-prattika tal-professjoni ta' avukat fuq bażi permanenti fl-Istati Membri minbarra dak fejn kienet miksuba l-kwalifikazzjoni, kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li jkun nharġu, jew li jistgħu jinharġu taħthom;

"Direttiva 2008/48/KE" tfisser id-Direttiva 2008/48/KE tal-Parlament Ewropew u tal-Kunsill tat-23 ta' April 2008 dwar ftehim ta' kreditu għall-konsumatur u li thassar id-Direttiva tal-Kunsill 87/102/KEE, kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nharġu, jew li jistgħu jinharġu taħthom;

"Direttiva 2009/65/KE" tfisser id-Direttiva 2009/65/KE tal-Parlament Ewropew u tal-Kunsill tat-13 ta' Lulju 2009 dwar il-koordinazzjoni ta' liġijiet, regolamenti u dispożizzjonijiet amministrattivi fir-rigward tal-impriżi ta' investment kollettiv f'titoli trasferibbli (UCITS), kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nharġu, jew li jistgħu jinharġu taħthom;

"Direttiva 2011/61/UE" tfisser id-Direttiva 2011/61/UE tal-Parlament Ewropew u tal-Kunsill tat-8 ta' Ġunju 2011 dwar Maniġers ta' Fondi ta' Investment Alternattivi u li temenda d-Direttivi 2003/41/KE u 2009/65/KE u r-Regolamenti (KE) Nru 1060/2009 u (UE) Nru 1095/2010, kif tiġi tista' emendata minn żmien għal żmien, u tinkludi kwalunkwe strumenti legali vinkolanti, linji gwida u miżuri oħra li nharġu, jew li jistgħu jinharġu taħthom;

"Direttiva 2014/17/UE" tfisser id-Direttiva 2014/17/UE tal-Parlament Ewropew u tal-Kunsill tal-4 ta' Frar 2014 dwar kuntratti ta' kreditu għall-konsumaturi marbutin ma' proprjetà immobbli residenzjali u li temenda d-Direttivi 2008/48/KE u 2013/36/UE u r-Regolament (UE) Nru 1093/2010, kif tista' tigi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nħarġu, jew li jistgħu jinħarġu taħthom;

"Direttiva NPL" tfisser id-Direttiva (UE) 2021/2167 tal-Parlament Ewropew u tal-Kunsill tal-24 ta' Novembru 2021 dwar is-servizzjanti tal-kreditu u x-xerrejja tal-kreditu u li temenda d-Direttivi 2008/48/KE u 2014/17/UE, kif tista' tigi emendata minn żmien għal żmien, u tinkludi kwalunkwe strument legali vinkolanti, linji gwida u miżuri oħra li nħarġu, jew li jistgħu jinħarġu taħtha;

"fornitur ta' servizzi ta' kreditu" tfisser parti terza użata minn persuna li ttipprova għestjoni ta' kreditu sabiex twettaq kwalunkwe waħda mill-attivitajiet ta' servizzi ta' kreditu;

"GDPR" tfisser ir-Regolament (UE) 2016/679 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' April 2016 dwar il-protezzjoni tal-persuni fiżiċi fir-rigward tal-ipproċessar ta' data personali u dwar il-moviment liberu ta' tali data, u li jħassar id-Direttiva 95/46/KE (Regolament Ġenerali dwar il-Protezzjoni tad-Data), kif jista' jiġi emendat minn żmien għal żmien, u jinkludi kwalunkwe strumenti legali vinkolanti, linji gwida u miżuri oħra li nħarġu, jew li jistgħu jinħarġu taħtu;

"istituzzjoni ta' kreditu" tfisser istituzzjoni ta' kreditu kif imfissra fil-punt (1) tal-artikolu 4(1) tas-CRR;

"konsumatur" tfisser persuna fiżika li, f'kuntratti ta' kreditu regolati minn dan l-Att jew kwalunkwe regolamenti magħmula taħtu, jew mir-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew mir-Regoli tal-Kondotta tal-Operat maħruġa taħtu, qed taġixxi għal skopijiet li mhumiex fi hdan il-kummerċ, in-negozju jew il-professjoni tagħha;

"korp manigerjali" tfisser il-korp jew korpi ta' persuna ġuridika, li hija maħtura f'konformità mal-liġi applikabbli u li għandha s-setgħa li tistabbilixxi l-istrateġija, l-oġettivi u d-direzzjoni ġenerali tal-persuna ġuridika, u li tissorvelja u tagħmel monitoraġġ tat-teħid ta' deċiżjonijiet manigerjali, u tinkludi l-persuni li effettivament imexxu n-negozju tal-persuna ġuridika;

"kreditur" tfisser istituzzjoni ta' kreditu li tkun harget kreditu jew xerrej ta' kreditu;

"kuntratt ta' għoti ta' servizzi ta' kreditu" tfisser kuntratt bil-miktub konkluz bejn xerrej ta' kreditu u persuna li tipprovdi servizzi ta' kreditu dwar is-servizzi li għandhom jiġu pprovduti mill-persuna li tipprovdi servizzi ta' kreditu f'isem ix-xerrej ta' kreditu;

"kuntratt ta' kreditu" tfisser kuntratt kif oriġinarjament maħruġ, modifikat jew sostitwit, fejn istituzzjoni ta' kreditu tagħti kreditu fil-forma ta' pagament differit, self jew akkomodazzjoni finanzjarja simili oħra;

"kuntratt ta' kreditu mhux produttiv" tfisser kuntratt ta' kreditu li huwa kklassifikat bhala skopertura mhux produttiva skont l-Artikolu 47a tas-CRR;

"liċenzja" tfisser liċenzja sabiex jitwettqu attivitajiet ta' gestjoni ta' kreditu maħruġa skont dan l-Att;

"MiFID" tfisser id-Direttiva 2014/65/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 dwar is-swieq fl-istrumenti finanzjarji u li temenda d-Direttiva 2002/92/KE u d-Direttiva 2011/61/UE, kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kwalunkwe strumenti legali vinkolanti, linji gwida u miżuri oħra li nharġu, jew li jistgħu jinharġu taħtha;

"Ministru" tfisser il-Ministru responsabbli għar-regolamentazzjoni tas-servizzi finanzjarji;

"mutwatarju" tfisser persuna ġuridika jew fiżika li tkun ikkonkludiet kuntratt ta' kreditu ma' istituzzjoni ta' kreditu, inkluż is-suċċessur legali jew iċ-ċessjonarju tagħha;

"persuna li tipprovdi servizzi ta' kreditu" tfisser persuna ġuridika li, matul in-negozju tagħha, timmaniġġja u tinforza d-drittijiet u l-obbligi relatati mad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, f'isem xerrej ta' kreditu, u li twettaq mill-inqas attività waħda (1) jew aktar attivitajiet ta' servizzi ta' kreditu;

"rappreżentant maħtur" tfisser ir-rappreżentant ta' xerrej ta' kreditu minn pajjiż terz maħtur skont l-artikolu 17;

"Regolament (UE) 2017/2402" tfisser ir-Regolament (UE) 2017/2402 tal-Parlament Ewropew u tal-Kunsill tat-12 ta'

Diċembru 2017 li jistabbilixxi qafas ġenerali għat-titolizzazzjoni u li johloq qafas speċifiku għal titolizzazzjoni sempliċi, trasparenti u standardizzata, u li jemenda d-Direttivi 2009/65/KE, 2009/138/KE u 2011/61/UE u r-Regolamenti (KE) Nru 1060/2009 u (UE) Nru 648/2012;

"Regolament (UE) 2018/1725" tfisser ir-Regolament (UE) 2018/1725 tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Ottubru 2018 dwar il-protezzjoni ta' persuni fiżiċi fir-rigward tal-ipproċessar ta' data personali mill-istituzzjonijiet, korpi, uffiċċji u aġenziji tal-Unjoni u dwar il-moviment liberu ta' tali data, u li jhassar ir-Regolament (KE) Nru 45/2001 u d-Deciżjoni Nru 1247/2002/KE, kif jista' jiġi emendat minn żmien għal żmien, u jinkludi kwalunkwe strumenti legali vinkolanti, linji gwida u miżuri oħra li nħarġu, jew li jistgħu jinħarġu tahtu;

"Regoli dwar il-Provvista ta' Servizzi ta' Kreditu" tfisser Regoli, għajr ir-Regoli tal-Kondotta tal-Operat, li jistgħu jinħarġu mill-awtorità kompetenti skont dan l-Att;

"Regoli tal-Kondotta tal-Operat" tfisser Regoli, għajr ir-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu, maħruġa mill-awtorità kompetenti skont dan l-Att;

"Stat Membru" tfisser Stat Membru tal-Unjoni Ewropea u tinkludi Stat taż-Żona Ekonomika Ewropea;

"Stat Membru ospitanti" tfisser l-Istat Membru, għajr l-Istat Membru ta' domicilju, li fih persuna li tipprovdi servizzi ta' kreditu tkun stabbilixxiet fergħa jew fejn tipprovdi attivitajiet ta' ġestjoni ta' kreditu, u fi kwalunkwe każ fejn ikun domiciljat il-mutwatarju, jew fejn ikun jinsab l-uffiċċju registrat tiegħu jew, jekk skont il-liġi nazzjonali tiegħu ma jkollu l-ebda uffiċċju registrat, l-Istat Membru li fih ikun jinsab l-uffiċċju prinċipali tiegħu;

"Stat Membru ta' domicilju" tfisser, fir-rigward ta' persuna li tipprovdi servizzi ta' kreditu, l-Istat Membru li fih ikun jinsab l-uffiċċju registrat tagħha jew, jekk skont il-liġi nazzjonali tagħha ma jkollha l-ebda uffiċċju registrat, l-Istat Membru li fih ikun jinsab l-uffiċċju prinċipali tagħha jew, fir-rigward ta' xerrej ta' kreditu, l-Istat Membru li fih ikun domiciljat ix-xerrej ta' kreditu jew ir-rappreżentant tiegħu, jew li fih l-uffiċċju registrat tiegħu jkun jinsab jew, jekk skont il-liġi nazzjonali tiegħu ma jkollu l-ebda uffiċċju registrat, l-Istat Membru li fih ikun jinsab l-uffiċċju prinċipali tiegħu;

"strument legali vinkolanti" tfisser kwalunkwe miżura applikabbli direttament, inkluż iżda mhux limitat għal, kwalunkwe standards tekniċi ta' implimentazzjoni, standards tekniċi regolatorji jew miżuri simili, maħruġa skont il-leġiżlazzjoni tal-Unjoni Ewropea;

"xerrej ta' kreditu" tfisser kwalunkwe persuna fiżika jew ġuridika, għajr istituzzjoni ta' kreditu, li tixtri d-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, fil-kors tal-kummerċ, in-negozju jew il-professjoni tiegħu, skont il-liġi tal-Unjoni Ewropea u l-liġi nazzjonali applikabbli.

(2) Għall-finijiet ta' dan l-Att, sakemm ir-rabta tal-kliem ma titlobx xort' oħra, termini użati f'dan l-Att li ma jkunux imfissra fih għandu jkollhom l-istess tifsira kif mogħtija lilhom fid-Direttiva NPL.

(3) F'dan l-Att u fi kwalunkwe regolamenti magħmula taħtu, f'każ ta' kunflitt bejn it-testi bl-Ingliż u bil-Malti, it-test bl-Ingliż għandu jipprevali.

3. (1) Id-dispożizzjonijiet ta' dan l-Att u ta' kwalunkwe regolamenti, tar-Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u tar-Regoli tal-Kondotta tal-Operat maħruġa taħtu għandhom japplikaw għal dan li ġej: Applikabbiltà.

(a) persuni li jipprovdu servizzi ta' kreditu li jaġixxu f'isem xerrej ta' kreditu fir-rigward tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, maħruġ minn istituzzjoni ta' kreditu; u

(b) ix-xerrejja ta' kreditu tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, maħruġ minn istituzzjoni ta' kreditu.

(2) Id-dispożizzjonijiet ta' dan l-Att u kwalunkwe regolament, tar-Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u tar-Regoli tal-Kondotta tal-Operat maħruġa taħtu għandhom ikunu bla ħsara għal kwalunkwe liġi oħra relatata ma':

(a) it-trasferiment tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu;

(b) il-protezzjoni tad-drittijiet tal-konsumaturi u tal-mutwatarji, inklużi d-dispożizzjonijiet tar-Regolamenti (KE) Nru 593/2008 u (UE) Nru 1215/2012, u d-Direttivi 93/13/KEE,

2008/48/KE, 2014/17/UE kif trasposti fil-liġi nazzjonali;

(ċ) kwalunkwe restrizzjoni rigward it-trasferiment tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, li ma jkunx skada, jew li jkun skada b'inqas minn disgħin (90) jum, jew ma jiġix terminat skont il-leġiżlazzjoni applikabbli; u

(d) kwalunkwe rekwiżit rigward l-għoti ta' servizzi tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, meta x-xerrej ta' kreditu jkun entità bi skop speċjali tat-titolizzazzjoni kif definit fil-punt (2) tal-Artikolu 2 tar-Regolament (UE) 2017/2402, sakemm dik il-liġi:

(i) ma taffettwax il-livell ta' protezzjoni tal-konsumatur ipprovdut mid-Direttiva NPL kif trasposta fil-liġi nazzjonali; u

(ii) tiżgura li l-awtorità kompetenti tircievi l-informazzjoni meħtieġa mingħand il-persuni li jipprovdu servizzi ta' kreditu.

Nuqqas ta' applikabbiltà.

4. Id-dispożizzjonijiet ta' dan l-Att u ta' kwalunkwe regolamenti magħmula taħtu, tar-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u tar-Regoli tal-Kondotta tal-Operat mahruġa taħtu ma għandhomx japplikaw għal dawn li ġejjin:

(a) l-għoti tas-servizz tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, imwettaq minn:

(i) istituzzjoni ta' kreditu stabbilita fl-Unjoni Ewropea;

(ii) manijer ta' fondi ta' investiment alternattivi (AIFM) awtorizzati jew irregistrati skont id-Direttiva 2011/61/UE, jew kumpanija manijerjali, jew kumpanija ta' investiment awtorizzata skont id-Direttiva 2009/65/KE sakemm il-kumpanija ta' investiment ma tkunx hatret kumpanija manijerjali skont id-Direttiva tal-aħħar, f'isem il-fond li timmanigġja;

(iii) istituzzjoni mhux ta' kreditu soġġetta għal superviżjoni minn awtorità kompetenti ta' Stat Membru skont l-Artikolu 20 tad-Direttiva 2008/48/KE jew l-Artikolu 35 tad-Direttiva 2014/17/UE meta twettaq attivitajiet f'dak l-Istat Membru;

(b) l-ġhoti ta' servizzi tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, li ma jkunx inhareġ minn istituzzjoni ta' kreditu ħlief fejn id-drittijiet tal-kreditur skont il-kuntratt ta' kreditu, jew il-kuntratt ta' kreditu nnifsu, jiġu sostitwiti minn kuntratt ta' kreditu maħrug minn tali istituzzjoni ta' kreditu;

(ċ) ix-xiri tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, minn istituzzjoni ta' kreditu stabbilita fl-Unjoni Ewropea;

(d) it-trasferiment tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, trasferit qabel it-30 ta' Diċembru 2023; u

(e) l-ġhoti ta' servizzi tad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, imwettaq minn nutara u marixxalli jew avukati kif definit fil-punt (a) tal-Artikolu 1(2) tad-Direttiva 98/5/KE, meta jwettqu attivitajiet ta' ġestjoni ta' kreditu bħala parti mill-professjoni tagħhom.

5. (1) L-awtorità kompetenti għandha twestaq il-funzjonijiet tagħha skont dan l-Att u, b'mod partikolari, għandha tiżgura l-konformità mad-dispożizzjonijiet tal-Att imsemmi u ma' kwalunkwe regolamenti magħmula tahtu, mar-Regoli dwar il-Provviediment ta' Servizzi ta' Kreditu u mar-Regoli tal-Kondotta tal-Operat maħruġa taht dan l-Att.

L-awtorità kompetenti.

(2) L-awtorità kompetenti għandha twestaq ukoll il-funzjonijiet u d-dmirijiet bħala awtorità kompetenti għall-finijiet kollha tad-Direttiva NPL kif trasposta fil-liġi nazzjonali.

(3) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, fejn Malta hija l-Istat Membru ta' domicilju, l-awtorità kompetenti għandha tiżgura li l-persuni li jipprovdu servizzi ta' kreditu u, fejn applikabbli, il-fornituri ta' servizzi ta' kreditu li lilhom ikunu ġew esternalizzati l-attivitajiet ta' ġestjoni ta' kreditu skont l-artikolu 12 jikkonformaw mad-dispożizzjonijiet ta' dan l-Att u ma' kwalunkwe regolamenti magħmula tahtu, mar-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u mar-Regoli tal-Kondotta tal-Operat maħruġa tahtu, fuq bażi kontinwa.

(4) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, fejn Malta hija l-Istat Membru ta' domicilju, hija għandha tkun responsabbli għas-superviżjoni tal-obbligi stabbiliti fl-Artikolu 10 u fl-Artikoli 17 sa 20 tad-Direttiva NPL, kif trasposta fil-liġi nazzjonali, fir-rigward tax-xerrej ta' kreditu jew, fejn applikabbli, tar-rappreżentant maħtur

tiegħu.

TAQSIMA I
PERSUNI LI JIPPROVDU SERVIZZI TA' KREDITU

Awtorizzazzjoni
bħala persuna li
tipprovdi
servizzi ta'
kreditu.

6. (1) L-ebda persuna ġuridika ma għandha taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, jew tqis lilha nnifisha li taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, f'Malta sakemm ma tkunx debitament awtorizzata mill-awtorità kompetenti jew minn kwalunkwe awtorità regolatorja Ewropea sabiex taġixxi bħala persuna li tipprovdi servizzi ta' kreditu.

(2) L-ebda persuna ġuridika stabbilita f'Malta ma għandha taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, jew tqis lilha nnifisha li taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, sakemm ma tkunx debitament awtorizzata mill-awtorità kompetenti sabiex taġixxi bħala persuna li tipprovdi servizzi ta' kreditu skont dan l-Att.

(3) Meta persuna ġuridika tkun awtorizzata mill-awtorità kompetenti sabiex taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, hija tista' tircievi u żżomm fondi mingħand il-mutwatarji sabiex tittrasferixxi dawk il-fondi lix-xerrejja ta' kreditu, diment li għandha tagħmel dan biss f'Malta u fi kwalunkwe Stat Membru ospitanti li jippermetti tali riċeviment u żamma ta' fondi.

(4) Meta persuna ġuridika tkun awtorizzata minn awtorità regolatorja Ewropea sabiex taġixxi bħala persuna li tipprovdi servizzi ta' kreditu, hija tista' tircievi u żżomm fondi minn mutwatarji f'Malta sabiex tittrasferixxi dawk il-fondi lix-xerrejja ta' kreditu, diment li għandha tagħmel dan biss jekk l-Istat Membru ta' domicilju jippermetti tali riċeviment u żamma ta' fondi.

Applikazzjoni
għall-
awtorizzazzjoni.

7. (1) Persuna ġuridika stabbilita f'Malta bl-intenzjoni li taġixxi bħala persuna li tipprovdi servizzi ta' kreditu għandha tapplika mal-awtorità kompetenti għal awtorizzazzjoni sabiex taġixxi bħala persuna li tipprovdi servizzi ta' kreditu.

(2) Applikant għandu jissottometti lill-awtorità kompetenti applikazzjoni għall-awtorizzazzjoni sabiex jaġixxi bħala persuna li tipprovdi servizzi ta' kreditu. Applikant għandu jipprovdi wkoll l-informazzjoni kollha meħtieġa sabiex l-awtorità kompetenti tivverifika li l-applikant ikun issodisfa l-kondizzjonijiet kollha stabbiliti fl-artikolu 8.

(3) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2), l-applikazzjoni msemmija fl-imsemmi subartikolu (2) għandha tkun akkumpanjata b'dan li ġej:

(a) evidenza tal-istatus legali tal-applikant u kopja ta' ċertifikat ta' registrazzjoni tiegħu, u l-memorandum u l-artikoli ta' assoċjazzjoni tiegħu;

(b) l-indirizz tal-uffiċċju registrat tal-applikant;

(ċ) l-identità tal-membri tal-korp maniġerjali jew amministrattiv tal-applikant u l-persuni li għandhom parteċipazzjoni kwalifikanti skont il-punt (36) tal-Artikolu 4(1) tas-CRR;

(d) evidenza li l-applikant jissodisfa l-kondizzjonijiet stabbiliti fl-artikolu 8(b) u (ċ);

(e) evidenza li l-persuni li għandhom parteċipazzjoni kwalifikanti skont it-tifsira tal-punt (36) tal-Artikolu 4(1) tas-CRR jissodisfaw il-kondizzjonijiet stabbiliti fl-artikolu 8(d);

(f) evidenza tal-arrangamenti ta' governanza u l-mekkaniżmi ta' kontroll intern imsemmija fl-artikolu 8(e);

(g) evidenza tal-politika msemmija fl-artikolu 8(f);

(h) evidenza tal-proċeduri interni msemmija fl-artikolu 8(g);

(i) evidenza tal-proċeduri msemmija fl-artikolu 8(h);

(j) fejn rilevanti, evidenza tal-eżistenza ta' kont separat f'istituzzjoni ta' kreditu kif previst fl-artikolu 8(j);

(k) kwalunkwe ftehim ta' esternalizzazzjoni kif imsemmi fl-artikolu 13; u

(l) meta l-applikant ma jkollux l-intenzjoni li jirċievi u jżomm fondi mingħand il-mutwatarji bhala parti mill-mudell tan-negozju tiegħu, dikjarazzjoni f'dan is-sens.

(4) L-awtorità kompetenti għandha, fi żmien hamsa u erbgħin (45) jum minn meta tirċievi l-applikazzjoni msemmija fis-subartikolu (2), tivvaluta jekk dik l-applikazzjoni hijiex kompluta billi tiżgura li l-informazzjoni u d-dokumentazzjoni msemmija fis-subartikolu (3) ġew sottomessi.

(5) Meta l-applikazzjoni msemmija fis-subartikolu (2) ma tkunx kompluta, l-awtorità kompetenti għandha tistabbilixxi skadenza sa meta l-applikant għandu jipprovdli l-informazzjoni nieqsa. Jekk l-applikazzjoni msemmija tibqa' mhux kompluta wara l-iskadenza

msemmija f'dan is-subartikolu, l-awtorità kompetenti tista' tirrifjuta li tirrevedi l-applikazzjoni u, fil-każ ta' tali rifjut, għandha tibgħat lura d-dokumenti sottomessi lill-applikant.

(6) Meta applikazzjoni msemmija fis-subartikolu (2) tkun kompluta, l-awtorità kompetenti għandha minnufih tinnotifika lill-applikant b'dan.

(7) L-awtorità kompetenti għandha, fi żmien disgħin (90) jum minn meta tirċievi applikazzjoni kompluta jew, jekk l-applikazzjoni titqies mhux kompluta mill-awtorità kompetenti, minn meta tirċievi l-informazzjoni meħtieġa u, jew id-dokumentazzjoni, tavża lill-applikant jekk l-awtorizzazzjoni sabiex jaġixxi bħala persuna li tipprovdi servizzi ta' kreditu tkunx ingħatat jew ġietx irrifjutata, u tipprovdi raġunijiet għar-rifjut.

(8) Fl-għoti ta' awtorizzazzjoni skont dan l-Att, l-awtorità kompetenti tista' timponi fuq il-persuna li tipprovdi servizzi ta' kreditu dawk il-kondizzjonijiet li hija tqis xierqa u wara li tkun tat tali awtorizzazzjoni, hija tista', minn żmien għal żmien, tvarja jew tirrevoka kwalunkwe kondizzjoni hekk imposta jew timponi kondizzjonijiet godda, kif applikabbli.

(9) Persuna li tipprovdi servizzi ta' kreditu li jkun beħsiebha testendi n-negozju tagħha għal servizzi addizzjonali mhux previsti fiż-żmien tal-għoti tal-awtorizzazzjoni skont dan l-Att għandha tissottometti talba bil-miktub għall-estensjoni tal-liċenzja tagħha lill-awtorità kompetenti billi tikkomplementa u, jew taġġorna l-informazzjoni u d-dokumentazzjoni msemmija f'dan l-Att, kif applikabbli.

(10) L-awtorità kompetenti għandha tistabbilixxi u żżomm lista tal-persuni kollha li jipprovdu servizzi ta' kreditu awtorizzati skont dan l-Att u l-persuni kollha li jipprovdu servizzi ta' kreditu awtorizzati fi kwalunkwe Stat Membru, għajr Malta, li jipprovdu servizzi f'Malta skont l-Artikolu 13 tad-Direttiva NPL. L-awtorità kompetenti għandha tippubblika l-lista msemmija fuq is-sit elettroniku uffiċjali tagħha u għandha taġġornaha fuq bażi regolari.

Ċaħda tal-awtorizzazzjoni.

8. L-awtorità kompetenti ma għandhiex tagħti awtorizzazzjoni lil applikant bħala persuna li tipprovdi servizzi ta' kreditu skont dan l-Att sakemm ma tkunx sodisfatta li:

(a) l-applikant ikun persuna ġuridika kif imsemmi fl-Artikolu 54 tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea u l-uffiċċju registrat tiegħu jkun f'Malta;

(b) il-membri tal-korp manigerjali jew amministrattivi

tal-applikant huma ta' reputazzjoni suffiċjentement tajba, li tintwera billi jiġi ppruvat li:

(i) ikollhom kondotta nadifa tal-pulizija jew kwalunkwe kondotta ekwivalenti nazzjonali oħra fir-rigward ta' reati kriminali rilevanti, b'mod partikolari dawk relatati mal-proprjetà, is-servizzi u l-attivitajiet finanzjarji, il-ħasil tal-flus, l-użura, il-frodi, ir-reati fiskali, il-ksur tas-segretezza professjonali jew tal-integrità fiżika, kif ukoll fir-rigward ta' kwalunkwe reat ieħor skont il-liġijiet relatati mal-kumpaniji, il-falliment, l-insolvenza jew il-protezzjoni tal-konsumatur;

(ii) l-effetti kumulattivi ta' inċidenti minuri ma jaffettwawx ir-reputazzjoni tajba tagħhom;

(iii) minn dejjem kienu trasparenti, miftuħa u kooperattivi fir-relazzjonijiet kummerċjali tal-passat tagħhom mal-awtoritajiet superviżorji u regolatorji;

(iv) ma jkunux soġġetti għal xi proċedura ta' insolvenza li tkun għaddejja u lanqas ma jkunu ġew iddikjarati falluti qabel sakemm ma jkunux reġgħu ġew integrati mill-ġdid skont il-liġi applikabbli;

(ċ) il-korp maniġerjali jew amministrattiv tal-applikant, b'mod ġenerali, ikollu għarfien u esperjenza adegwati sabiex iwettaq in-negozju b'mod kompetenti u responsabbli;

(d) il-persuni li jkollhom parteċipazzjonijiet kwalifikanti fl-applikant skont it-tifsira tal-punt (36) tal-Artikolu 4(1) tas-CRR ikunu ta' reputazzjoni suffiċjentement tajba, li tintwera billi jiġu sodisfatti r-rekwiżiti stabbiliti fil-paragrafu (b) ta' dan l-artikolu;

(e) l-applikant ikollu fis-seħħ arrangamenti ta' governanza robusti u mekkaniżmi ta' kontroll intern adegwati, inklużi l-ġestjoni tar-riskju u l-proċeduri ta' kontabilità, li jiżguraw ir-rispett għad-drittijiet tal-mutwatarji u l-konformità mal-liġijiet li jirregolaw id-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew il-kuntratt tal-kreditu nnifsu, u mal-GDPR;

(f) l-applikant japplika politika xierqa li tiżgura l-konformità mar-regoli għall-protezzjoni, u t-trattament ġust u diligenti tal-mutwatarji, inkluż billi jqis is-sitwazzjoni finanzjarja tagħhom u, fejn disponibbli, il-htieġa li tali

mutwatarji jiġu riferuti għal pariri dwar id-dejn jew servizzi soċjali;

(g) l-applikant ikollu fis-seħh proċeduri interni adegwati u speċifiċi li jiżguraw ir-reġistrazzjoni u t-trattament tal-ilmenti tal-mutwatarji;

Kap. 373.

(h) l-applikant ikollu fis-seħh proċeduri adegwati kontra l-ħasil tal-flus u kontra l-finanzjament tat-terroriżmu fejn id-dispożizzjonijiet tal-Att kontra *Money Laundering*, jew kwalunkwe regolamenti magħmula tahtu, jinnominaw lill-persuni li jipprovdu servizzi ta' kreditu bħala persuni suġġetti;

(i) l-applikant huwa soġġett, bis-saħħa tal-ligi nazzjonali applikabbli, għar-rekwiżiti ta' rappurtar u ta' żvelar pubbliku; u

(j) l-applikant għandu kont separat f'istituzzjoni ta' kreditu li fih il-fondi kollha riċevuti mill-mutwatarji għandhom jiġu kkreditati u jinżammu sakemm jiġu diretti lejn ix-xerrej ta' kreditu rispettiv, taht il-kondizzjonijiet miftiehma max-xerrej ta' kreditu:

Izda dan il-paragrafu ma għandux japplika meta l-applikant ma jkollux l-intenzjoni li jirċievi u jzomm fondi mingħand il-mutwatarji bħala parti mill-mudell tan-negożju tiegħu u jipprovdi lill-awtorità kompetenti b'dikjarazzjoni għal dak il-għan skont l-artikolu 7(3)(l).

Sospensjoni jew irtirar tal-awtorizzazzjoni.

9. (1) L-awtorità kompetenti tista' fi kwalunkwe hin tissospendi jew tirtira awtorizzazzjoni mogħtija lil persuna li tipprovdi servizzi ta' kreditu skont dan l-Att fejn kwalunkwe waħda minn dawn li ġejjin tapplika għal tali persuna li tipprovdi servizzi ta' kreditu:

(a) il-persuna li tipprovdi servizzi ta' kreditu ma tagħmilx użu mill-awtorizzazzjoni fi żmien tnax (12)-il xahar mill-għoti tagħha mill-awtorità kompetenti;

(b) il-persuna li tipprovdi servizzi ta' kreditu tiffinunzja espressament għall-awtorizzazzjoni;

(ċ) il-persuna li tipprovdi servizzi ta' kreditu tkun waqfet tinvolvi ruħha fl-attivitàjiet ta' persuna li tipprovdi servizzi ta' kreditu għal aktar minn tnax (12)-il xahar;

(d) il-persuna li tipprovdi servizzi ta' kreditu tkun kisbet awtorizzazzjoni permezz ta' dikjarazzjonijiet foloz jew b'mezzi

irregolari oħra;

(e) il-persuna li tipprovdi servizzi ta' kreditu ma tibqax tissodisfa r-rekwiżiti għall-għoti ta' tali awtorizzazzjoni stabbiliti fl-artikolu 8; u jew

(f) il-persuna li tipprovdi servizzi ta' kreditu twettaq ksur serju ta' kwalunkwe waħda mid-dispożizzjonijiet ta' dan l-Att, ta' kwalunkwe regolamenti magħmula tahtu, ta' Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew ta' Regoli tal-Kondotta tal-Operat maħruġa tahtu u, jew kwalunkwe liġi oħra li tirregola l-protezzjoni tal-konsumatur, inkluża kwalunkwe liġi applikabbli tal-Istat Membru ospitanti jew tal-Istat Membru fejn ikun inġhata l-kreditu.

(2) Fejn awtorizzazzjoni tiġi rtirata skont is-subartikolu (1), l-awtorità kompetenti għandha, fejn applikabbli, tinforma minnufih lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti f'każijiet fejn il-persuna li tipprovdi servizzi ta' kreditu tipprovdi s-servizzi skont regolamenti magħmula taht dan l-Att, kif ukoll lill-awtorità regolatorja Ewropea tal-Istat Membru fejn inġhata l-kreditu, meta dan ikun differenti mill-Istat Membru ospitanti u mill-Istat Membru tad-domicilju.

(3) Meta awtorizzazzjoni tiġi rtirata skont is-subartikolu (1), l-awtorità kompetenti għandha tagġorna l-lista msemmija fl-artikolu 7(10) mingħajr dewmien.

10. (1) Fejn l-awtorità kompetenti tipproponi:

(a) li tvarja kwalunkwe kondizzjoni li għaliha tkun soġġetta l-awtorizzazzjoni jew li timponi kondizzjoni fuqha; jew

(b) li tirrifjuta applikazzjoni għal awtorizzazzjoni, jew li tirtira jew tissospendi awtorizzazzjoni,

Avviż ta' rifjut, varjazzjoni, sospenzjoni jew irtirar ta' awtorizzazzjoni proposti.

hi għandha tagħti lill-applikant jew lill-persuna li tipprovdi servizzi ta' kreditu, kif applikabbli, avviż bil-miktub dwar l-intenzjoni tagħha li tagħmel dan, filwaqt li tagħti r-raġunijiet għad-deċiżjoni li tipproponi li tiegħu.

(2) Kull avviż mogħti taht is-subartikolu (1) għandu jiddikjara li r-riċevitur tal-avviż jista', f'dak il-perjodu raġonevoli wara li jkun inġhata l-avviż kif jista' jkun iddikjarat fl-avviż, jagħmel sottomissjonijiet bil-miktub lill-awtorità kompetenti li bihom jagħti r-raġunijiet għaliex id-deċiżjoni proposta ma għandhiex tittiehed, u l-awtorità kompetenti għandha tikkunsidra kwalunkwe sottomissjoni

hekk magħmula qabel ma tasal għal deċiżjoni finali.

(3) Bla ħsara għad-dispożizzjonijiet tal-artikolu 7(7), l-awtorità kompetenti għandha mill-aktar fis prattikabbli tavża bid-deċiżjoni finali tagħha bil-miktub lil kwalunkwe persuna li lilha għandu jingħata avviż skont is-subartikolu (1).

Superviżjoni tal-persuni li jipprovdu servizzi ta' kreditu.

11. (1) Meta Malta tkun l-Istat Membru ta' domicilju, l-awtorità kompetenti għandha tevalwa, billi tapplika approċċ ibbażat fuq ir-riskju, l-implimentazzjoni minn persuna li tipprovdi servizzi ta' kreditu tar-rekwiżiti stabbiliti fil-paragrafi (e) sa (h) tal-artikolu 8:

Iżda l-awtorità kompetenti għandha tiddetermina l-firxa tal-evalwazzjoni msemmija f'dan is-subartikolu, filwaqt li tqis id-daqs, in-natura u l-kumplessità tal-attivitajiet tal-persuna kkonċernata li tipprovdi servizzi ta' kreditu.

(2) L-awtorità kompetenti għandha tinforma lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti, jew tal-Istat Membru fejn ikun ingħata l-kreditu, meta dan ikun differenti mill-Istat Membru ospitanti u dak tad-domicilju, bir-riżultati tal-evalwazzjoni msemmija fis-subartikolu (1) fuq talba ta' waħda (1) mill-imsemmija awtoritajiet regolatorji Ewropej, jew fejn l-awtorità kompetenti tqis li jkun xieraq. Id-dettalji ta' kwalunkwe penali amministrattiva jew miżura amministrattiva oħra imposta għandhom jiġu trasmessi mill-awtorità kompetenti lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti u, fejn xieraq, tal-Istat Membru fejn ingħata l-kreditu, meta dan ikun differenti mill-Istat Membru ospitanti u dak tad-domicilju.

(3) Meta twettaq l-evalwazzjoni msemmija fis-subartikolu (1), l-awtorità kompetenti għandha tiskambja informazzjoni mal-awtorità regolatorja Ewropea tal-Istat Membru ospitanti, u tal-Istat Membru fejn ikun ingħata l-kreditu, meta jkun differenti mill-Istat Membru ospitanti u dak tad-domicilju, kif ikun meħtieġ sabiex ikunu jistgħu jwettqu l-funzjonijiet u d-dmirijiet rispettivi tagħhom stabbiliti fid-Direttiva NPL.

Kapaċità ta' żamma ta' fondi.

12. (1) Meta persuna li tipprovdi servizzi ta' kreditu jkollha l-ħsieb li tirċievi u żżomm fondi f'isem il-mutwatarji bħala parti mill-mudell tan-negozju tagħha skont dan l-Att, tali fondi għandhom, skont id-dispożizzjonijiet ta' kwalunkwe liġi applikabbli, jiġu protetti fl-interess tax-xerrejja ta' kreditu kontra l-pretensjonijiet tal-kredituri l-oħra tal-persuni li jipprovdu servizzi ta' kreditu, b'mod partikolari fil-każ ta' insolvenza.

(2) Meta persuna li tipprovdi servizzi ta' kreditu jkollha l-intenzjoni li tirċievi u żżomm fondi f'isem il-mutwatarji bħala parti mill-mudell tan-negozju tagħha skont dan l-Att, u l-mutwatarju

jagħmel pagament lil dik il-persuna li tipprovdi servizzi ta' kreditu sabiex, parzjalment jew totalment, jirrimborża l-ammonti dovuti relatati mad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, dak il-pagament għandu jitqies li thallas lix-xerrej ta' kreditu.

(3) Meta persuna li tipprovdi servizzi ta' kreditu jkollha l-intenzjoni li tirċievi u żżomm fondi f'isem il-mutwatarji bħala parti mill-mudell tan-negozju tagħha skont dan l-Att, dik il-persuna li tipprovdi servizzi ta' kreditu għandha tkun meħtieġa tagħti riċevuta jew ittra ta' rilaxx lill-mutwatarju, fuq karta jew mezz durabbli ieħor, kull meta l-persuna li tipprovdi servizzi ta' kreditu tirċievi fondi mingħand il-mutwatarju, filwaqt li tirrikonoxxi l-ammonti riċevuti.

(4) Il-fornituri ta' servizzi ta' kreditu ma għandhomx jithallew jirċievu u jżommu fondi mingħand il-mutwatarji.

13. (1) Meta persuna li tipprovdi servizzi ta' kreditu tuża fornitur ta' servizzi ta' kreditu sabiex iwettaq kwalunkwe waħda mill-attivitajiet ta' ġestjoni ta' kreditu, il-persuna li tipprovdi servizzi ta' kreditu għandha tibqa' kompletament responsabbli għall-osservanza tal-obbligi kollha li joħorġu minn dan l-Att, u minn kwalunkwe regolamenti magħmula tahtu, jew mir-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u r-Regoli tal-Kondotta tal-Operat maħruġa tahtu.

Esternalizzazzjoni minn persuna li tipprovdi servizzi ta' kreditu.

(2) L-esternalizzazzjoni ta' kwalunkwe attività ta' ġestjoni ta' kreditu kif imsemmija fis-subartikolu (1) għandha tkun soġġetta għall-kondizzjonijiet kollha li ġejjin:

(a) il-konklużjoni ta' kuntratt ta' esternalizzazzjoni bil-miktub bejn il-persuna li tipprovdi servizzi ta' kreditu u l-fornitur ta' servizzi ta' kreditu li tahtu l-fornitur ta' servizzi ta' kreditu huwa meħtieġ jikkonforma mad-dispożizzjonijiet legali applikabbli, inklużi d-dispożizzjonijiet ta' dan l-Att, u ta' kwalunkwe regolamenti magħmula tahtu, mar-Regoli dwar il-Provviediment ta' Servizz ta' Kreditu u mar-Regoli tal-Kondotta tal-Operat maħruġa tahtu, u l-liġi nazzjonali u tal-Unjoni Ewropea rilevanti applikabbli għad-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew għall-kuntratt ta' kreditu nnifsu;

(b) l-esternalizzazzjoni lil fornitur ta' servizzi ta' kreditu tal-attivitajiet kollha ta' ġestjoni ta' kreditu fl-istess ħin hija pprojbita;

(ċ) ir-relazzjoni kuntrattwali bejn il-persuna li tipprovdi servizzi ta' kreditu u x-xerrej ta' kreditu u l-obbligi tal-persuna li tipprovdi servizzi ta' kreditu lejn ix-xerrej ta'

kreditu jew lejn il-mutwatarji ma tinbidilx bil-kuntratt ta' esternalizzazzjoni mal-fornitur ta' servizzi ta' kreditu;

(d) il-konformità ta' persuna li tipprovdi servizzi ta' kreditu mar-rekwiżiti ta' awtorizzazzjoni stabbiliti fl-artikolu 8 mhijiex affettwata mill-esternalizzazzjoni ta' xi wħud mill-attivitajiet ta' ġestjoni ta' kreditu tiegħu;

(e) l-esternalizzazzjoni lill-fornitur ta' servizzi ta' kreditu ma tipprevjenix is-superviżjoni tal-persuna li tipprovdi servizzi ta' kreditu mill-awtorità kompetenti u, fejn applikabbli, mill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti u mill-Istat Membru fejn inġhata l-kreditu, meta dan ikun differenti mill-Istat Membru ta' domicilju u mill-Istat Membru ospitanti, skont l-Artikolu 5 u l-Artikolu 14 tad-Direttiva NPL, kif applikabbli;

(f) il-persuna li tipprovdi servizzi ta' kreditu jkollha aċċess dirett għall-informazzjoni rilevanti kollha dwar l-attivitajiet ta' ġestjoni ta' kreditu esternalizzati lill-fornitur ta' servizzi ta' kreditu;

(g) wara li jintemm il-ftehim ta' esternalizzazzjoni, il-persuna li tipprovdi servizzi ta' kreditu jkollha l-għarfien espert u r-riżorsi sabiex tkun tista' tipprovdi l-attivitajiet ta' ġestjoni ta' kreditu esternalizzati; u

(h) l-esternalizzazzjoni tal-attivitajiet ta' ġestjoni ta' kreditu ma għandhiex titwettaq b'tali mod li tfixkel il-kwalità tal-kontroll intern tal-persuna li tipprovdi servizzi ta' kreditu, jew is-solidità jew il-kontinwità tal-attivitajiet ta' ġestjoni ta' kreditu tagħha.

(3) Il-persuni li jipprovdu servizzi ta' kreditu għandhom jinfurmaw lill-awtorità kompetenti tal-Istat Membru ta' domicilju u, fejn applikabbli, tal-Istat Membru ospitanti, qabel ma jesternalizzaw l-attivitajiet ta' ġestjoni ta' kreditu tagħhom skont dan l-artikolu.

(4) Il-persuni li jipprovdu servizzi ta' kreditu għandhom iżommu u jaġġornaw rekords tal-istruzzjonijiet rilevanti pprovdu lill-fornitur ta' servizzi ta' kreditu, skont il-kondizzjonijiet previsti fil-liġi nazzjonali applikabbli, u tal-ftehim ta' esternalizzazzjoni msemmi f'dan l-artikolu, għal perjodu ta' mill-inqas ħames (5) snin, iżda mhux aktar minn għaxar (10) snin, mid-data li fiha jiġi tterminat il-ftehim ta' esternalizzazzjoni.

(5) Il-persuni li jipprovdu servizzi ta' kreditu u l-fornituri ta'

servizzi ta' kreditu għandhom jagħmlu l-informazzjoni msemmija fis-subartikolu (4) disponibbli għall-awtorità kompetenti fuq talba.

TAQSIMA II XERREJJA TA' KREDITU

14. (1) L-istituzzjonijiet ta' kreditu għandhom jipprovdu lil xerrej ta' kreditu prospettiv l-informazzjoni meħtieġa rigward id-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu u, jekk applikabbli, il-kollaterali sabiex ix-xerrej ta' kreditu prospettiv ikun jista' jwettaq il-valutazzjoni tiegħu stess tal-valur tad-drittijiet tal-kreditur skont il-kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, u l-probabbiltà ta' rkupru tal-valur ta' dak il-kuntratt qabel ma jidhol f'kuntratt għat-trasferiment tad-drittijiet ta' dak il-kreditur skont il-kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, filwaqt li jiżguraw il-protezzjoni tal-informazzjoni magħmula disponibbli mill-istituzzjoni ta' kreditu u l-kunfidenzjalità tad-data tan-negozju.

Dritt għall-informazzjoni.

(2) Fuq bażi biannwali, l-istituzzjonijiet ta' kreditu li jittrasferixxu lil xerrej ta' kreditu drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu, għandhom jinfurmaw lill-awtorità kompetenti u lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti mill-inqas dwar dan li ġej:

(a) in-numru ta' registrazzjoni tal-kumpanija;

(b) l-identifikatur ta' entità ġuridika tax-xerrej ta' kreditu jew, fejn applikabbli, tar-rappreżentant tagħha maħtur skont l-artikolu 17, jew fejn dawn ma jeżistux, dwar:

(i) l-identità tax-xerrej ta' kreditu jew tal-membri tal-korp manigerjali jew amministrattiv tax-xerrej ta' kreditu u l-persuni li jkollhom parteċipazzjoni kwalifikanti fix-xerrej ta' kreditu skont it-tifsira tal-Artikolu 4(1)(36) tas-CRR; u

(ii) l-indirizz u, jew l-uffiċċju registrat tax-xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant tiegħu maħtur skont l-artikolu 17;

(c) il-bilanċ pendenti aggregat tad-drittijiet tal-kreditur skont il-kuntratti ta' kreditu mhux produttivi jew tal-kuntratti ta' kreditu mhux produttivi ttrasferiti;

(d) l-għadd u d-daqs tad-drittijiet tal-kreditur skont il-

kuntratti ta' kreditu mhux produttivi jew tal-kuntratti ta' kreditu mhux produttivi ttrasferiti; u

(e) jekk it-trasferiment jinkludix id-drittijiet tal-kreditur skont il-kuntratti ta' kreditu mhux produttivi, jew il-kuntratti ta' kreditu mhux produttivi nfushom, konkluzi mal-konsumaturi u t-tipi ta' attiv li jiggarantixxu l-kuntratti ta' kreditu mhux produttivi, meta applikabbli.

(3) L-awtoritajiet imsemmija fis-subartikolu (2) jistgħu jeħtieġu li l-istituzzjonijiet ta' kreditu jipprovdu l-informazzjoni msemmija fis-subartikolu msemmi fuq bażi trimestrali kull meta jqisu meħtieġ, inkluż sabiex jimmonitorjaw aħjar numru kbir ta' trasferimenti li jistgħu jseħħu matul perjodu ta' kriżi.

(4) Fejn Malta hija l-Istat Membru ospitanti, l-awtorità kompetenti għandha tikkomunika mingħajr dewmien l-informazzjoni msemmija fis-subartikoli (2) u (3), u kwalunkwe informazzjoni oħra li l-awtorità kompetenti tista' tikkunsidra bħala meħtieġa għat-tweqqif tal-funzjonijiet u d-dmirijiet skont id-Direttiva NPL, lill-awtoritajiet kompetenti tal-Istat Membru ta' domicilju tax-xerrej ta' kreditu.

(5) Id-dispożizzjonijiet ta' dan l-artikolu għandhom jiġu applikati f'konformità mal-Att dwar il-Protezzjoni u l-Privatezza tad-Data u l-GDPR.

Kap. 586.

Obbligi tax-xerreja ta' kreditu.

15. (1) Xerrej ta' kreditu li jkun domiciljat jew li jkollu l-uffiċċju registrat tiegħu f'Malta għandu jahtar entità kif imsemmi fl-artikolu 4(a)(i) jew (iii) jew persuna li tippovdi servizzi ta' kreditu, sabiex twettaq attivitajiet ta' ġestjoni ta' kreditu fir-rigward tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, konkluz mal-konsumaturi.

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (1), meta xerrej ta' kreditu domiciljat fl-Unjoni Ewropea, jew li jkollu l-uffiċċju registrat tiegħu jew, jekk skont il-liġi nazzjonali tiegħu ma jkollu l-ebda uffiċċju registrat, l-uffiċċju prinċipali tiegħu fl-Unjoni Ewropea jixtri d-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu, konkluz ma' konsumatur domiciljat f'Malta, minbarra d-drittijiet ta' kreditur skont kwalunkwe kuntratt ta' kreditu ieħor, jew kwalunkwe tali kuntratt ta' kreditu ieħor innifsu, huwa għandu jahtar entità kif imsemmi fl-artikolu 4(a)(i) jew (iii) jew persuna li tippovdi servizzi ta' kreditu, sabiex twettaq attivitajiet ta' ġestjoni ta' kreditu fir-rigward ta' tali drittijiet tal-kredituri, jew tali kuntratti ta' kreditu nfushom.

(3) Meta xerrej ta' kreditu ma jkunx domiciljat fl-Unjoni Ewropea, jew ma jkollux l-uffiċċju registrat tiegħu jew, jekk skont il-

liġi nazzjonali tiegħu ma jkollu l-ebda uffiċċju registrat, l-uffiċċju prinċipali tiegħu fl-Unjoni Ewropea, ir-rappreżentant mahtur tiegħu għandu jahtar entità kif imsemmi fl-artikolu 4(a)(i) jew (iii) jew persuna li ttipprovdi servizzi ta' kreditu, ħlief f'każijiet fejn ir-rappreżentant mahtur innifsu jkun entità kif imsemmi fl-artikolu 4(a)(i) jew (iii), jew persuna li ttipprovdi servizzi ta' kreditu, sabiex twettaq attivitajiet ta' ġestjoni ta' kreditu fir-rigward tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, konkluż ma':

(a) persuni fiżiċi, inklużi l-konsumaturi u l-ħaddiema indipendenti; u, jew

(b) intrapriżi mikro, żgħar u ta' daqs medju (SMEs), kif imfissra fl-Artikolu 2 tal-Anness għar-Rakkomandazzjoni tal-Kummissjoni 2003/361/KE:

Iżda d-dispożizzjonijiet ta' dan is-subartikolu għandhom japplikaw ukoll meta xerrej ta' kreditu kif imsemmi f'dan is-subartikolu jixtri d-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu, konkluż ma' konsumatur domiciljat f'Malta, flimkien mad-drittijiet ta' kreditur skont kwalunkwe kuntratt ta' kreditu ieħor, jew kwalunkwe tali kuntratt ta' kreditu nnifsu.

(4) Xerrej ta' kreditu ma għandux ikun soġġett għall-ebda rekwiżit addizzjonali għax-xiri tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, għajr kif previst skont dan l-Att, u kwalunkwe regolamenti magħmula tahtu, jew ir-Regoli dwar il-Provista ta' Servizzi ta' Kreditu u r-Regoli tal-Kondotta tal-Operat maħruġa tahtu, jew minn kwalunkwe dispożizzjoni applikabbli tal-liġi dwar il-protezzjoni tal-konsumatur, il-liġi tal-kuntratti, il-liġi ċivili jew il-liġi kriminali.

(5) Il-liġi rilevanti tal-Unjoni Ewropea u l-liġi nazzjonali li tikkonċerna b'mod partikolari l-infurzar tal-kuntratti, il-protezzjoni tal-konsumatur, id-drittijiet tal-mutwatarji, l-orijini tal-kreditu, ir-regoli dwar is-segretezza bankarja u l-liġi kriminali għandhom ikomplu japplikaw għax-xerrej ta' kreditu mat-trasferiment tad-drittijiet tal-kreditur skont il-kuntratt ta' kreditu, jew tal-kuntratt ta' kreditu nnifsu, għax-xerrej ta' kreditu.

(6) Bla ħsara għal kwalunkwe liġi nazzjonali u internazzjonali dwar iċ-ċedoli u l-kambjali, il-livell ta' protezzjoni previst skont il-liġi tal-Unjoni Ewropea u l-liġi nazzjonali għal konsumaturi u għal mutwatarji ohra, kif ukoll il-liġijiet dwar l-insolvenza, ma għandux jiġi affettwat mit-trasferiment tad-drittijiet tal-kreditur skont il-kuntratt ta'

kreditu, jew tal-kuntratt ta' kreditu nnifsu, lix-xerrej ta' kreditu.

(7) Id-dispożizzjonijiet ta' dan l-Att, u ta' kwalunkwe regolamenti magħmula tahtu, ta' Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u ta' Regoli tal-Kondotta tal-Operat maħruġa tahtu, għandhom ikunu bla ħsara għas-setgħa tal-awtorità kompetenti u ta' kwalunkwe awtorità nazzjonali oħra, aġenzija u, jew korp skont il-liġi li jeħtieġu informazzjoni mix-xerrejja ta' kreditu rigward id-drittijiet ta' kreditur skont kuntratt ta' kreditu, jew il-kuntratt ta' kreditu nnifsu, u l-prestazzjoni tiegħu.

(8) Ix-xerrejja ta' kreditu għandhom ikunu pprojbiti milli jingagħġaw persuni fiżiċi sabiex jagħmlu servizz tal-kuntratti ta' kreditu li jkunu akkwistaw.

(9) Persuna li tipprovdi servizzi ta' kreditu jew entità kif imsemmija fl-artikolu 4(a)(i) jew (iii) mahtura skont dan l-artikolu għandhom josservaw, f'isem ix-xerrej ta' kreditu, l-obbligi imposti fuq ix-xerrej ta' kreditu skont is-subartikoli (3) sa (5) u l-artikoli 16 u 18. F'każijiet fejn ma tinħatar l-ebda persuna li tipprovdi servizzi ta' kreditu jew entità kif imsemmi fl-artikolu 4(a)(i) jew (iii), ix-xerrej ta' kreditu jew ir-rappreżentant tiegħu għandhom jibqgħu soġġetti għal dawk l-obbligi.

(10) L-awtorità kompetenti tista' teħtieġ li l-persuna li tipprovdi servizzi ta' kreditu jew l-entità kif imsemmi fl-artikolu 4(a)(i) jew (iii) mahtura skont dan l-artikolu tikkonforma, f'isem ix-xerrej ta' kreditu, mal-obbligi imposti fuq ix-xerrej ta' kreditu skont il-liġi nazzjonali, inkluż ma' dan l-Att u ma' kwalunkwe regolamenti magħmula tahtu, ma' Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u ma' Regoli tal-Kondotta tal-Operat maħruġa tahtu, u ma' kwalunkwe liġi kif imsemmija fis-subartikolu (6).

Użu ta' persuni li jipprovdu servizzi ta' kreditu jew entitajiet oħra.

16. (1) Meta x-xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant mahtur tiegħu, jahtar entità msemmija fl-artikolu 4(a)(i) jew (iii), jew persuna li tipprovdi servizzi ta' kreditu, sabiex twettaq attivitajiet ta' ġestjoni ta' kreditu fir-rigward tad-drittijiet tal-kreditur trasferiti skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu, ix-xerrej ta' kreditu jew ir-rappreżentant tiegħu għandu jinforma lill-awtorità kompetenti bil-miktub dwar l-identità u l-indirizz tal-entità jew persuna li tipprovdi servizzi ta' kreditu msemmija, mhux aktar tard mid-data li fiha jibdedw l-attivitajiet ta' ġestjoni ta' kreditu.

(2) Meta x-xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant mahtur tiegħu jahtar entità għajr dik notifikata skont is-subartikolu (1), dan għandu javża lill-awtorità kompetenti dwar dan

mhux aktar tard mid-data ta' dik il-bidla u għandu jindika l-identità u l-indirizz tal-entità l-ġdida li jkun ħatar sabiex twettaq attivitajiet ta' ġestjoni ta' kreditu fir-rigward tad-drittijiet tal-kreditur trasferiti skont kuntratt ta' kreditu mhux produttiv jew il-kuntratt ta' kreditu mhux produttiv innifsu.

(3) Meta Malta tkun l-Istat Membru tad-domicilju tax-xerrej ta' kreditu, l-awtorità kompetenti għandha tittrasmetti mingħajr dewmien żejjed lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti, lill-awtorità regolatorja Ewropea tal-Istat Membru li fih ikun ingħata l-kreditu, u lill-awtorità regolatorja Ewropea tal-Istat Membru tad-domicilju tal-persuna li tipprovdi servizzi ta' kreditu l-ġdida, l-informazzjoni riċevuta skont is-subartikoli (1) u (2).

17. (1) Meta jiġi konkluż trasferiment tad-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu, xerrej ta' kreditu:

Rappreżentant ta' xerrej ta' kreditu minn pajjiż terz.

(a) li ma jkunx domiciljat fi Stat Membru; jew

(b) li ma jkollux l-uffiċċju registrat tiegħu fi Stat Membru jew, jekk skont il-liġi nazzjonali tiegħu ma jkollux uffiċċju registrat, l-uffiċċju prinċipali tiegħu fi Stat Membru, skont il-każ,

għandu jahtar bil-miktub rappreżentant li jkun domiciljat fi Stat Membru jew li jkollu l-uffiċċju registrat tiegħu fi Stat Membru jew, jekk skont il-liġi nazzjonali tiegħu ma jkollux uffiċċju registrat, l-uffiċċju prinċipali tiegħu fi Stat Membru.

(2) L-awtorità kompetenti għandha tindirizza lir-rappreżentant imsemmi fis-subartikolu (1) flimkien ma', jew minflok, ix-xerrej ta' kreditu dwar il-kwistjonijiet kollha relatati mal-konformità kontinwa ma' dan l-Att, u ma' kwalunkwe regolamenti magħmula tahtu, mar-Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u mar-Regoli tal-Kondotta tal-Operat maħruġa tahtu.

(3) Ir-rappreżentant imsemmi fis-subartikolu (1) għandu jkun kompletament responsabbli għall-osservanza tal-obbligi imposti fuq ix-xerrej ta' kreditu skont dan l-Att, u skont kwalunkwe regolamenti magħmula tahtu, Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u r-Regoli tal-Kondotta tal-Operat maħruġa tahtu.

18. (1) Meta Malta tkun l-Istat Membru ta' domicilju, xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant mahtur tiegħu, li jittrasferixxi d-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew il-kuntratt ta' kreditu mhux produttiv innifsu, għandu jinforma lill-awtorità kompetenti fuq bażi biannwali dwar l-

Trasferiment tad-drittijiet ta' kreditur minn xerrej ta' kreditu.

identifikatur ta' entità ġuridika (LEI), tax-xerrej ta' kreditu l-ġdid u, fejn applikabbli, tar-rappreżentant maħtur tiegħu jew, fejn tali identifikatur ma jeżistix, dwar:

(a) l-identità tax-xerrej ta' kreditu l-ġdid jew, fejn applikabbli, tar-rappreżentant maħtur tiegħu, jew tal-membri tal-korp maniġerjali tax-xerrej ta' kreditu l-ġdid jew tar-rappreżentant tiegħu u l-persuni li jkollhom parteċipazzjonijiet kwalifikanti fix-xerrej ta' kreditu l-ġdid jew ir-rappreżentant tiegħu skont it-tifsira tal-punt (36) tal-Artikolu 4(1) tas-CRR; u

(b) l-indirizz tax-xerrej ta' kreditu l-ġdid jew, fejn applikabbli, tar-rappreżentant maħtur tiegħu.

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (1), fejn Malta hija l-Istat Membru ta' domicilju, ix-xerrej ta' kreditu jew ir-rappreżentant maħtur tiegħu għandu jinforma lill-awtorità kompetenti mill-inqas dwar dan li ġej:

(a) il-bilanċ pendenti aggregat tad-drittijiet tal-kreditur skont il-kuntratti ta' kreditu mhux produttivi, jew tal-kuntratti ta' kreditu mhux produttivi ttrasferiti;

(b) l-għadd u d-daqs tad-drittijiet tal-kreditur skont il-kuntratti ta' kreditu mhux produttivi jew tal-kuntratti ta' kreditu mhux produttivi ttrasferiti;

(ċ) jekk it-trasferiment jinkludix id-drittijiet ta' kreditur skont kuntratt ta' kreditu mhux produttiv, jew kuntratt ta' kreditu mhux produttiv innifsu, konkluz mal-konsumaturi u t-tipi ta' attiv li jggarantixxu l-kuntratt ta' kreditu mhux produttiv, meta applikabbli.

(3) Fejn Malta tkun l-Istat Membru tad-domicilju, l-awtorità kompetenti tista' titlob li x-xerrejja ta' kreditu jew, fejn applikabbli, ir-rappreżentant maħtur tagħhom jipprovdu l-informazzjoni msemmija fis-subartikoli (1) u (2), fuq bażi trimestrali kull meta l-awtorità kompetenti tqis li jkun meħtieġ, inkluż sabiex timmonitorja aħjar numru kbir ta' trasferimenti li jistgħu jseħħu matul perjodu ta' kriżi.

(4) Fejn Malta tkun l-Istat Membru ta' domicilju, l-awtorità kompetenti għandha tittrażmetti mingħajr dewmien żejjed l-informazzjoni li tirċievi skont dan l-artikolu lill-awtorità regolatorja Ewropea tal-Istat Membru ospitanti u lill-awtorità regolatorja Ewropea tal-Istat Membru ta' domicilju tax-xerrej il-ġdid ta' kreditu.

TAQSIMA III SETGHAT REGOLATORJI U INVESTIGATTIVI

19. (1) Il-Ministru, li jaġixxi fuq parir tal-awtorità kompetenti, jista' jagħmel regolamenti sabiex jimplimenta d-dispożizzjonijiet ta' dan l-Att, u bla ħsara għall-ġeneralità ta' dan ta' qabel jista', permezz ta' tali regolamenti, b'mod partikolari, jagħmel kwalunkwe waħda minn dawn li ġejjin:

Setgħat tal-
Ministru.

(a) jipprovdi għal u jirregola l-ħlas minn kwalunkwe persuna jew korp, skont il-każ, ta' awtorizzazzjoni jew drittijiet oħra u tali ħlasijiet oħra pagabbli lill-awtorità kompetenti fir-rigward ta' kwalunkwe kwistjoni prevista, permezz ta' jew skont dan l-Att jew kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu inklużi d-drittijiet u l-ħlasijiet fir-rigward ta' kwalunkwe permess, liċenzja, awtorizzazzjoni, eżenzjoni jew benefiċċju ieħor, kif ukoll kwalunkwe dritt u ħlas fir-rigward tal-funzjonijiet regolatorji, superviżorji jew investigattivi tal-awtorità kompetenti skont dan l-Att u skont kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u r-Regoli dwar il-Kondotta tal-Operat maħruġa taħtu kif jista' jiġi preskritt;

(b) jeżenta kwalunkwe persuna, servizz jew attività minn kwalunkwe waħda jew aktar mid-dispożizzjonijiet ta' dan l-Att, bla ħsara għal tali varjazzjonijiet, żidiet, adattamenti u modifiki kif jista' jkun preskritt u bla ħsara għal tali kondizzjonijiet jew rekwiżiti oħra, inklużi forom oħra ta' awtorizzazzjoni u proċeduri ta' notifika, kif jista' jkun preskritt;

(ċ) jittrasponi, jimplimenta u jagħti effett lid-dispożizzjonijiet u r-rekwiżiti tad-Direttiva NPL;

(d) jittrasponi, jimplimenta u jagħti effett lid-dispożizzjonijiet u r-rekwiżiti tad-Direttivi tal-Unjoni Ewropea, tar-Regolamenti tal-Unjoni Ewropea u ta' kwalunkwe miżura legiżlattiva oħra tal-Unjoni Ewropea li jeħtieġu traspożizzjoni u, jew implimentazzjoni, kif jistgħu jiġu emendati minn żmien għal żmien, inkluża kwalunkwe miżura ta' implimentazzjoni li tkun inħarġet jew li tista' tinħareġ taħthom u li tkun relatata ma' persuni awtorizzati u oħrajn kif jista' jiġi speċifikat fihom. Ir-regolamenti magħmula taħt dan il-paragrafu, u strettament relatati mat-traspożizzjoni jew l-implimentazzjoni kif imsemmi qabel, jistgħu jipprovdu li kwalunkwe dispożizzjoni ta' dan l-Att jew ta' kwalunkwe liġi oħra ma għandhiex tapplika għal materji li jaqgħu taħt ir-regolamenti, u li sa fejn kwalunkwe waħda mid-

dispożizzjonijiet tar-regolamenti tkun inkonsistenti mad-dispożizzjonijiet ta' dan l-Att jew ta' kwalunkwe liġi oħra, dawn id-dispożizzjonijiet f'xi regolamenti bħal dawn għandhom jipprevalu;

(e) jassenja setgħat u funzjonijiet lill-awtorità kompetenti għall-finijiet ta' dan l-Att, u jipprovdi għall-eżerċizzju ta' tali setgħat u t-twettiq ta' tali funzjonijiet;

(f) jipprovdi għat-twaqqif u l-impożizzjoni ta' penalitajiet amministrattivi u miżuri amministrattivi oħra li l-awtorità kompetenti tista' timponi fuq il-persuni li jipprovdu servizzi ta' kreditu, ix-xerrejja ta' kreditu, ir-rappreżentanti maħtura jew kwalunkwe persuna oħra li tista' tiġi speċifikata fihom;

(g) jippreskrivi li ksur ta' kwalunkwe regolament magħmul taħt dan l-Att jista' jammonta għal reat kriminali kif jista' jiġi speċifikat, u tali regolamenti jistgħu jimponu pieni fir-rigward ta' kwalunkwe ksur, li jikkonsisti f'multa li ma taqbiżx mija u ħamsin elf euro (€150,000) jew prigunerija għal terminu li ma jaqbiżx sena (1) jew kemm tali multa kif ukoll prigunerija. Multa oġġla tista' tiġi imposta meta jitqies meħtieġ jew xieraq għal kwalunkwe ksur jew nuqqas ta' konformità ma' kwalunkwe Direttiva tal-Unjoni Ewropea jew Regolament tal-Unjoni Ewropea jew ma' kwalunkwe regolament li jsir skont dan l-artikolu għat-traspożizzjoni jew biex jingħata effett lil kwalunkwe Direttiva tal-Unjoni Ewropea jew Regolament tal-Unjoni Ewropea;

(h) jippreskrivi kwalunkwe ħaġa li għandha tiġi preskritta jew li tista' tiġi preskritta; u

(i) jipprovdi għal kwalunkwe kwistjoni inċidentali għal jew marbuta ma' kwalunkwe wieħed minn dawn ta' hawn qabel.

(2) Ir-regolamenti magħmula taħt dan l-artikolu jistgħu jkunu soġġetti għal dawk l-eżenzjonijiet jew kondizzjonijiet kif jistgħu jiġu speċifikati fihom, jistgħu jagħmlu dispożizzjonijiet differenti għal każijiet, ċirkostanzi jew għanijiet differenti u jistgħu jagħtu lill-awtorità kompetenti dawk is-setgħat u, jew funzjonijiet ta' adattament tar-regolamenti kif jistgħu wkoll ikunu speċifikati b'dan il-mod.

(3) Fejn ikunu ġew magħmula regolamenti skont dan l-artikolu, l-awtorità kompetenti tista' toħroġ Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u Regoli tal-Kondotta tal-Operat għat-twettiq u l-

implimentazzjoni aħjar tad-dispożizzjonijiet tar-regolamenti.

(4) Regolamenti magħmula skont dan l-Att u kwalunkwe emenda jew revoka ta' tali regolamenti jistgħu jiġu ppubblikati fil-lingwa Inġliża biss.

(5) L-eżerċizzju ta' kwalunkwe waħda mis-setgħat mogħtija skont dan l-artikolu għandu jkun bla ħsara għal kwalunkwe obbligu jew dritt li jirriżulta mill-impenji internazzjonali ta' Malta.

20. (1) L-awtorità kompetenti tista', minn żmien għal żmien, toħroġ, tippubblika, temenda jew tirrevoka Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u, jew Regoli dwar il-Kondotta tal-Operat li għandhom jorbtu lill-persuni kollha awtorizzati minnha jew li jaqgħu taħt il-funzjonijiet regolatorji jew superviżorji tagħha, jew kwalunkwe persuna oħra, kif jista' jiġi speċifikat fihom.

Setgħa li jinħarġu Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u Regoli tal-Kondotta tal-Operat.

(2) Bla ħsara għall-ġeneralità tas-subartikolu (1), ir-Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u, jew ir-Regoli tal-Kondotta tal-Operat, kif applikabbli, maħruġa mill-awtorità kompetenti jistgħu:

(a) jistabbilixxu rekwiżiti u kondizzjonijiet addizzjonali fir-rigward ta' persuni awtorizzati minnha, li jkunu qed ifittxu l-approvazzjoni tagħha, jew li jaqgħu taħt il-funzjonijiet regolatorji jew superviżorji tal-awtorità kompetenti, l-attivitajiet tagħhom, it-twettiq tan-negozju tagħhom, ir-relazzjonijiet tagħhom mal-klijenti, il-pubbliku u partijiet oħra, ir-responsabbiltajiet tagħhom lejn l-awtorità kompetenti, ir-rekwiżiti ta' rappurtar, ir-riżorsi finanzjarji u riżorsi oħra, u r-rekwiżiti relatati, u kwalunkwe kwistjoni oħra li l-awtorità kompetenti tista' tqis xierqa;

(b) jipprovdu għad-dikjarazzjonijiet u l-avviżi li għandhom isiru jew jingħataw għal kwalunkwe skop li fir-rigward tagħhom l-awtorità kompetenti teżerċita funzjonijiet superviżorji jew regolatorji, u l-forma u l-kontenut tagħhom;

(ċ) jippreskrivu l-informazzjoni li dawn il-persuni għandhom jissottomettu lill-awtorità kompetenti;

(d) jittrasponu, jimplementaw u jagħtu effett lid-dispożizzjonijiet u r-rekwiżiti tad-Direttiva NPL;

(e) jittrasponu, jimplementaw u jagħtu effett lid-dispożizzjonijiet u r-rekwiżiti tad-Direttivi tal-Unjoni Ewropea, tar-Regolamenti tal-Unjoni Ewropea u ta' kwalunkwe miżura leġiżlattiva oħra tal-Unjoni Ewropea li jeħtieġu traspożizzjoni u, jew implimentazzjoni, kif jistgħu jiġu emendati minn żmien għal

żmien, inkluża kwalunkwe miżura ta' implimentazzjoni li nharġet jew li tista' tinħareġ taħthom u li għandha x'taqsam ma' persuni awtorizzati u oħrajn kif jista' jiġi speċifikat fihom; u, jew

(f) jirregolaw kwalunkwe kwistjoni li hija inċidentali għal jew konnessa ma' kwalunkwe waħda mill-kwistjonijiet imsemmija hawn qabel kif l-awtorità kompetenti tista' tqis xierqa fit-twettiq tal-funzjonijiet tagħha.

(3) Ir-Regoli dwar il-Provvista ta' Servizzi ta' Kreditu u r-Regoli tal-Kondotta tal-Operat jistgħu jkunu soġġetti għal tali eżenzjonijiet jew kondizzjonijiet kif jistgħu jiġu speċifikati fihom, jistgħu jagħmlu dispożizzjonijiet differenti għal każijiet, ċirkostanzi jew skopijiet differenti u jistgħu jagħtu lill-awtorità kompetenti s-setgħat ta' adattament tar-Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu u, jew tar-Regoli tal-Kondotta tal-Operat, kif jista' jiġi wkoll hekk speċifikat.

Setgħa li jinħarġu direttivi.

21. (1) Bla ħsara għal kwalunkwe setgħat oħra mogħtija lill-awtorità kompetenti b'dan l-Att jew bi kwalunkwe liġi oħra, l-awtorità kompetenti tista', kull meta tqis meħtieġ, tagħti b'notifika bil-miktub tali direttivi li hi tqis xierqa fiċ-ċirkostanzi u kwalunkwe persuna li lilha jingħata l-avviż, għandha tobdi, tikkonforma u b'xort'oħra tagħti effett lil kwalunkwe tali direttiva fiż-żmien u bil-mod iddikjarat fid-direttiva jew fid-direttivi sussegwenti:

Iżda l-awtorità kompetenti tista' tagħti kwalunkwe direttiva bħal din ukoll meta persuna awtorizzata, għal kwalunkwe raġuni, ma tibqax hekk awtorizzata skont dan l-Att:

Iżda wkoll kwalunkwe direttiva maħruġa skont dan l-artikolu għandha, diment li l-awtorità kompetenti ma tordnax xort'oħra, tkompli tapplika wkoll meta persuna awtorizzata, għal kwalunkwe raġuni, ma tibqax awtorizzata skont dan l-Att.

(2) Is-setgħa li jinħarġu direttivi taħt dan l-artikolu għandha tinkludi wkoll is-setgħa li tvarja, tbiddel, iżżid jew tirtira kwalunkwe direttiva, kif ukoll is-setgħa li toħroġ direttivi godda sussegwenti.

(3) Fejn l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi hekk jitolbu, hi tista' fi kwalunkwe hin tagħmel pubblika kwalunkwe direttiva li tkun tat skont dan l-artikolu.

Setgħa li teħtieġ informazzjoni.

22. (1) L-awtorità kompetenti tista', fi kwalunkwe hin u b'avviż bil-miktub, teħtieġ lill-persuni msemmija fis-subartikolu (2) sabiex jagħmlu dan kollu jew xi wiehed minn dawn li ġejjin:

(a) li jfornu lill-awtorità kompetenti, f'tali hin u post u

f'tali forma li tista' tispeċifika, tali informazzjoni u, jew dokumentazzjoni li tista' teħtieġ, inkluż is-setgħa li teħtieġ rekords eżistenti tat-telefon u tat-traffiku ta' data;

(b) li jfornu lill-awtorità kompetenti kwalunkwe informazzjoni u, jew dokumentazzjoni li tista' teħtieġ verifikata b'tali mod li tista' tispeċifika;

(ċ) li jattendu quddiem l-awtorità kompetenti, jew quddiem persuna maħtura minnha, f'tali ħin u post li tista' tispeċifika, sabiex iwieġbu għal mistoqsijiet u jipprovdu dik l-informazzjoni u, jew dokumentazzjoni li tista' teħtieġ;

(d) li tipprovdi lill-awtorità kompetenti kwalunkwe assistenza li tista' teħtieġ u li dik il-persuna tkun raġonevolment kapaċi li tipprovdi.

(2) Il-persuni li ġejjin jistgħu jkunu meħtieġa mill-awtorità kompetenti sabiex jipprovdu informazzjoni, dokumentazzjoni u, jew assistenza kif speċifikat fis-subartikolu (1):

(a) persuna li tipprovdi servizzi ta' kreditu, entità kif imsemmija fl-artikolu 4(a)(i) jew (iii) maħtura skont l-artikolu 15, xerrej ta' kreditu, fornitur ta' servizzi ta' kreditu, rappreżentant maħtur u kwalunkwe parti terza maħtura sabiex twettaq funzjonijiet fir-rigward tal-forniment ta' servizzi minn tali persuni;

(b) il-persuni fiżiċi u, jew ġuridiċi li jikkontrollaw kwalunkwe persuna msemmija fil-paragrafu (a) jew li huma kkontrollati minn tali persuna, kemm fil-passat kif ukoll fil-preżent, kif ukoll diretturi, manigġers, awdituri, uffiċjali u impjegati oħra ta' tali persuna passati u preżenti, u kwalunkwe parti terza li tipprovdi servizz lil tali persuna; u, jew

(ċ) kwalunkwe persuna oħra li tidher li għandha fil-pussess tagħha kwalunkwe informazzjoni rilevanti.

(3) Persuna fiżika jew ġuridika li tagħmel l-informazzjoni disponibbli lill-awtorità kompetenti skont dan l-artikolu ma għandhiex titqies li qiegħda tikser kwalunkwe restrizzjoni fuq l-iżvelar ta' informazzjoni imposta b'kuntratt jew bi kwalunkwe dispożizzjoni leġiżlattiva, regolatorja jew amministrattiva, u ma għandha tkun soġġetta għall-ebda tip ta' responsabbiltà relatata mal-għoti ta' tali informazzjoni u, jew dokumentazzjoni.

(4) L-awtorità kompetenti tista' tagħmel u żżomm kopji ta' kwalunkwe dokument fornut, ipprovdut jew li għalih għandha aċċess skont dan l-artikolu.

(5) Fejn il-persuna meħtieġa li tipprovdi informazzjoni u, jew dokumentazzjoni taħt dan l-artikolu ma għandhiex l-informazzjoni u, jew dokumentazzjoni rilevanti, tali persuna għandha tiżvela lill-awtorità kompetenti fejn, mill-aħjar li taf, dik l-informazzjoni u, jew dokumentazzjoni tista' tinstab, u l-awtorità kompetenti tista' teħtieġ lil kwalunkwe persuna, kemm jekk indikata kif imsemmi qabel jew le, li jidhrilha li hi fil-pussess ta' dik l-informazzjoni u, jew dokumentazzjoni, sabiex tipprovdiha.

(6) Dikjarazzjoni magħmula u dokumentazzjoni pprovduta skont kwalunkwe rekwiżit taħt dan l-artikolu jistgħu jintużaw bħala prova kontra l-persuna li tagħmel id-dikjarazzjoni jew li tipprovdi d-dokumentazzjoni kif ukoll kontra kwalunkwe persuna li magħha jkunu relatati.

Kap. 9.

(7) Id-dispożizzjonijiet ta' dan l-artikolu ma għandhomx japplikaw għal informazzjoni u, jew dokumentazzjoni li hi privileġġjata skont id-dispożizzjonijiet tal-artikolu 642 tal-Kodiċi Kriminali.

(8) Fejn l-awtorità kompetenti tkun hatret rappreżentant skont is-subartikolu (1)(ċ), tali persuna għandha, għall-finijiet tat-twertiq tal-funzjonijiet tagħha taħt il-hatra tagħha, ikollha s-setgħat u l-funzjonijiet kollha kkonferiti fuq l-awtorità kompetenti b'dan l-artikolu u rekwiżit impost minn dik il-persuna għandu jitqies u jkollu l-istess forza u effett daqslikieku kien impost mill-awtorità kompetenti.

Setgħa sabiex jinhatru spetturi.

23. (1) L-awtorità kompetenti tista', kull meta tqis li jkun meħtieġ jew spedjenti, taħtar spettur sabiex jinvestiga u jirrapporta dwar l-affarijiet ta' kwalunkwe persuni msemmija fl-artikolu 22(2).

(2) Spettur maħtur skont is-subartikolu (1):

(a) jista', jekk iqis li jkun meħtieġ jew spedjenti għall-finijiet ta' investigazzjoni, jinvestiga l-affarijiet ta' kwalunkwe persuna msemmija fis-subartikolu (1);

(b) għandu jkollu u jista' jeżerċita s-setgħat kollha mogħtija lill-awtorità kompetenti bl-artikolu 22, u kwalunkwe rekwiżit magħmul mill-imsemmi spettur għandu jitqies u jkollu l-istess forza u effett daqslikieku kien impost mill-awtorità kompetenti; u

(ċ) jista', u jekk ikun hekk ordnat mill-awtorità kompetenti għandu, jipprepara rapporti interim u mal-konklużjoni tal-investigazzjoni tiegħu għandu jagħmel rapport finali lill-awtorità kompetenti.

(3) Fil-ħatra ta' spettur taht is-subartikolu (1), l-awtorità kompetenti tista' tordna li l-investigazzjoni għandha titwettaq f'dak iż-żmien u tkun limitata għal kwistjonijiet speċifiċi jew generali kif l-awtorità kompetenti tista' tqis xierqa.

(4) Għall-finijiet ta' dan l-artikolu, l-ispetturi jistgħu jinkludu avukat, persuna awtorizzata sabiex teżerċita l-professjoni ta' accountant jew awditur skont l-Att dwar il-Professjoni tal-Accountancy, jew persuna meqjusa mill-awtorità kompetenti bħala li għandha għarfien espert xieraq sabiex teżerċita tali funzjoni. Kap. 281.

(5) L-awtorità kompetenti għandu jkollha s-setgħa li tordna li l-ispejjeż kollha ta', u incidentalment għal, investigazzjoni mwettqa skont dan l-artikolu jithallsu mill-persuni msemmija fis-subartikolu (1).

24. (1) Kwalunkwe uffiċjal, impjegat jew aġent tal-awtorità kompetenti, meta jipproduċi, jekk meħtieġ, prova tal-awtorità tiegħu, għandu jkollu s-setgħa li jidhrol fi kwalunkwe fond okkupat minn persuna li lilha jkun gie nnotifikat avviż skont l-artikolu 22 jew li l-affarijiet tiegħu jkunu qegħdin jiġu investigati skont l-artikolu 23, bil-għan li jikseb mingħandhom l-informazzjoni jew id-dokumenti meħtieġa minn dak l-avviż, jew bil-għan li jwettaq spezzjonijiet jew investigazzjonijiet fuq il-post, u li jeżerċita kwalunkwe waħda mis-setgħat mogħtija mill-imsemmija artikoli. Dritt ta' dhul.

(2) Fejn kwalunkwe uffiċjal, impjegat jew aġent tal-awtorità kompetenti jkollu raġuni sabiex jemmen li jekk dak l-avviż kif imsemmi fl-artikolu 22 jiġi notifikat, ma jiġix osservat jew li kwalunkwe dokumenti li jista' jkollhom x'jaqsmu miegħu jitneħħew, jiġu mbagħbsa jew meqruda, tali uffiċjal, impjegat jew aġent għandu jkollu s-setgħa, meta jipproduċi, jekk meħtieġ, prova tal-awtorità tiegħu, sabiex jidhrol fi kwalunkwe fond imsemmi fis-subartikolu (1) bil-għan li jikseb minn hemm kwalunkwe informazzjoni jew dokumenti speċifikati fl-awtorità, li jkunu informazzjoni jew dokumenti li setgħu kienu meħtieġa taht tali avviż kif imsemmi fl-artikolu 22.

(3) Għall-finijiet ta' kwalunkwe azzjoni meħuda skont id-dispożizzjonijiet ta' dan l-artikolu, l-awtorità kompetenti tista' titlob l-assistenza tal-Kummissarju tal-Pulizija, li jista' għal dan il-għan jeżerċita dawk is-setgħat li jingħatawlu bil-liġi.

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Setgħat tal-awtorità kompetenti.

25. (1) Bla ħsara għal kwalunkwe setgħa oħra mogħtija lilha b'dan l-Att jew bi kwalunkwe liġi oħra, l-awtorità kompetenti għandu jkollha s-setgħat li ġejjin:

(a) li tagħti jew tiċhad awtorizzazzjoni skont l-artikoli 7 u 8;

(b) li tirtira jew tissospendi awtorizzazzjoni skont l-artikolu 9;

(c) li tipprojbixxi kwalunkwe waħda mill-attivitajiet ta' ġestjoni ta' kreditu;

(d) li twettaq spezzjonijiet fuq il-post u mhux fuq il-post;

(e) li timponi penali amministrattivi u miżuri oħra skont l-artikolu 26;

(f) li teżamina ftehimiet ta' esternalizzazzjoni konkluzi bejn il-persuni li jipprovdu servizzi ta' kreditu u l-fornituri ta' servizzi ta' kreditu skont l-artikolu 13;

(g) li teħtieġ li l-persuni li jipprovdu servizzi ta' kreditu jnehħu kwalunkwe membri tal-korp manigerjali jew amministrattivi tagħhom meta jonqsu milli jikkonformaw mar-rekwiżiti stabbiliti fl-artikolu 8(b);

(h) li teħtieġ li l-persuni li jipprovdu servizzi ta' kreditu jimmodifikaw jew jaġġornaw l-arranġamenti interni ta' governanza u l-mekkaniżmi ta' kontroll intern tagħhom sabiex jiżguraw b'mod effettiv ir-rispett għad-drittijiet tal-mutwatarji skont il-liġijiet li jirregolaw il-kuntratt ta' kreditu;

(i) li teħtieġ li l-persuni li jipprovdu servizzi ta' kreditu jimmodifikaw jew jaġġornaw il-politiki, il-pjanijiet u l-proċeduri tagħhom adottati sabiex jiżguraw it-trattament ġust u diliġenti tal-mutwatarji, u r-reġistrazzjoni u t-trattament tal-ilmenti minn mutwatarji;

(j) li jitolbu informazzjoni ulterjuri dwar it-trasferiment tad-drittijiet ta' kreditur skont il-kuntratt ta' kreditu mhux produttiv, jew tal-kuntratt ta' kreditu mhux produttiv innifsu; u

(k) li jeħtieġu li persuna li tipprovdi servizzi ta' kreditu, fornitur ta' servizz ta' kreditu jew xerrej ta' kreditu jew ir-rappreżentant maħtur tiegħu li ma jissodisfa l-ebda

wieħed mir-reqwiziti stabbiliti f'dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu, jieħdu, fi stadju bikri, l-azzjonijiet jew il-passi kollha meħtieġa sabiex jikkonformaw ma' dawk ir-reqwiziti.

26. (1) L-awtorità kompetenti tista' timponi penali amministrattivi u miżuri amministrattivi oħra kif imsemmija fis-subartikolu (3) fejn tqis li: Penali amministrattivi u miżuri oħra.

(a) l-imġiba ta' persuna tammonta għal ksur ta' kwalunkwe waħda mid-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu;

(b) persuna tkun kisret jew naqset milli tikkonforma ma' kwalunkwe kondizzjoni, obbligu, reqwizit jew direttivi magħmula jew mogħtija mill-awtorità kompetenti taħt kwalunkwe waħda mid-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu, inkluż in-nuqqas ta' kooperazzjoni ma' investigazzjoni jew spezzjoni jew kwalunkwe talba magħmula mill-awtorità kompetenti skont dan l-Att.

(2) Bla ħsara għall-ġeneralità tas-subartikolu (1), l-awtorità kompetenti tista' timponi penali amministrattivi u miżuri amministrattivi oħra kif imsemmija fis-subartikolu (3) fejn tqis li:

(a) persuna li tipprovdi servizzi ta' kreditu tidhol fi ftehim ta' esternalizzazzjoni li jikser id-dispożizzjonijiet tal-artikolu 13 jew il-fornitur ta' servizz ta' kreditu li lilu l-attivitajiet ta' ġestjoni ta' kreditu ġew esternalizzati, jikkommetti ksur serju tad-dispożizzjonijiet legali applikabbli, inklużi d-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu;

(b) arrangamenti ta' governanza u l-mekkaniżmi ta' kontroll interni ta' persuna li tipprovdi servizzi ta' kreditu kif stabbiliti fl-artikolu 8(e) jonqsu milli jiżguraw ir-rispett għad-drittijiet tal-mutwatarju u l-konformità mar-regoli dwar il-protezzjoni tad-data personali;

(ċ) il-politika ta' persuna li tagħti servizzi ta' kreditu

ma tkunx adegwata għat-trattament xieraq tal-mutwatarji kif stabbilit fl-artikolu 8(f);

(d) il-proċeduri interni ta' persuna li tipprovdi servizzi ta' kreditu kif stabbiliti fl-artikolu 8(g) jonqsu milli jipprovdu għar-registrazzjoni u t-trattament tal-ilmenti minghand il-mutwatarji skont l-obbligi stabbiliti f'dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu;

(e) xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant maħtur tiegħu jonqos milli jikkomunika l-informazzjoni stabbilita fl-artikoli 16 u 18;

(f) xerrej ta' kreditu jew, fejn applikabbli, ir-rappreżentant maħtur tiegħu jonqos milli jikkonforma mar-rekwizit tal-artikolu 15;

(g) xerrej ta' kreditu jonqos milli jikkonforma mar-rekwiziti tad-dispożizzjonijiet tal-artikolu 17;

(h) istituzzjoni ta' kreditu tonqos milli tikkomunika l-informazzjoni stabbilita fl-artikolu 14;

(i) persuna li tipprovdi servizzi ta' kreditu tippermetti persuna waħda jew aktar li ma jikkonformawx mar-rekwiziti stabbiliti fl-artikolu 8(b) sabiex isiru jew jibqgħu membri tal-organu maniġerjali jew amministrattiv tiegħu;

(j) persuna li tipprovdi servizzi ta' kreditu tirċievi u żżomm fondi minn mutwatarji meta ma tkunx awtorizzata li tagħmel dan skont dan l-Att; u, jew

(k) persuna li tagħti servizzi ta' kreditu tonqos milli tikkonforma mar-rekwiziti stabbiliti fl-artikolu 12.

(3) Bla ħsara għal kwalunkwe setgħa oħra mogħtija lilha b'dan l-Att jew bi kwalunkwe liġi oħra, l-awtorità kompetenti għandu jkollha s-setgħa li timponi l-penali u miżuri amministrattivi li ġejjin għall-ksur imsemmi fis-subartikoli (1) u (2):

(a) li tirtira jew tissospendi awtorizzazzjoni skont l-artikolu 9;

(b) li toħroġ ordni li teħtieġ lill-persuna li tipprovdi servizzi ta' kreditu jew lix-xerrej ta' kreditu jew, fejn applikabbli, lir-rappreżentant maħtur tiegħu sabiex

jirrimedjaw il-ksur, u jwaqqfu l-imġiba u tieqaf milli tirrepeti dik l-imġiba; u, jew

(ċ) li timponi penali amministrattiva li ma taqbiżx mija u ħamsin elf euro (€150,000) għal kull ksur jew nuqqas ta' konformità, skont il-każ.

(4) Il-penali amministrattivi u miżuri amministrattivi oħra mehuda mill-awtorità kompetenti skont id-dispożizzjonijiet ta' dan l-artikolu għandhom jiġu implimentati b'mod effettiv.

(5) Id-dispożizzjonijiet tal-artikolu 16(4) tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta għandhom japplikaw *mutatis mutandis*, fir-rigward ta' kwalunkwe penali amministrattiva imposta mill-awtorità kompetenti skont dan l-artikolu. Kap. 330.

(6) Fil-każ ta' penali amministrattivi jew miżuri amministrattivi oħra imposti mill-awtorità kompetenti skont id-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvediment ta' Servizi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu, l-awtorità kompetenti għandha tqis iċ-ċirkostanzi rilevanti, inkluż, fejn xieraq:

(a) il-gravità u t-tul ta' żmien tal-ksur;

(b) il-grad ta' responsabbiltà tal-persuna li ttiprovdi servizzi ta' kreditu jew tax-xerrej tal-kreditu jew, fejn applikabbli, tar-rappreżentant maħtur tiegħu responsabbli għall-ksur;

(ċ) is-saħħa finanzjarja tal-persuna li ttiprovdi servizzi ta' kreditu jew tax-xerrej ta' kreditu responsabbli għall-ksur, inkluż b'referenza għall-fatturat totali ta' persuna ġuridika jew l-introjtu annwali ta' persuna fiżika;

(d) l-importanza tal-profitti miksuba jew tat-telf evitat minhabba ksur mill-persuna li ttiprovdi servizzi ta' kreditu jew mix-xerrej ta' kreditu jew, fejn applikabbli, mir-rappreżentant maħtur tiegħu responsabbli għall-ksur, sa fejn dawk il-profitti jew it-telf ikunu jistgħu jiġu determinati;

(e) it-telf ikkawżat lil terzi mill-ksur, sa fejn dak it-telf ikun jista' jiġi determinat;

(f) il-livell ta' kooperazzjoni mal-awtorità kompetenti mill-persuna li ttiprovdi servizzi ta' kreditu jew mix-xerrej ta' kreditu responsabbli għall-ksur;

(g) ksur preċedenti mill-persuna li tagħti servizzi ta' kreditu jew mix-xerrej ta' kreditu jew, fejn applikabbli, mir-rappreżentant mahtur tiegħu responsabbli għall-ksur;

(h) kwalunkwe konsegwenza sistemika attwali jew potenzjali tal-ksur.

(7) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, fejn l-obbligi imposti skont id-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu, japplikaw għal persuna ġuridika, fil-każ ta' ksur ta' kwalunkwe dispożizzjoni tiegħu, jistgħu jiġu imposti wkoll penali amministrattivi u miżuri oħra, bla ħsara għall-kondizzjonijiet stabbiliti fil-liġi nazzjonali, fuq il-membri tal-korp maniġerjali jew amministrattivi tal-entità ġuridika kkonċernata, u fuq individwi oħra li huma responsabbli għall-ksur skont il-liġi nazzjonali.

(8) L-impożizzjoni mill-awtorità kompetenti ta' penali amministrattiva jew kwalunkwe miżura amministrattiva oħra skont id-dispożizzjonijiet ta' dan l-artikolu għandha tkun bla ħsara għal kwalunkwe konsegwenza oħra li tirriżulta mill-att jew l-ommissjoni tal-ħati skont il-liġi ċivili jew il-liġi kriminali:

Iżda fil-każijiet kollha fejn l-awtorità kompetenti timponi penali amministrattiva jew kwalunkwe miżura amministrattiva oħra fir-rigward ta' kwalunkwe haġa magħmula jew li naqset li ssir minn kwalunkwe persuna, u tali att jew ommissjoni jikkostitwixxu wkoll reat kriminali, l-ebda proċedimenti ma jistgħu jittieħdu jew jitkomplew kontra l-persuna msemmija fir-rigward ta' tali reat kriminali.

Avviż ta' penali amministrattivi u miżuri ta' rimedju.

27. (1) Jekk l-awtorità kompetenti tipproponi li timponi penali amministrattiva jew kwalunkwe miżura oħra fuq kwalunkwe persuna skont l-artikolu 26, hi għandha tagħti avviż bil-miktub dwar l-intenzjoni tagħha li tagħmel dan, filwaqt li tagħti r-raġunijiet għad-deċiżjoni li tipproponi li tiegħu.

(2) Kull avviż mogħti taht is-subartikolu (1) għandu jispeċifika li r-riċevitur tal-avviż jista', f'dak il-perjodu raġonevoli wara li jkun ġie notifikat, kif jista' jiġi ddikjarat fl-avviż, jagħmel sottomissjonijiet bil-miktub lill-awtorità kompetenti li jagħtu r-raġunijiet għaliex id-deċiżjoni proposta ma għandhiex tittieħed u l-awtorità kompetenti għandha tikkunsidra kwalunkwe sottomissjoni hekk magħmula qabel ma tagħmel deċiżjoni finali.

(3) L-awtorità kompetenti għandha kemm jista' jkun malajr

tinnotifika d-deċiżjoni finali tagħha bil-miktub lil kwalunkwe persuna li lilha għandha tingħata notifika skont is-subartikolu (1).

28. (1) L-awtorità kompetenti għandha tippubblika kwalunkwe deċiżjoni li timponi penali amministrattiva jew kwalunkwe miżura oħra, skont id-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu, fuq is-sit elettroniku tagħha minnufih wara li l-persuna soġġetta għal dik id-deċiżjoni tkun giet infurmata b'dik id-deċiżjoni.

Pubblikazzjoni
tad-
deċiżjonijiet.

(2) L-informazzjoni ppubblikata skont is-subartikolu (1) għandha tispeċifika t-tip u n-natura tal-ksur, l-identità tal-persuna soġġetta għad-deċiżjoni u kwalunkwe informazzjoni oħra li l-awtorità kompetenti tqis rilevanti.

(3) Id-dispożizzjonijiet tas-subartikoli (1) u (2) ma għandhomx japplikaw għal deċiżjonijiet tal-awtorità kompetenti li jimponu miżuri li huma ta' natura investigattiva.

(4) Fejn l-awtorità kompetenti tqis, wara valutazzjoni skont il-każ, li l-pubblikazzjoni tal-identità tal-persuna ġuridika soġġetta għad-deċiżjoni, jew l-identità jew id-data personali ta' persuna fiżika, tkun sproporzjonata, jew fejn tali publikazzjoni tista' tipperikola investigazzjoni li tkun għaddejja, l-awtorità kompetenti għandha:

(a) iddewwem il-pubblikazzjoni tad-deċiżjoni li tiġi imposta penali jew miżura sal-mument fejn ir-raġunijiet għan-nuqqas ta' publikazzjoni ma jibqgħux jeżistu;

(b) tippubblika d-deċiżjoni li timponi penali jew miżura fuq bażi anonima b'mod li jkun konformi mal-liġi nazzjonali, fejn tali publikazzjoni anonima tiżgura protezzjoni effettiva tad-data personali kkonċernata:

Iżda f'dan il-każ, il-pubblikazzjoni tad-data rilevanti tista' tiġi mdewma għal perjodu raġonevoli fejn ikun previst li f'dak il-perjodu r-raġunijiet għall-pubblikazzjoni anonima ma jibqgħux jeżistu;

(ċ) ma tippublikax id-deċiżjoni li tiġi imposta penali jew miżura fil-każ li l-għażliet stabbiliti fil-paragrafi (a) u (b) jitqiesu bħala insuffiċjenti sabiex tiġi żgurata l-proporzjonalità tal-pubblikazzjoni ta' tali deċiżjoni fir-rigward ta' miżuri li jitqiesu ta' natura minuri.

(5) Fejn id-deċiżjoni tkun soġġetta għal appell quddiem awtorità gudizzjarja, amministrattiva jew awtorità oħra nazzjonali, l-awtorità

kompetenti għandha tippubblika wkoll minnufih fuq is-sit elettroniku tagħha din l-informazzjoni u kwalunkwe informazzjoni sussegwenti dwar l-eżitu ta' tali appell. Kwalunkwe deċiżjoni li tannulla deċiżjoni li tkun soġġetta għal appell għandha tiġi ppubblikata wkoll.

(6) Kwalunkwe deċiżjoni li tiġi ppubblikata skont dan l-artikolu għandha tibqa' aċċessibbli fuq is-sit elettroniku tal-awtorità kompetenti għal perjodu ta' mill-inqas ħames (5) snin wara l-pubblikazzjoni tagħha:

Iżda d-data personali li tinsab fi kwalunkwe deċiżjoni bhal din għandha tinżamm biss fuq is-sit elettroniku tal-awtorità kompetenti sakemm ikun meħtieġ għall-finijiet ta' interess pubbliku u trasparenza.

TAQSIMA IV APPELLI, REATI U KUNFIDENZJALITÀ

Appelli.
Kap. 330.

29. (1) Għall-finijiet ta' dan l-artikolu, it-Tribunal għas-Servizzi Finanzjarji jfisser it-Tribunal imwaqqaf bl-artikolu 21 tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.

(2) Kwalunkwe persuna li tħoss ruħha aggravata b'deċiżjoni tal-awtorità kompetenti taht dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu, tista' tappella kontra din id-deċiżjoni quddiem it-Tribunal f'dak il-perjodu u taht dawk il-kondizzjonijiet li huma stabbiliti fl-artikolu 21 tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.

Kap. 330.

(3) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (2), kwalunkwe persuna li tkun tħoss ruħha aggravata min-nuqqas tal-awtorità kompetenti li tiegħu deċiżjoni fir-rigward ta' applikazzjoni għall-awtorizzazzjoni li jkun fiha l-informazzjoni kollha meħtieġa skont dan l-Att fil-limitu ta' żmien previst fl-artikolu 7(4), tista' tappella kontra dan in-nuqqas li tittiehed deċiżjoni lit-Tribunal f'dak il-perjodu u taht dawk il-kondizzjonijiet li huma stabbiliti fl-artikolu 21 tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.

(4) Appell kontra deċiżjoni tal-awtorità kompetenti ma għandux jissospendi l-operat ta' dik id-deċiżjoni:

Iżda deċiżjoni tal-awtorità kompetenti li tirtira l-awtorizzazzjoni ta' persuna li tipprovdi servizzi ta' kreditu ma għandhiex issir operattiva qabel l-iskadenza tal-perjodu li fih isir appell taht dan l-artikolu u, jekk jiġi pprezentat appell f'dak il-perjodu, id-deċiżjoni għandha ssir operattiva fid-data tad-deċiżjoni tat-Tribunal li tiġi l-appell jew fid-data li fiha l-appell jiġi abbandunat.

(5) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, id-dispożizzjonijiet tal-artikolu 21 tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta għandhom japplikaw, *mutatis mutandis*, għal appelli li jistgħu jitressqu quddiem it-Tribunal skont dan l-artikolu. Kap. 330

30. (1) Kwalunkwe persuna li: Reati.

(a) tikser jew tonqos milli tikkonforma ma' xi waħda mid-dispożizzjonijiet tal-artikoli 6(1) jew (2), 21(1), 22(1), 22(5) jew 31(1), jew tal-artikolu 22(1) jew 22(5) kif applikat mill-artikolu 23; jew

(b) tikser jew tonqos milli tikkonforma ma' kwalunkwe kondizzjoni, obbligu, rekwiżit, direttiva jew ordni magħmula jew mogħtija skont xi waħda mid-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provviment ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu; jew

(ċ) għall-finijiet ta', jew skont, kwalunkwe waħda mid-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provviment ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu, jew kwalunkwe kondizzjoni, obbligu, rekwiżit, direttiva jew ordni magħmula jew mogħtija kif imsemmi qabel, tipprovdi informazzjoni jew tagħmel dikjarazzjoni li taf li mhux preċiża, falza jew qarrieqa fi kwalunkwe aspekk materjali, jew tforni informazzjoni bi traskuraġni jew tagħmel dikjarazzjoni li ma tkunx preċiża, falza jew qarrieqa fi kwalunkwe aspekk materjali; jew

(d) bl-intenzjoni li tiġi evitata s-sejba tat-twettiq ta' reat skont dan l-Att, tneħħi, teqred, taħbi jew tbiddel b'mod fraudolenti kwalunkwe ktieb, dokument jew karta oħra; jew

(e) tfixkel intenzjonalment persuna li teżerċita d-drittijiet jew is-setgħat mogħtija b'dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa taħtu,

għandha tehel, meta tinsab hatja, il-piena ta' prigunerija għal perjodu li ma jaqbiżx sena (1) jew ta' multa li ma taqbiżx mija u ħamsin elf euro (€150,000), jew kemm għal tali multa kif ukoll dik il-prigunerija, diment li tali multa jew perjodu ta' prigunerija ma jkunux imposti b'xort'oħra f'regolamenti magħmula taħt l-Att.

(2) Id-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe

regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu, ma għandhom jaffettwaw l-ebda proċedimenti kriminali li jistgħu jkunu kompetenti skont kwalunkwe liġi oħra.

Kunfidenzjalità.

31. (1) Informazzjoni miksuba mill-awtorità kompetenti jew mill-uffiċjali, l-impjegati jew l-aġenti tagħha, kemm jekk attwali jew ta' qabel, jew minn spetturi, awdituri u esperti li qabel kienu jew attwalment huma ingaġġati mill-awtorità kompetenti għall-finijiet ta', jew skont, kwalunkwe waħda mid-dispożizzjonijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu, jew fit-twertiq ta' kwalunkwe funzjoni taht kwalunkwe waħda mid-dispożizzjonijiet imsemmija, jew minn kwalunkwe persuna oħra li taħdem jew ħadmet għall-awtorità kompetenti jew għal kwalunkwe parti terza li lilha l-awtorità kompetenti tkun iddelegat xi waħda mill-funzjonijiet jew setgħat tagħha, għandha tiġi ttrattata bħala kunfidenzjali u protetta mid-dmir tas-segretezza professjonali, u ma għandhiex tiġi żvelata lil kwalunkwe persuna oħra, hliet fil-każijiet li ġejjin:

(a) fejn l-awtorità, il-korp jew il-persuna li jikkomunikaw l-informazzjoni lill-awtorità kompetenti jagħtu l-kunsens tagħhom għal dan;

(b) fejn l-iżvelar tal-informazzjoni jkun meħtieġ għal kwalunkwe proċediment legali;

(ċ) fejn l-informazzjoni tiġi pprovduta lil tali awtoritajiet regolatorji, ġudizzjarji jew ta' infurzar oħrajn lokali jew Ewropej jew barra mill-Ewropa in segwitu ta' tħassib serju ta' natura regolatorja jew kriminali; u, jew

(d) fejn l-iżvelar tal-informazzjoni jkun permess jew meħtieġ mil-liġi jew mil-legiżlazzjoni tal-Unjoni Ewropea.

(2) L-informazzjoni msemmija fis-subartikolu (1) għandha tinkludi l-informazzjoni kollha skambjata bejn l-awtorità kompetenti u l-awtoritajiet regolatorji Ewropej skont dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu li tikkonċerna kondizzjonijiet tan-negozju jew operattivi u affarijiet ekonomiċi jew personali oħra.

Protezzjoni tad-data personali.

Kap. 586.

32. L-iproċessar ta' data personali għall-finijiet ta' dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvista ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat maħruġa tahtu għandu jitwettaq f'konformità mal-Att dwar il-Protezzjoni u l-

Privatezza tad-Data, il-GDPR u r-Regolament (UE) 2018/1725.

TAQSIMA V KOOPERAZZJONI MA' AWTORITAJIET OHRA

33. (1) L-awtorità kompetenti għandha tikkoopera ma' awtoritajiet regolatorji Ewropej kull meta jkun meħtieġ għall-fini tat-twettiq tal-funzjonijiet u d-dmirijiet jew tal-eżerċitar tas-setgħat assenjati lill-awtorità kompetenti u lill-awtoritajiet regolatorji Ewropej imsemmija skont id-Direttiva NPL, kif trasposta fil-liġi nazzjonali.

Kooperazzjoni mal-awtoritajiet regolatorji Ewropej.

(2) L-awtorità kompetenti għandha, fuq talba u mingħajr dewmien żejjed, tippovdi lill-awtoritajiet regolatorji Ewropej imsemmija fis-subartikolu (1) bl-informazzjoni meħtieġa għall-fini tat-twettiq tal-funzjonijiet u d-dmirijiet tagħhom skont id-Direttiva NPL, kif trasposta fil-liġi nazzjonali.

(3) Meta l-awtorità kompetenti tirċievi kwalunkwe informazzjoni kunfidenzjali fl-eżerċizzju tal-funzjonijiet u d-dmirijiet tagħha skont dan l-Att, jew fi kwalunkwe regolamenti magħmula, Regoli dwar il-Provvediment ta' Servizzi ta' Kreditu jew Regoli tal-Kondotta tal-Operat mahruġa tahtu, l-awtorità kompetenti għandha tuża biss dik l-informazzjoni matul il-funzjonijiet u d-dmirijiet imsemmija. L-iskambju ta' informazzjoni bejn l-awtorità kompetenti u l-awtoritajiet regolatorji Ewropej l-oħra kif imsemmi fis-subartikolu (1) għandu jkun soġġett għall-obbligu tas-segretezza professjonali msemmi fl-Artikolu 76 tal-MiFID.

(4) L-awtorità kompetenti għandha timplimenta l-miżuri amministrattivi u organizzattivi meħtieġa sabiex tiffaċilita l-kooperazzjoni msemmija fis-subartikolu (1).

TAQSIMA VI EMENDI GĦALL-ATT DWAR IL-KUMMERĊ TAL- ASSIGURAZZJONI

34. (1) Din it-Taqsima temenda l-Att dwar il-Kummerċ tal-Assigurazzjoni u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Kummerċ tal-Assigurazzjoni, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ l-"Att prinċipali".

Emendi għall-Att dwar il-Kummerċ tal-Assigurazzjoni. Kap. 403.

(2) Din it-Taqsima għandha tidhol fis-seħħ f'dik id-data jew dati li l-Ministru responsabbli għar-regolamentazzjoni tas-servizzi finanzjarji jista', b'avviż fil-Gazzetta, jistabblixxi u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet u, jew għanijiet differenti ta' din it-Taqsima.

A 670

Emenda tal-artikolu 2 tal-Att prinċipali.

35. Fis-subartikolu (1) tal-artikolu 2 tal-Att prinċipali, minnufih wara t-tifsira "kummerċ tal-assigurazzjoni" għandha tiġi miżjuda t-tifsira ġdida li ġejja:

" "kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur" tfisser il-kummerċ tal-assigurazzjoni fil-klassi 10 kif speċifikat fit-Taqsima I tat-Tielet Skeda;"

Sostituzzjoni tal-artikolu 49 tal-Att prinċipali.

36. L-artikolu 49 tal-Att prinċipali għandu jiġi sostitwit b'dan l-artikolu ġdid li ġej:

"Twaqqif tal-Fond għall-Protezzjoni u Kumpens. 49. (1) Għandu jitwaqqaf fond, kif jista' jiġi preskritt, li għandu jkun magħruf bħala "Fond għall-Protezzjoni u Kumpens":

(a) għall-ħlas ta' kwalunkwe talba dwar:

(i) riskji u impenji kontra impriza tal-assigurazzjoni li teżerċita kummerċ tal-assigurazzjoni f'Malta, kif jista' jiġi preskritt skont ir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens, li jibqgħu ma jithallsux minhabba fl-insolvibbiltà tat-tali impriza, bla ħsara għal tali limitazzjonijiet, restrizzjonijiet u esklużjonijiet li jistgħu jiġu preskritti bl-istess regolamenti; u

(ii) riskji relatati mal-kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur kontra impriza tal-assigurazzjoni li teżerċita kummerċ tal-assigurazzjoni għar-responsabbiltà għal vetturi bil-mutur minn Malta, kif jista' jiġi preskritt skont ir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens, li jibqgħu ma jithallsux minhabba l-insolvibbiltà ta' tali impriza, bla ħsara għal tali limitazzjonijiet, restrizzjonijiet u esklużjonijiet, kif jista' jiġi preskritt bl-istess regolamenti; u

(b) sabiex jithallas kumpens lil vittmi ta' inċidenti tat-traffiku fit-toroq kif jiġi preskritt skont tali limitazzjonijiet u restrizzjonijiet, kif jista' jiġi preskritt.

(2) Bla hsara għad-dispożizzjonijiet ta' dan l-Att u ta' kwalunkwe regolamenti mahruġa tahtu, il-Fond għall-Protezzjoni u Kumpens għandu jkun korp ġuridiku b'personalità ġuridika distinta u għandu jkollu l-kapaċità li jidhol f'kuntratti, kemm jekk dawk ta' self kif ukoll jekk b'xi mod ieħor jinkorri djun għall-finijiet tal-funzjoni tiegħu, li jakkwista, iżomm u jiddisponi minn kwalunkwe xorta ta' proprjetà għall-finijiet tal-funzjonijiet tiegħu, li jħarrek jew jiġi mħarrek, li jagħmel dawk l-affarijiet kollha u jidhol f'dawk in-negożjati, tranżazzjonijiet u ftehim kollu li jkunu incidentali jew li jwasslu għall-eżerċizzju jew it-tweqqig tal-funzjonijiet tiegħu. Bla hsara għall-ġeneralità ta' dak imsemmi qabel, il-Fond għall-Protezzjoni u Kumpens għandu għal dan il-għan ikollu s-setgħa li jidhol f'arranġamenti raġjonevoli amministrattivi, ta' ġestjoni jew arranġamenti oħra li jistgħu jkunu meħtieġa sabiex jippermettuh jissodisfa l-oġġettivi u l-funzjonijiet tiegħu skont dan l-Att u skont ir-Regolamenti dwar Insurance Business (Protection and Compensation Fund), inkluż sabiex isir parti fl-arranġament imsemmi fir-regolament 10A tar-Regolamenti dwar Insurance Business (General Provisions of Supervision), u sabiex jiddelga lil kwalunkwe korp jew persuna kwalsiasi funzjoni hekk kif il-Kumitat tal-Ġestjoni mahtur skont ir-Regolamenti dwar Insurance Business (Protection and Compensation Fund) jidhirlu xieraq."

L.S. 403.24.

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

Emenda tal-artikolu 50 tal-Att prinċipali.

(a) in-nota marginali tiegħu għandha tiġi sostitwita bin-nota marginali ġdida li ġejja:

"Kontribuzzjonijiet lill-Fond għall-Protezzjoni u Kumpens.";

(b) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-

subartikolu ġdid li ġej:

"(1) Il-Fond għall-Protezzjoni u Kumpens għandu jkun magħmul minn diversi fondi kif jista' jiġi preskritt bir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens, mill-kontribuzzjonijiet kollha li jsiru fih skont dan l-Att u kwalunkwe regolamenti magħmula tahtu, u mill-attiv u d-dhul l-ieħor kollu li għandu x'jaqsam miegħu. L-attiv ta' kull fond għandu jinżamm separat u b'mod identifikabbli separatament mill-attiv tal-Fondi l-oħra, kif jista' jiġi preskritt fl-imsemmija regolamenti.";

(ċ) fis-subartikolu (2) tiegħu l-kliem "fil-Fond" għandhom jiġu sostitwiti bil-kliem "fil-Fond għall-Protezzjoni u Kumpens"; u

(d) minnufih wara s-subartikolu (2) tiegħu, kif emendat, għandu jiġi miżjud is-subartikolu ġdid li ġej:

"(3) Impriżi tal-assigurazzjoni li jeżerċitaw kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur minn Malta, kif jista' jiġi preskritt mir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens, għandhom jikkontribwixxu għall-Fond għall-Protezzjoni u Kumpens f'dawk l-ammonti u sa dawk il-limitazzjonijiet, kif jista' jiġi preskritt bir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens, u ammonti u limitazzjonijiet differenti jistgħu hekk japplikaw, kif jista' jiġi preskritt fl-imsemmija regolamenti.".

Emenda tal-artikolu 51 tal-Att prinċipali.

38. L-artikolu 51 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) in-nota marginali tiegħu għandha tiġi sostitwita bin-nota marginali ġdida li ġejja:

"Ġestjoni tal-Fond għall-Protezzjoni u Kumpens.";

(b) l-artikolu 51 għandu jiġi enumerat mill-ġdid bhala l-artikolu 51(1);

(ċ) il-provisos tiegħu għandhom jiġu sostitwiti bil-proviso ġdid li ġej:

"Iżda tali regolamenti għandhom jiżguraw li:

(a) hłasijiet li jsiru fil-Fond għall-

Protezzjoni u Kumpens minn impriži sabiex jeżerċitaw kummerċ fit-tul f'Malta għandhom jiġu utilizzati għal kumpens fir-rigward ta' kummerċ fit-tul, u għandhom jiġu ttrattati separatament u jiġu utilizzati esklussivament għal kumpens ta' talbiet relatati mal-kummerċ fit-tul;

(b) ħlasijiet li jsiru fil-Fond għall-Protezzjoni u Kumpens minn impriži sabiex jeżerċitaw kummerċ ġenerali f'Malta għandhom jiġu ttrattati separatament, u għandhom jiġu utilizzati esklussivament għal kumpens ta' talbiet relatati mal-kummerċ ġenerali:

Iżda ħlasijiet li jsiru fil-Fond għall-Protezzjoni u Kumpens minn impriži tal-assigurazzjoni li jeżerċitaw kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur f'Malta fi jew wara d-data ta' inizjazzjoni kif hawn imfissra, għandhom jiġu ttrattati separatament min-negozju ġenerali, u għandhom jiġu utilizzati esklussivament għal kumpens ta' talbiet relatati ma' negozju tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur eżerċitat f'Malta, fi, jew wara dik id-data; u

(ċ) ħlasijiet li jsiru fil-Fond għall-Protezzjoni u Kumpens minn impriži tal-assigurazzjoni li jeżerċitaw kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur minn Malta għandhom ukoll jiġu ttrattati separatament u għandhom jiġu utilizzati esklussivament għal kumpens ta' talbiet relatati ma' kummerċ tal-assigurazzjoni għal responsabbiltà għal vetturi bil-mutur eżerċitat minn Malta.";

(d) minnufih wara s-subartikolu (1) tiegħu, kif emendat, għandu jiġi miżjud is-subartikolu ġdid li ġej:

"(2) Għall-finijiet ta' dan l-artikolu, "data ta' inizjazzjoni" tfisser:

(a) id-data ta' dħul fis-seħħ tal-ftehim imsemmi fl-ewwel subparagrafu tal-Artikolu 10a(13) u fl-ewwel subparagrafu tal-Artikolu 25a(13) tad-Direttiva 2009/103/KE tal-Parlament

Ewropew u tal-Kunsill tas-16 ta' Settembru 2009 dwar l-assigurazzjoni kontra responsabbiltà ċivili fir-rigward tal-użu ta' vetturi bil-mutur u l-infurzar tal-obbligu ta' assigurazzjoni kontra din ir-responsabbiltà, kif emendata minn żmien għal żmien; jew

(b) id-data tal-applikazzjoni tal-att delegat tal-Kummissjoni msemmi fir-raba' subparagrafu tal-Artikolu 10a(13) u r-raba' subparagrafu tal-Artikolu 25a(13) tal-istess Direttiva msemmija fil-paragrafu (a),

skont liema minnhom tkun l-ewwel."

Emenda tal-artikolu 52 tal-Att prinċipali.

39. L-artikolu 52 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) il-kliem "mill-Fond" għandhom jiġu sostitwiti bil-kliem "mill-Fond għall-Protezzjoni u Kumpens";

(b) il-paragrafu (a) tiegħu għandu jiġi sostitwit bil-paragrafu ġdid li ġej:

Kap. 386.

"(a) dwar talba skont l-artikolu 49(a)(i), fi żmien sentejn mid-data li fiha isem l-impriża jiġi mhassar minn fuq ir-registru stabbilit skont l-Att dwar il-Kumpaniji jew dik l-impriża tiġi definittivament stralċjata, unikament f'dawk iċ-ċirkostanzi fejn il-kumpens ikun dovut mill-Fond A;"

(ċ) minnufih wara l-paragrafu (a) tiegħu, kif sostitwit, għandu jiġi miżjud il-paragrafu ġdid li ġej:

"(aa) dwar talba skont l-artikolu 49(a)(ii), fi żmien il-perjodu u bil-mod kif preskritt fir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens;" u

(d) il-paragrafu (b) tiegħu għandu jiġi sostitwit bil-paragrafu ġdid li ġej:

"(b) dwar talba skont l-artikolu 49(b), fi żmien sentejn mid-data meta jseħh l-inċident relattiv għal tali talba:

Iżda għall-finijiet ta' dan l-artikolu, il-kliem "Fond A" għandu jkollhom l-istess tifsira kif assenjata lilhom skont ir-Regolamenti dwar il-Fond għall-Protezzjoni u Kumpens."

40. Fl-artikolu 53 tal-Att prinċipali l-kliem "u kull *income* ta' flejjes li jappartjenu lill-Fond tkun eżentata" għandhom jiġu sostitwiti bil-kliem "u kwalunkwe dħul u attiv li jappartjenu lill-Fond għall-Protezzjoni u Kumpens għandhom ikunu eżentati".

Emenda tal-artikolu 53 tal-Att prinċipali.

TAQSIMA VII EMENDI GHALL-ATT DWAR SERVIZZI TA' INVESTIMENT

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

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

42. Minnufih wara l-paragrafu (o) tas-subartikolu (1) tal-artikolu 12 tal-Att prinċipali għandu jiġi miżjud il-paragrafu ġdid li ġej:

Emenda tal-artikolu 12 tal-Att prinċipali.

Kap. 386.

"(oa) jistabbilixxi u jirregola soċjetajiet limitati mingħajr personalità ġuridika, u li l-att tas-soċjetà tagħhom espressament jillimta l-għan tagħhom jew għall-investment kollettiv tal-fondi tagħhom f'titoli u fi proprjetà oħra mobbli u immobbli, jew fi kwalunkwe wiehed minnhom, bil-għan li tagħti lis-soċji l-benefiċċji tar-riżultati tal-immaniġġjar tal-fondi tagħhom, u għal materji anċillari jew inċidentali għal dan, u li tikkwalifika għal skema ta' investment kollettiv u li tkun debitament liċenzjata, rikonoxxuta, eżentata jew regolata b'mod ieħor skont dan l-Att; u għandhom ikunu distinti minn soċjetajiet limitati kif stabbiliti fid-dispożizzjonijiet tal-Att dwar il-Kumpaniji. Regolamenti magħmula taħt dan il-paragrafu jistgħu jipprovdu li xi dispożizzjoni ta' dan l-Att jew ta' xi liġi oħra ma għandhomx japplikaw għal materji li jaqgħu taħt ir-regolamenti, u li sa fejn kwalunkwe waħda mid-dispożizzjonijiet tar-regolamenti tkun inkonsistenti mad-dispożizzjonijiet ta' dan l-Att jew ta' xi liġi oħra, tali dispożizzjonijiet f'dawk ir-regolamenti għandhom jipprevalu;"

VERŻJONI ELETTRONIKA

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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 258 tal-15 ta' Lulju, 2024.

ANĠLU FARRUGIA

Speaker

ELEANOR SCERRI

Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

MYRIAM SPITERI DEBONO
President

30th July, 2024

ACT No. XXXII of 2024

AN ACT to provide for the establishment of a framework for the regulation of credit purchasers, as well as credit servicers acting on behalf of such credit purchasers, of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the European Union; and to amend the Insurance Business Act and the Investment Services Act.

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

1. (1) The short title of this Act is the Credit Servicers and Credit Purchasers Act, 2024.

Short title and scope.

(2) The principal scope of this Act is to transpose the relevant provisions of the Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (NPL Directive), and it shall be interpreted and applied in accordance with the said Directive.

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Interpretation.

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

"applicant" means a legal person established in Malta applying to the competent authority to act as a credit servicer in accordance with article 7;

"binding legal instrument" means any directly applicable measures, including but not limited to, any implementing technical standards, regulatory technical standards or similar measures issued in accordance with European Union legislation;

"borrower" means a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successor or assignee;

Cap. 330.

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

"Conduct of Business Rules" means Rules, other than Credit Servicing Rules, issued by the competent authority in accordance with this Act;

"consumer" means a natural person who, in credit agreements regulated by this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, is acting for purposes which are outside his trade, business or profession;

"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, 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 binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"credit agreement" means an agreement as originally issued, modified or substituted, whereby a credit institution grants a credit in the form of a deferred payment, a loan or other similar financial accommodation;

"credit institution" means a credit institution as defined in point (1) of Article 4(1) of the CRR;

"credit purchaser" means any natural or legal person, other than a credit institution, that purchases a creditor's rights under a

non-performing credit agreement, or the non-performing credit agreement itself, in the course of its trade, business or profession, in accordance with applicable European Union law and national law;

"credit service provider" means a third party used by a credit servicer to perform any of the credit servicing activities;

"credit servicer" means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and which carries out at least one (1) or more credit servicing activities;

"credit servicing activities" means one (1) or more of the following activities:

(a) collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;

(b) renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3(f) of Directive 2008/48/EC or in Article 4(5) of Directive 2014/17/EU;

(c) administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself; and, or

(d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;

"credit servicing agreement" means a written contract concluded between a credit purchaser and a credit servicer concerning the services to be provided by the credit servicer on behalf of the credit purchaser;

"Credit Servicing Rules" means Rules, other than Conduct of Business Rules, which may be issued by the competent

authority in accordance with this Act;

"creditor" means a credit institution that has issued a credit or a credit purchaser;

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

"designated representative" means the representative of a third-country credit purchaser designated in accordance with article 17;

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"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 may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"Directive 2009/65/EC" means 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), as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"Directive 2011/61/EU" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"Directive 2014/17/EU" means Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"European regulatory authority" means a body or bodies designated by a Member State other than Malta in accordance with Article 21(3) of the NPL Directive to carry out the functions and duties stipulated in the said Directive;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"home Member State" means, with respect to a credit servicer, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated or, with respect to a credit purchaser, the Member State in which the credit purchaser or its representative is domiciled, or its registered office is situated, or if under its national law it has 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 credit servicer has established a branch or where it provides credit servicing activities, and in any event where the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

"licence" means a licence to carry out credit servicing activities issued under this Act;

"licence holder" means a person who holds a licence;

"management body" means the body or bodies of a legal

person, which is appointed in accordance with the applicable law and which is empowered to set the strategy, objectives and overall direction of the legal person, and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the legal person;

"Member State" means a Member State of the European Union and includes an European Economic Area State;

"MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"Minister" means the Minister responsible for the regulation of financial services;

"non-performing credit agreement" means a credit agreement that is classified as a non-performing exposure in accordance with Article 47a of the CRR;

"NPL Directive" means Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been, or may be issued thereunder;

"Regulation (EU) 2017/2402" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012;

"Regulation (EU) 2018/1725" means Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures

that have been, or may be issued thereunder.

(2) For the purposes of this Act, unless the context otherwise requires, terms used in this Act which are not defined in the said Act shall have the same meaning as assigned to them in the NPL Directive.

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

3. (1) The provisions of this Act and of any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder shall apply to the following: Applicability.

(a) credit servicers acting on behalf of a credit purchaser in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution; and

(b) credit purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution.

(2) The provisions of this Act and of any regulations made thereunder, Credit Servicing Rules or Conduct of Business Rules issued thereunder shall be without prejudice to any other law relating to:

(a) the transfer of a creditor's rights under a credit agreement, or of the credit agreement itself;

(b) the protection of consumers and borrowers' rights, including the provisions of Regulations (EC) No. 593/2008 and (EU) No. 1215/2012, and Directives 93/13/EEC, 2008/48/EC, 2014/17/EU as transposed in national law;

(c) any restrictions regarding the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself that is not past due, or is less than ninety (90) days past due, or is not terminated in accordance with the applicable legislation; and

(d) any requirements regarding the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, when the credit purchaser is a securitisation special purpose entity as defined in point (2) of Article 2 of Regulation (EU) 2017/2402, provided that law:

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(i) does not affect the level of consumer protection provided by the NPL Directive as transposed into national law; and

(ii) ensures that the competent authority receives the necessary information from credit servicers.

Non-
applicability.

4. The provisions of this Act and of any regulations made thereunder, of the Credit Servicing Rules or Conduct of Business Rules issued thereunder shall not apply to the following:

(a) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by:

(i) a credit institution established in the European Union;

(ii) an alternative investment fund manager (AIFM) authorised or registered in accordance with Directive 2011/61/EU, or a management company, or an investment company authorised in accordance with Directive 2009/65/EC provided that the investment company has not designated a management company under the latter Directive, on behalf of the fund it manages; or

(iii) a non-credit institution subject to supervision by a competent authority of a Member State in accordance with Article 20 of Directive 2008/48/EC or Article 35 of Directive 2014/17/EU when performing activities in that Member State;

(b) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, that was not issued by a credit institution except where the creditor's rights under the credit agreement, or the credit agreement itself, is replaced by a credit agreement issued by such credit institution;

(c) the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit institution established in the European Union;

(d) the transfer of a creditor's rights under a credit agreement, or of the credit agreement itself transferred before 30th December 2023; and

(e) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, executed by public

notaries or marshals or lawyers as defined in point (a) of Article 1(2) of Directive 98/5/EC when conducting credit servicing activities as part of their profession.

5. (1) The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of the said Act and any regulations made thereunder, with the Credit Servicing Rules or Conduct of Business Rules issued thereunder.

Competent authority.

(2) The competent authority shall also carry out the functions and duties as competent authority for all purposes of the NPL Directive as transposed in national law.

(3) Without prejudice to the provisions of this article, where Malta is the home Member State, the competent authority shall ensure that credit servicers and, where applicable, credit service providers to whom credit servicing activities have been outsourced in accordance with article 12, comply with the provisions of this Act and of any regulations made thereunder and with the Credit Servicing Rules or Conduct of Business Rules issued thereunder, on an ongoing basis.

(4) Without prejudice to the provisions of this article, where Malta is the home Member State, it shall be responsible for the supervision of the obligations set out in Article 10 and in Articles 17 to 20 of the NPL Directive, as transposed in national law, in respect of the credit purchaser or, where applicable, its designated representative.

PART I CREDIT SERVICERS

6. (1) No legal person shall act as a credit servicer, or hold itself to act as a credit servicer, in Malta unless it is duly authorised by the competent authority or any European regulatory authority to act as a credit servicer.

Authorisation as a credit servicer.

(2) No legal person established in Malta shall act as a credit servicer, or hold itself to act as a credit servicer, unless it is duly authorised by the competent authority to act as a credit servicer under this Act.

(3) Where a legal person is authorised by the competent authority to act as a credit servicer, it may receive and hold funds from borrowers in order to transfer those funds to credit purchasers, provided that it shall only do so in Malta and in any host Member State that permits such receiving and holding of funds.

(4) Where a legal person is authorised by a European regulatory

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authority to act as a credit servicer, it may receive and hold funds from borrowers in Malta in order to transfer those funds to credit purchasers, provided that it shall only do so if the home Member State permits such receiving and holding of funds.

Application for
authorisation.

7. (1) A legal person established in Malta intending to act as a credit servicer shall apply to the competent authority for authorisation to act as a credit servicer.

(2) An applicant shall submit to the competent authority an application for authorisation to act as a credit servicer. An applicant shall also provide all the information necessary for the competent authority to verify that the applicant has satisfied all the conditions set out in article 8.

(3) Without prejudice to the provisions of sub-article (2), the application referred to in the said sub-article (2) shall be accompanied by the following:

(a) evidence of the legal status of the applicant and a copy of its certificate of registration, and its memorandum and articles of association;

(b) the address of the applicant's registered office;

(c) the identity of the members of the applicant's management or administrative body and the persons who hold qualifying holdings in accordance with point (36) of Article 4(1) of the CRR;

(d) evidence that the applicant fulfils the conditions laid down in article 8(b) and (c);

(e) evidence that the persons who hold qualifying holdings in accordance with point (36) of Article 4(1) point (36) of the CRR fulfil the conditions laid down in article 8(d);

(f) evidence of the governance arrangements and internal control mechanisms referred to in article 8(e);

(g) evidence of the policy referred to in article 8(f);

(h) evidence of the internal procedures referred to in article 8(g);

(i) evidence of the procedures referred to in article 8(h);

(j) where relevant, evidence of the existence of a

separate account in a credit institution as provided for in article 8(j);

(k) any outsourcing agreement as referred to in article 13; and

(l) where the applicant does not intend to receive and hold funds from borrowers as part of its business model, a declaration to that effect.

(4) The competent authority shall, within forty-five (45) days of receipt of the application referred to in sub-article (2), assess whether that application is complete by ensuring that the information and documentation referred to in sub-article (3) have been submitted.

(5) Where the application referred to in sub-article (2) is not complete, the competent authority shall set a deadline by which the applicant is to provide the missing information. If the said application remains incomplete after the deadline referred to in this sub-article, the competent authority may refuse to review the application and, in the event of such refusal, shall return the submitted documents to the applicant.

(6) Where an application referred to in sub-article (2) is complete, the competent authority shall immediately notify the applicant thereof.

(7) The competent authority shall, within ninety (90) days of receipt of a complete application or, if the application is considered incomplete by the competent authority, of receipt of the required information and, or documentation, notify the applicant whether the authorisation to act as a credit servicer is granted or refused, and provide reasons for refusal.

(8) In granting an authorisation under this Act, the competent authority may subject a credit servicer to such conditions as it may deem appropriate and, having granted such an authorisation, it may, from time to time, vary or revoke any condition so imposed or impose new conditions, as applicable.

(9) A credit servicer intending to extend its business to additional services not foreseen at the time of the granting of the authorisation under this Act shall submit a request in writing for the extension of its licence to the competent authority by complementing and, or updating the information and documentation referred to in this Act, as applicable.

(10) The competent authority shall establish and maintain a list of

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all credit servicers authorised under this Act and all credit servicers authorised in any Member State other than Malta providing services in Malta under Article 13 of the NPL Directive. The competent authority shall publish the said list on its official website and shall update it on a regular basis.

Refusal of
authorisation.

8. The competent authority shall not grant an applicant authorisation as a credit servicer in accordance with this Act unless it is satisfied that:

(a) the applicant is a legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union and its registered office is in Malta;

(b) the members of the applicant's management or administrative body are of sufficiently good repute, which is demonstrated by proving that:

(i) they have a clean police record or any other national equivalent in relation to relevant criminal offences, in particular those relating to property, financial services and activities, money laundering, usuary, fraud, tax crimes, violation of professional secrecy or physical integrity, and also in relation to any other offences under laws relating to companies, bankruptcy, insolvency or consumer protection;

(ii) the cumulative effects of minor incidents do not impinge on their good repute;

(iii) they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;

(iv) they are not subject to any ongoing insolvency procedure nor have previously been declared bankrupt unless reinstated in accordance with the applicable law;

(c) the applicant's management or administrative body, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner;

(d) the persons who hold qualifying holdings in the applicant within the meaning of point (36) of Article 4(1) of the CRR are of sufficiently good repute, which is demonstrated by fulfilling the requirements set out in paragraph (b) of this article;

(e) the applicant has in place robust governance

arrangements and adequate internal control mechanisms, including risk management and accounting procedures, which ensure respect for borrower rights and compliance with the laws governing a creditor's rights under a credit agreement, or the credit agreement itself, and with the GDPR;

(f) the applicant applies an appropriate policy ensuring compliance with rules for the protection, and the fair and diligent treatment of borrowers, including by taking into account their financial situation and, where available, the need for such borrowers to be referred to debt advice or social services;

(g) the applicant has in place adequate and specific internal procedures that ensure the recording and handling of complaints from borrowers;

(h) the applicant has in place adequate anti-money laundering and counter terrorism financing procedures where the provisions of the Prevention of Money Laundering Act or in any regulations made thereunder, designate credit servicers as subject persons; Cap. 373.

(i) the applicant is subject, by virtue of applicable national law, to reporting and public disclosure requirements; and

(j) the applicant has a separate account in a credit institution into which all funds received from borrowers are to be credited and kept until their channelling to the respective credit purchaser, under the conditions agreed with the credit purchaser:

Provided that this paragraph shall not apply where the applicant does not intend to receive and hold funds from borrowers as part of its business model and provides the competent authority with a declaration to that effect in accordance with article 7(3)(1).

9. (1) The competent authority may at any time suspend or withdraw an authorisation granted to a credit servicer in accordance with this Act where any of the following applies to such a credit servicer: Suspension or withdrawal of authorisation.

(a) the credit servicer does not make use of the authorisation within twelve (12) months of its grant from the competent authority;

(b) the credit servicer expressly renounces to the authorisation;

(c) the credit servicer has ceased to engage in the activities of a credit servicer for more than twelve (12) months;

(d) the credit servicer has acquired an authorisation through false statements or other irregular means;

(e) the credit servicer no longer fulfils the requirements for the granting of such authorisation set out in article 8; and, or

(f) the credit servicer commits a serious infringement of any of the provisions of this Act or any regulations made thereunder, of Credit Servicing Rules or Conduct of Business Rules issued thereunder, and, or any other laws regulating consumer protection, including any applicable laws of the host Member State or of the Member State where the credit was granted.

(2) Where an authorisation is withdrawn in accordance with sub-article (1), the competent authority shall, where applicable, immediately inform the European regulatory authority of the host Member State in cases where the credit servicer provides services under regulations made under this Act, and also the European regulatory authority of the Member State where the credit was granted, when different from the host Member State and the home Member State.

(3) When an authorisation is withdrawn in accordance with sub-article (1), the competent authority shall update the list referred to in article 7(10) without delay.

Notification of proposed refusal, variation, suspension or withdrawal of an authorisation.

10. (1) Where the competent authority proposes:

(a) to vary any condition to which the authorisation is subject or to impose a condition thereon; or

(b) to refuse an application for an authorisation, or to withdraw or suspend an authorisation,

it shall give the applicant or the credit servicer, as applicable, notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1), shall state that the recipient of the notice may, within such reasonable period after the notification thereof as may be stated in the notice, make representations in writing to the competent authority indicating reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before

reaching a final decision.

(3) Without prejudice to the provisions of article 7(7), the competent authority shall as soon as practicable notify its final decision in writing to any person to whom notice is to be given in accordance with sub-article (1).

11. (1) When Malta is the home Member State, the competent authority shall evaluate, by applying a risk-based approach, the implementation by a credit servicer of the requirements set out in paragraphs (e) to (h) of article 8: Supervision of credit servicers.

Provided that the competent authority shall determine the extent of the evaluation referred to in this sub-article, having regard to the size, nature and complexity of the activities of the credit servicer concerned.

(2) The competent authority shall inform the European regulatory authority of the host Member State, or of the Member State where the credit was granted, when the latter is different from the host and the home Member State, of the results of the evaluation referred to in sub-article (1), upon request of any one (1) of the said European regulatory authorities, or where the competent authority considers it appropriate. The details of any administrative penalty or other administrative measures imposed shall be transmitted by the competent authority to the European regulatory authority of the host Member State and, where appropriate, of the Member State where the credit was granted, when the latter is different from the host and the home Member State.

(3) When carrying out the evaluation referred to in sub-article (1), the competent authority shall exchange information with the European regulatory authority of the host Member State, and of the Member State where the credit was granted, when the latter is different from the host and the home Member State, as is necessary to enable them to carry out their respective functions and duties laid down in the NPL Directive.

12. (1) When a credit servicer intends to receive and hold funds on behalf of borrowers as part of its business model in accordance with this Act, such funds shall, in accordance with the provisions of any applicable laws, be protected in the interest of the credit purchasers against the claims of the other creditors of the credit servicers, in particular in the event of insolvency. Ability to hold funds.

(2) When a credit servicer intends to receive and hold funds on behalf of borrowers as part of its business model in accordance with this Act, and a borrower makes a payment to that credit servicer in order to partially or totally reimburse the amounts due related to a

creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, that payment shall be deemed to have been paid to the credit purchaser.

(3) When a credit servicer intends to receive and hold funds on behalf of borrowers as part of its business model in accordance with this Act, that credit servicer shall be required to deliver a receipt or a letter of discharge to the borrower on paper or another durable medium, whenever the credit servicer receives funds from the borrower, acknowledging the amounts received.

(4) Credit service providers shall not be permitted to receive and hold funds from borrowers.

Outsourcing by
a credit servicer.

13. (1) When a credit servicer uses a credit service provider to perform any of the credit servicing activities, the credit servicer shall remain fully responsible for complying with all the obligations emanating from this Act, or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder.

(2) The outsourcing of any credit servicing activities as referred to in sub-article (1) shall be subject to all of the following conditions:

(a) the conclusion of a written outsourcing agreement between the credit servicer and the credit service provider under which the credit service provider shall be required to comply with the applicable legal provisions, including the provisions of this Act or any regulations made thereunder, Credit Servicing Rules and Conduct of Business Rules issued thereunder, and the relevant national and European Union law applicable to a creditor's rights under a credit agreement, or to the credit agreement itself;

(b) the outsourcing to a credit service provider of all credit servicing activities at the same time is prohibited;

(c) the contractual relationship between the credit servicer and the credit purchaser and the obligations of the credit servicer towards the credit purchaser or towards borrowers is not altered by the outsourcing agreement with the credit service provider;

(d) the compliance of a credit servicer with the authorisation requirements set out in article 8 is not affected by the outsourcing of some of its credit servicing activities;

(e) the outsourcing to the credit service provider does not prevent the supervision of the credit servicer by the

competent authority and, where applicable, the European regulatory authority of the host Member State and the Member State where the credit was granted, when the latter is different from the home Member State and the host Member State, in accordance with Article 5 and Article 14 of the NPL Directive, as applicable;

(f) the credit servicer has direct access to all relevant information concerning the credit servicing activities outsourced to the credit service provider;

(g) after the outsourcing agreement is terminated, the credit servicer has the expertise and resources to be able to provide the outsourced credit servicing activities; and

(h) the outsourcing of credit servicing activities shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, or the soundness or continuity of its credit servicing activities.

(3) Credit servicers shall inform the competent authority of the home Member State and, where applicable, of the host Member State, prior to outsourcing their credit servicing activities in accordance with this article.

(4) Credit servicers shall keep and maintain records of relevant instructions provided to the credit service provider, in accordance with the conditions provided for under applicable national law, and of the outsourcing agreement referred to in this article, for a period of at least five (5) years, but not more than ten (10) years, from the date on which the outsourcing agreement is terminated.

(5) Credit servicers and the credit service providers shall make the information referred to in sub-article (4) available to the competent authority upon request.

PART II CREDIT PURCHASERS

14. (1) Credit institutions shall provide a prospective credit purchaser with necessary information regarding a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and if applicable, the collateral in order to enable the prospective credit purchaser to conduct its own assessment of the value of the creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself, and the likelihood of recovery of the value of that agreement prior to entering into a contract for the transfer of that creditor's rights under the non-

Right to information.

performing credit agreement, or of the non-performing credit agreement itself, while ensuring the protection of information made available by the credit institution and of the confidentiality of business data.

(2) On a biannual basis, credit institutions that transfer to a credit purchaser a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, shall inform the competent authority and the European regulatory authority of the host Member State of at least the following:

(a) the company registration number;

(b) the legal entity identifier of the credit purchaser or, where applicable, of its representative designated in accordance with article 17, or where these do not exist of:

(i) the identity of the credit purchaser or of the members of the credit purchaser's management or administrative body and the persons who hold qualifying holdings in the credit purchaser within the meaning of Article 4(1)(36) of the CRR; and

(ii) the address and, or registered office of the credit purchaser or, where applicable, its representative designated in accordance with article 17;

(c) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;

(d) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred; and

(e) whether the transfer includes the creditor's rights under the non-performing credit agreements, or the non-performing credit agreements themselves, concluded with consumers and the types of assets securing the non-performing credit agreements, when applicable.

(3) The authorities referred to in sub-article (2), may require credit institutions to provide the information referred to in the said sub-article on a quarterly basis whenever they deem necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.

(4) Where Malta is the host Member State, the competent

authority shall communicate without delay the information referred to in sub-articles (2) and (3), and any other information that the competent authority may consider to be necessary for carrying out functions and duties in accordance with the NPL Directive, to the competent authorities of the home Member State of the credit purchaser.

(5) The provisions of this article shall be applied in accordance with the Data Protection Act and the GDPR.

Cap. 586.

15. (1) A credit purchaser that is domiciled or has its registered office in Malta shall appoint an entity as referred to in article 4(a)(i) or (iii) or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with consumers.

Obligations of
credit
purchasers.

(2) Without prejudice to the provisions of sub-article (1), when a credit purchaser domiciled in the European Union, or that has its registered office or, if under its national law it has no registered office, its head office in the European Union purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, concluded with a consumer domiciled in Malta, in addition to a creditor's rights under any other credit agreement, or any such other credit agreement itself, it shall appoint an entity as referred to in article 4(a)(i) or (iii) or a credit servicer, to perform credit servicing activities in respect of such creditors' rights, or such credit agreements themselves.

(3) When a credit purchaser is not domiciled in the European Union, or does not have its registered office, or if under its national law it has no registered office, its head office in the European Union, its designated representative shall appoint an entity as referred to in article 4(a)(i) or (iii), or a credit servicer, except in cases where the designated representative itself is an entity as referred to in article 4(a)(i) or (iii) or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with:

(a) natural persons, including consumers and independent workers; and, or

(b) micro, small and medium-sized enterprises (SMEs), as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC:

Provided that the provisions of this sub-article shall also apply when a credit purchaser as referred to in this sub-article purchases a

creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, concluded with a consumer domiciled in Malta, in addition to a creditor's rights under any other credit agreement, or any such other credit agreement itself.

(4) A credit purchaser shall not be subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, other than as provided for in accordance with this Act and any regulations made thereunder, or Credit Servicing Rules and Conduct of Business Rules issued thereunder, or by any applicable provisions of consumer protection law, contract law, civil law or criminal law.

(5) The relevant European Union law and national law concerning in particular the enforcement of contracts, consumer protection, borrowers' rights, credit origination, bank secrecy rules and criminal law shall continue to apply to the credit purchaser upon the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser.

(6) Without prejudice to any national and international laws on promissory notes and bills of exchange, the level of protection provided under European Union law and national law to consumers and other borrowers, as well as insolvency laws, shall not be affected by the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser.

(7) The provisions of this Act and of any regulations made thereunder, Credit Servicing Rules and Conduct of Business Rules issued thereunder shall be without prejudice to the power of the competent authority and any other national authority, agency and, or body at law to require information from credit purchasers regarding a creditor's rights under a credit agreement, or the credit agreement itself, and its performance.

(8) Credit purchasers shall be prohibited from engaging natural persons to service the credit agreements that they have acquired.

(9) A credit servicer or entity as referred to in article 4(a)(i) or (iii) appointed in terms of this article shall comply, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser under sub-articles (3) to (5) and articles 16 and 18. In cases where no credit servicer or entity as referred to in article 4(a)(i) or (iii) is appointed, the credit purchaser or its representative shall remain subject to those obligations.

(10) The competent authority may require that the credit servicer or entity as referred to in article 4(a)(i) or (iii) appointed in terms of this article complies, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser in accordance with national law, including this Act and any regulations made thereunder, Credit Servicing Rules and Conduct of Business Rules issued thereunder, and any law as referred to in sub-article (6).

16. (1) When the credit purchaser or, where applicable, its designated representative, appoints an entity referred to in article 4(a)(i) or (iii), or a credit servicer, to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, the credit purchaser or its representative shall inform the competent authority in writing of the identity and address of the said entity or credit servicer, at the latest on the date on which the credit servicing activities start.

Use of credit servicers or other entities.

(2) When the credit purchaser or, where applicable, its designated representative appoints an entity other than that notified in accordance with sub-article (1), it shall notify the competent authority thereof at the latest on the date of that change and shall indicate the identity and address of the new entity that it has appointed to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself.

(3) When Malta is the home Member State of the credit purchaser, the competent authority shall transmit without undue delay to the European regulatory authority of the host Member State, to the European regulatory authority of the Member State in which the credit was granted, and to the European regulatory authority of the home Member State of the new credit servicer, the information received in accordance with sub-articles (1) and (2).

17. (1) When a transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself is concluded, a credit purchaser:

Representative of a third-country credit purchaser.

(a) that is not domiciled in a Member State; or

(b) that does not have its registered office in a Member State or, if under its national law it has no registered office, its head office in a Member State, as the case may be,

shall designate in writing a representative that is domiciled in a Member State or that has its registered office in a Member State, or if under its national law it has no registered office, its head office in a

Member State.

(2) The competent authority shall address the representative referred to in sub-article (1) in addition to, or instead of, the credit purchaser on all issues related to the ongoing compliance with this Act and with any regulations made thereunder, and Credit Servicing Rules and Conduct of Business Rules issued thereunder.

(3) The representative referred to in sub-article (1) shall be fully responsible for compliance with the obligations imposed on the credit purchaser under this Act and under any regulations made thereunder, and Credit Servicing Rules and Conduct of Business Rules issued thereunder.

Transfer of a creditor's rights by a credit purchaser.

18. (1) When Malta is the home Member State, a credit purchaser or, where applicable, its designated representative, that transfers a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, shall inform the competent authority on a biannual basis of the legal entity identifier (LEI) of the new credit purchaser and, where applicable, of its designated representative or, where such identifier does not exist, of:

(a) the identity of the new credit purchaser or, where applicable, its designated representative, or of the members of the new credit purchaser's or its representative's management body and the persons who hold qualifying holdings in the new credit purchaser or its representative within the meaning of point (36) of Article 4(1) of the CRR; and

(b) the address of the new credit purchaser or, where applicable, of its designated representative.

(2) Without prejudice to the provisions of sub-article (1), where Malta is the home Member State, the credit purchaser or its designated representative shall inform the competent authority of at least the following:

(a) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements, or of the non-performing credit agreements transferred;

(b) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;

(c) whether the transfer includes a creditor's rights under a non-performing credit agreement, or a non-performing credit agreement itself, concluded with consumers and the types of

assets securing the non-performing credit agreement, when applicable.

(3) Where Malta is the home Member State, the competent authority may require credit purchasers or, where applicable, their designated representative to provide the information referred to in sub-articles (1) and (2), on a quarterly basis whenever the competent authority deems necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.

(4) Where Malta is the home Member State, the competent authority shall transmit without undue delay the information received in accordance with this article to the European regulatory authority of the host Member State and the European regulatory authority of the home Member State of the new credit purchaser.

PART III REGULATORY AND INVESTIGATIVE POWERS

19. (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:

Powers of the
Minister.

(a) provide for and regulate the payment by any person or body, as the case may be, of authorisation or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, including the fees and charges in respect of any permission, licence, authorisation, exemption or other benefit, as well as any fees and charges in respect of the competent authority's regulatory, supervisory or investigative functions under this Act and under any regulations made, Credit Servicing Rules and Conduct of Business Rules issued thereunder, as may be prescribed;

(b) exempt any person, service or activity from any one or more of the provisions of this Act, subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(c) transpose, implement and give effect to the provisions and requirements of the NPL Directive;

(d) transpose, implement and give effect to the

provisions and requirements of European Union Directives, European Union 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 authorised persons and others as may be specified therein. Regulations made under this paragraph, and strictly related to transpositions or implementations as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under such regulations, and insofar as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(e) assign powers and functions to the competent authority for the purposes of this Act, and provide for the exercise of such powers and the performance of such functions;

(f) provide for the establishment and imposition of administrative penalties and other administrative measures that the competent authority may impose on credit servicers, credit purchasers, designated representatives and any other persons as may be specified therein;

(g) prescribe that a breach of any regulations made under this Act may amount to a criminal offence as may be specified, and such regulations may impose punishments in respect of any breach, consisting of a fine (*multa*) not exceeding one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one (1) year or to both such fine and imprisonment. A higher fine (*multa*) may be imposed where deemed necessary or appropriate for any breach or failure of compliance with any European Union legislation or with any regulations made in accordance with this article to transpose or to give effect to any European Union legislation;

(h) prescribe anything which may be prescribed; and

(i) provide for any matter incidental to, or connected with any of the above.

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

(3) Where regulations have been made in terms of this article, the competent authority may issue Credit Servicing Rules and Conduct of Business Rules for the better carrying out and implementation of the provisions of any regulations made in terms of this Act.

(4) Regulations made under this Act and any amendment or revocation of such regulations may be published in the English language only.

(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

20. (1) The competent authority may, from time to time, issue, publish, amend or revoke Credit Servicing Rules and, or Conduct of Business Rules which shall be binding on all persons authorised by it or falling under its regulatory or supervisory functions, or any other persons, as may be specified therein.

Power to issue
Credit Servicing
Rules and
Conduct of
Business Rules.

(2) Without prejudice to the generality of sub-article (1), Credit Servicing Rules and, or Conduct of Business Rules, as applicable, issued by the competent authority may:

(a) lay down additional requirements and conditions in relation to persons authorised by it, seeking its approval, or falling under the regulatory or supervisory functions of the competent authority, their activities, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, financial and other resources, and related requirements, and any other matters as the competent authority may consider appropriate;

(b) provide for the statements and notices that shall be made or given for any purposes in regard to which the competent authority exercises supervisory or regulatory functions, and the form and contents thereof;

(c) prescribe the information that such persons are to submit to the competent authority;

(d) transpose, implement and give effect to the provisions and requirements of the NPL Directive;

(e) transpose, implement and give effect to the provisions and requirements of European Union legislation and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended

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from time to time, including any implementing measures that have been, or may be issued thereunder and relating to authorised persons and others as may be specified therein; and, or

(f) regulate any matter that is incidental to, or connected with any of the matters mentioned above as the competent authority may consider appropriate in the performance of its functions.

(3) Credit Servicing Rules and Conduct of Business Rules 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 Credit Servicing Rules and, or Conduct of Business Rules, as may also be so specified.

Power to issue directives.

21. (1) Without prejudice to any other powers conferred to the competent authority by this Act or by any other law, the competent authority may, whenever it deems necessary, give by notice in writing such directives as it may deem appropriate in the circumstances, and any person to whom the notice is given, shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or subsequent directives:

Provided that the competent authority may give any such directive even when an authorised person, for whatever reason, ceases to be so authorised in accordance with this Act:

Provided further that any directive issued in accordance with this article shall, unless the competent authority otherwise directs, continue to apply even when an authorised person, for whatever reason, ceases to be so authorised in accordance with this Act.

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

(3) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given in accordance with this article.

Power to require information.

22. (1) The competent authority may, at any time and by notice in writing, require the persons referred to in sub-article (2) 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, or documentation as it may require, including the power to require existing telephone and data traffic records;

(b) to furnish to the competent authority any information and, or documentation as it may require 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 reply to questions and provide such information and, or documentation as it may require;

(d) to provide the competent authority any assistance which it may require and which that person is reasonably able to provide.

(2) The following persons may be required by the competent authority to provide information, documentation and, or assistance as specified in sub-article (1):

(a) a credit servicer, an entity as referred to in article 4(a)(i) or (iii) appointed in terms of article 15, a credit purchaser, a credit service provider, a designated representative and any third party designated to perform functions in relation to the provision of services by such persons;

(b) the natural and, or legal persons that control any person referred to in paragraph (a) or are controlled by such person, both in the past and present, as well as past and present directors, managers, auditors, officers and other employees of such person, and any third party providing a service to such person; and, or

(c) any other person who appears to be in possession of any relevant information.

(3) A natural or legal person making information available to the competent authority in accordance with this article shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to the provision of such information and, or documentation.

(4) The competent authority may make and retain copies of any document furnished, provided or to which it has access in accordance with this article.

(5) Where the person required to provide information and, or

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documentation under this article does not have the relevant information and, or documentation, such person shall disclose to the competent authority where, to the best of his knowledge, that information and, or documentation may be available, and the competent authority may require any person, whether indicated as aforesaid or otherwise, who appears to the said authority to be in possession of such information and, or documentation to provide it as requested.

(6) A declaration and documentation provided in accordance with any requirement under this article may be used in evidence against the person making the declaration or providing the documentation as well as against any person to whom they relate.

Cap. 9.

(7) The provisions of this article shall not apply to information and, or documentation which is privileged in accordance with the provisions of article 642 of the Criminal Code.

(8) Where the competent authority has appointed a representative in accordance with sub-article (1)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers and functions conferred on the competent authority by this article and a requirement imposed by such person shall be deemed to have the same force and effect as a requirement imposed by the competent authority.

Power to
appoint
inspectors.

23. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector to investigate and report on the affairs of any persons referred to in article 22(2).

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

(a) may, if he deems it necessary or expedient for the purposes of an investigation, investigate the affairs of any person mentioned in sub-article (1);

(b) shall have and may exercise all the powers conferred on the competent authority by article 22, and any requirement imposed by the said inspector shall be deemed to be and have the same force and effect as a requirement imposed by the competent authority; and

(c) may, and if so directed by the competent authority shall, prepare and submit interim reports and, on the conclusion of his investigation, a final report to the competent authority.

(3) In appointing an inspector under sub-article (1), the competent authority may direct that the investigation shall be carried

out within such time and shall be limited to such specific or general matters as the competent authority may deem fit.

(4) For the purposes of this article, the inspectors may include an advocate, a person authorised to carry out the profession of accountant or auditor in accordance with the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function. Cap. 281.

(5) The competent authority shall have the power to order that all expenses of, and incidental to, an investigation carried out in accordance with this article shall be paid by the persons referred to in sub-article (1).

24. (1) Any officer, employee or agent of the competent authority, on producing proof of his authority, if required, shall have the power to enter any premises occupied by a person on whom a notice has been served in terms of article 22 or whose affairs are being investigated in terms of article 23, for the purpose of obtaining therefrom the information or documents required by that notice, or for the purpose of carrying out on-site inspections or investigations, and of exercising any of the powers conferred by the said articles. Right of entry.

(2) Where any officer, employee or agent of the competent authority has cause to believe that if the notice referred to in article 22 were to be served, it would not be complied with, or that any documents to which it may relate would be removed, tampered with or destroyed, such officer, employee or agent shall have the power on producing proof of his authority, if required, to enter any premises referred to in sub-article (1) for the purpose of obtaining therefrom any information or documents specified in the authority, being information or documents that may have been required in accordance to such notice as referred to in article 22.

(3) For the purposes of any action taken in accordance with 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 by law.

25. Without prejudice to any other power conferred upon it by this Act or any other law, the competent authority shall have the following powers: Powers of the competent authority.

(a) to grant or refuse an authorisation in accordance with articles 7 and 8;

(b) to withdraw or suspend an authorisation in accordance with article 9;

- (c) to prohibit any of the credit servicing activities;
- (d) to conduct on-site and off-site inspections;
- (e) to impose administrative penalties and other measures in accordance with article 26;
- (f) to review outsourcing agreements concluded between credit servicers and credit service providers in accordance with article 13;
- (g) to require credit servicers to remove any members of their management or administrative body when they fail to comply with the requirements set out in article 8(b);
- (h) to require credit servicers to modify or update their internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the laws governing the credit agreement;
- (i) to require credit servicers to modify or update their policies, plans and procedures adopted to ensure the fair and diligent treatment of borrowers, and the recording and handling of complaints from borrowers;
- (j) to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself; and
- (k) to require a credit servicer, credit service provider or credit purchaser or its designated representative that does not meet any of the requirements set out in this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder to take, at an early stage, all necessary actions or steps in order to comply with those requirements.

Administrative penalties and other measures.

26. (1) The competent authority may impose administrative penalties and other administrative measures as referred to in sub-article (3) where it deems that:

- (a) a person's conduct amounts to an infringement of any of the provisions of this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder;
- (b) a person has contravened or failed to comply with

any condition, obligation, requirement or directive made or issued by the competent authority in accordance with any of the provisions of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, including failure to co-operate with an investigation or an inspection or any request made by the competent authority in accordance with this Act.

(2) Without prejudice to the generality of sub-article (1), the competent authority may impose administrative penalties and other administrative measures as referred to in sub-article (3) where it deems that:

(a) a credit servicer enters into an outsourcing agreement infringing the provisions of article 13 or the credit service provider to whom the credit servicing activities were outsourced commits a serious infringement of the applicable legal provisions, including the provisions of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder;

(b) a credit servicer's governance arrangements and internal control mechanisms as set out in article 8(e) fail to ensure respect for borrower rights and compliance with personal data protection rules;

(c) a credit servicer's policy is inadequate for the proper treatment of borrowers as set out in article 8(f);

(d) a credit servicer's internal procedures as set out in article 8(g) fail to provide for the recording and handling of complaints from borrowers according to the obligations set out in this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder;

(e) a credit purchaser, or where applicable, its designated representative fails to communicate the information set out in articles 16 and 18;

(f) a credit purchaser or, where applicable, its designated representative fails to comply with the requirement of article 15;

(g) a credit purchaser fails to comply with the requirements of the provisions of article 17;

(h) a credit institution fails to communicate the information set out in article 14;

(i) a credit servicer allows one or more persons not complying with the requirements set out in article 8(b) to become or remain a member of its management or administrative organ;

(j) a credit servicer receives and holds funds from borrowers when it is not authorised to do so in accordance with this Act; and, or

(k) a credit servicer fails to comply with the requirements set out in article 12.

(3) Without prejudice to any other powers conferred to it by this Act or by any other law, the competent authority shall have the power to impose the following administrative penalties and measures for the infringements referred to in sub-articles (1) and (2):

(a) to withdraw or suspend an authorisation in accordance with article 9;

(b) to issue an order requiring the credit servicer or credit purchaser, or where applicable, its designated representative to remedy the infringement, and to cease such conduct and to desist from a repetition of said conduct; and, or

(c) to impose an administrative penalty which may not exceed one hundred and fifty thousand (€150,000) euro for each infringement or failure to comply, as the case may be.

(4) The administrative penalties and other administrative measures taken by the competent authority in terms of this article shall be effectively implemented.

Cap. 330.

(5) The provisions of article 16(4) of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, with respect to any administrative penalty imposed by the competent authority in terms of this article.

(6) In the case of administrative penalties or other administrative measures imposed by the competent authority in accordance with the provisions of this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, the competent authority shall take into account relevant circumstances, including where appropriate:

(a) the gravity and the duration of the infringement;

(b) the degree of responsibility of the credit servicer or

credit purchaser, or where applicable, its designated representative responsible for the infringement;

(c) the financial strength of the credit servicer or credit purchaser responsible for the infringement, including by reference to the total turnover of a legal person or the annual income of a natural person;

(d) the importance of profits gained or losses avoided because of the infringement by the credit servicer or credit purchaser or, where applicable, its designated representative responsible for the infringement, insofar as those profits or losses can be determined;

(e) the losses caused to third parties by the infringement, insofar as those losses can be determined;

(f) the level of cooperation by the credit servicer or credit purchaser responsible for the infringement with the competent authority;

(g) previous infringements by the credit servicer or credit purchaser or, where applicable, its designated representative responsible for the infringement;

(h) any actual or potential systemic consequences of the infringement.

(7) Without prejudice to the provisions of this article, where obligations imposed in terms of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder apply to a legal person, in the event of an infringement of any provision thereof, administrative penalties and other measures may also be imposed, subject to the conditions laid down in national law, on the members of the management or administrative body of the legal entity concerned, and on other individuals who are responsible for the infringement under national law.

(8) The imposition by the competent authority of an administrative penalty or any other administrative measure in terms of this article shall be without prejudice to any other consequence emanating from the act or omission of the offender in terms of civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty or any other administrative measure

in respect of anything done or omitted to be done by any person, and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

Notice of administrative penalties and remedial measures.

27. (1) If the competent authority proposes to impose an administrative penalty or any other measure on any person in accordance with article 26, it shall give a notice in writing of its intention to do so, specifying the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall specify that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice, make representations in writing to the competent authority specifying the reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before reaching a final decision.

(3) The competent authority shall as soon as practicable notify its final decision in writing to any person to whom notice is to be given in accordance with sub-article (1).

Publication of decisions.

28. (1) The competent authority shall publish any decision imposing an administrative penalty or any other measure, in accordance with the provisions of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, on its website immediately after the person subject to that decision has been informed of that decision.

(2) The information published in accordance with sub-article (1) shall specify the type and nature of the breach, the identity of the person subject to the decision and any other information which the competent authority deems relevant.

(3) The provisions of sub-articles (1) and (2) shall not apply to decisions of the competent authority imposing measures that are of an investigatory nature.

(4) Where the competent authority deems, following a case by case assessment, that the publication of the identity of the legal person subject to the decision, or the identity or personal data of a natural person would be disproportionate, or where such publication may jeopardise an ongoing investigation, the competent authority shall:

(a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;

(b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned:

Provided that in this case, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision to impose a penalty or measure in the event that the options laid down in paragraphs (a) and (b) are considered to be insufficient to ensure the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

(5) Where the decision is subject to an appeal before a national judicial, administrative or other authority, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a decision subject to appeal shall also be published.

(6) Any decision that is published in accordance with this article shall remain accessible on the website of the competent authority for a period of at least five (5) years after its publication:

Provided that personal data contained in any such decision shall only be retained on the website of the competent authority for as long as is necessary for the purposes of public interest and transparency.

PART IV APPEALS, OFFENCES AND CONFIDENTIALITY

29. (1) For the purposes of this article, the Financial Services Tribunal means the Tribunal established by article 21 of the Malta Financial Services Authority Act. Appeals.
Cap. 330.

(2) Any person who feels aggrieved by a decision of the competent authority in terms of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued, thereunder may appeal against such decision to the Tribunal within such period and under such conditions as are laid down in article 21 of the Malta Financial Services Authority Act. Cap. 330.

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Cap. 330. (3) Without prejudice to the provisions of sub-article (2), any person who feels aggrieved by the competent authority's failure to take a decision in respect of an application for authorisation which contains all the information required in accordance with this Act within the time limit provided for in article 7(4), may appeal against such failure to decide to the Tribunal within such period and under such conditions as laid down in article 21 of the Malta Financial Services Authority Act.

(4) An appeal against a decision of the competent authority shall not suspend the operation of that decision:

Provided that a decision of the competent authority to withdraw the authorisation of a credit servicer shall not become effective until the expiration of the period within which an appeal is filed under this article and, in the case that an appeal is filed within such period, the decision shall become effective on the date of the decision of the Tribunal dismissing the appeal, or on the date on which the appeal is abandoned, whichever is the earliest.

Cap. 330. (5) Subject to the provisions of this article, the provisions of article 21 of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, to appeals that may be brought before the Tribunal in accordance with this article.

Offences. **30.** (1) Any person who:

(a) contravenes or fails to comply with any of the provisions of articles 6(1) or (2), 21(1), 22(1), 22(5) or 31(1), or of article 22(1) or 22(5) as applied in terms of article 23; or

(b) contravenes or fails to comply with any condition, obligation, requirement, directive or order made or given in accordance with any of the provisions of this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder; or

(c) for the purposes of, or in accordance with, any of the provisions of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a declaration which is inaccurate, false or misleading in any material respect; or

(d) with intent to avoid detection of the commission of

an offence in accordance with this Act, removes, destroys, conceals or fraudulently alters any book, document or other paper; or

(e) intentionally obstructs a person exercising rights or powers conferred by this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder,

shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding one (1) year, or to a fine (*multa*) not exceeding one hundred and fifty thousand euro (€150,000), or to both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed in regulations made under the Act.

(2) The provisions of this Act or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, shall be without prejudice to any criminal proceedings that may be competent under any other law.

31. (1) Information obtained by the competent authority or by its officers, employees or agents, whether current or former, or by inspectors, auditors and experts formerly or currently engaged by the competent authority for the purposes of, or in accordance with, any of the provisions of this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, or in the discharge of any functions under any of the said provisions, or by any other person who works, or has worked for the competent authority, or for any third party to whom the competent authority has delegated any of its functions or powers, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases: Confidentiality.

(a) where the authority, body or person communicating the information to the competent authority consents thereto;

(b) where the disclosure of the information is necessary for any legal proceedings;

(c) where the information is provided to such other local or European or overseas regulatory, judicial or enforcement authorities in the pursuance of serious concerns of a regulatory or criminal nature; and, or

(d) where the disclosure of the information is permitted or required by law or European Union legislation.

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(2) The information referred to in sub-article (1) shall include all information exchanged between the competent authority and European regulatory authorities in accordance with this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder that concerns business or operational conditions and other economic or personal affairs.

Personal data protection.

Cap. 586.

32. The processing of personal data for the purposes of this Act, or in any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder shall be carried out in accordance with the Data Protection Act, GDPR and Regulation (EU) 2018/1725.

PART V COOPERATION WITH OTHER AUTHORITIES

Cooperation with European regulatory authorities.

33. (1) The competent authority shall cooperate with European regulatory authorities whenever necessary for the purpose of carrying out the functions and duties or of exercising the powers assigned to the competent authority and the said European regulatory authorities under the NPL Directive, as transposed in national law.

(2) The competent authority shall, on request and without undue delay, provide the European regulatory authorities referred to in sub-article (1) with the information required for the purpose of carrying out their functions and duties under the NPL Directive, as transposed in national law.

(3) When the competent authority receives any confidential information in the exercise of its functions and duties in accordance with this Act or any regulations made thereunder, or Credit Servicing Rules or Conduct of Business Rules issued thereunder, the competent authority shall only use that information in the course of the said functions and duties. The exchange of information between the competent authority and the other European regulatory authorities as referred to in sub-article (1) shall be subject to the obligation of professional secrecy referred to in Article 76 of MiFID.

(4) The competent authority shall implement the necessary administrative and organisational measures to facilitate the cooperation referred to in sub-article (1).

PART VI AMENDMENTS TO THE INSURANCE BUSINESS ACT

Amendments to the Insurance Business Act. Cap. 403.

34. (1) This Part amends the Insurance Business Act and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as the "principal Act".

(2) This Part shall come into force on such date or dates as the Minister responsible for the regulation of financial services may by notice in the Gazette establish, and different dates may be so established for different provisions and, or purposes of this Part.

35. In sub-article (1) of article 2 of the principal Act, immediately after the definition "motor vehicle", there shall be added the following new definition: Amendment of article 2 of the principal Act.

" "motor vehicle liability insurance business" means the business of insurance in class 10 as specified in Part I of the Third Schedule;"

36. Article 49 of the principal Act shall be substituted by the following new article: Substitution of article 49 of the principal Act.

"Establishment of the Protection and Compensation Fund.

49. (1) There shall be established a fund, as may be prescribed, which shall be known as the "Protection and Compensation Fund":

(a) for the payment of any claims in respect of:

(i) risks and commitments against an insurance undertaking carrying on business of insurance in Malta, as may be prescribed under the Insurance Business (Protection and Compensation Fund) Regulations, remaining unpaid by reason of the insolvency of such undertaking, subject to such limitations, restrictions and exclusions as may be prescribed by the said regulations; and

(ii) risks related to motor vehicle liability insurance business against an insurance undertaking carrying on motor vehicle liability insurance business from Malta, as may be prescribed in accordance with the Insurance Business (Protection and Compensation Fund) Regulations, remaining unpaid by reason of the insolvency of such undertaking, subject to such limitations, restrictions and exclusions as may be prescribed by the said regulations; and

(b) for the payment of compensation to victims of road traffic accidents as may be prescribed subject to such limitations and restrictions as may be prescribed.

(2) Without prejudice to the provisions of this Act and of any regulations issued thereunder, the Protection and Compensation Fund shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, whether of borrowing or if otherwise incurring indebtedness for the purposes of its functions, acquiring, holding and disposing of any kind of property for the purposes of its functions; of suing or being sued, doing all such matters and entering into all such negotiations, transactions and agreements as are incidental or conducive to the exercise or performance of its functions. Without prejudice to the generality of the foregoing, the Protection and Compensation Fund shall for this purpose have the power to enter into such reasonable administrative, management or other arrangements as may be necessary to enable it to fulfil its objectives and functions under this Act and under the Insurance Business (Protection and Compensation Fund) Regulations, including to become a party to the agreement referred to in regulation 10A of the Insurance Business (General Provisions of Supervision) Regulations, and to delegate to any body or person any of its functions as the Management Committee appointed in accordance with the Insurance Business (Protection and Compensation Fund) Regulations deems necessary."

S.L. 403.24.

Amendment of article 50 of the principal Act.

37. Article 50 of the principal Act shall be amended as follows:

(a) the marginal note thereof shall be substituted by the following new marginal note:

"Contributions to the Protection and Compensation Fund.";

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

"(1) The Protection and Compensation Fund shall comprise of different funds as may be prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, of all contributions made thereto in accordance with this Act and any regulations made thereunder, and of all other assets and revenues pertaining to it. The assets of every fund shall be kept separate and separately identifiable from the assets of the other Funds, as may be prescribed in the said regulations.";

(c) in sub-article (2) thereof the words "the Fund" shall be substituted by the words "the Protection and Compensation Fund"; and

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

"(3) Insurance undertakings which carry on motor vehicle liability insurance business from Malta, as may prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, shall contribute to the Protection and Compensation Fund in such amounts and to such limitations, as may be prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, and different amounts and limitations may so apply as may be prescribed in the said regulations."

38. Article 51 of the principal Act shall be amended as follows:

Amendment of article 51 of the principal Act.

(a) the marginal note thereof shall be substituted by the following new marginal note:

"Management of the Protection and Compensation Fund.";

(b) article 51 shall be renumbered as article 51(1);

(c) the provisos thereof shall be substituted by the following new proviso:

"Provided that such regulations shall ensure that:

(a) payments made into the Protection and Compensation Fund by undertakings to carry on long term business in Malta shall be utilised for compensation with respect to long term business, and shall be treated separately and utilised exclusively for compensation of claims relating to long term business;

(b) payments made into the Protection and Compensation Fund by undertakings to carry on general business in Malta shall be treated separately, and shall be utilised exclusively for compensation of claims relating to general business:

Provided that payments made into the Protection and Compensation Fund by undertakings carrying on motor vehicle liability insurance business in Malta, on or after the initiation date as defined herein, shall be treated separately from general business, and shall be utilised exclusively for compensation of claims relating to such motor vehicle liability insurance business carried on in Malta, on or after such date; and

(c) payments made into the Protection and Compensation Fund by undertakings carrying on motor vehicle liability insurance business from Malta shall also be treated separately and shall be utilised exclusively for compensation of claims relating motor vehicle liability insurance business carried on from Malta.";

(d) immediately after sub-article (1), as amended, there shall be added the following new sub-article:

"(2) For the purposes of this article, "initiation date" means:

(a) the date of the entry into force of the agreement referred to in the first sub-paragraph of Article 10a(13) and the first sub-paragraph of Article 25a(13) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability, as amended from time to time; or

(b) the date of application of the Commission delegated act referred to in the fourth sub-paragraph of Article 10a(13) and the fourth sub-paragraph of Article 25a(13) of the said Directive mentioned in paragraph (a),

whichever is the earlier."

Amendment of article 52 of the principal Act.

39. Article 52 of the principal Act shall be amended as follows:

(a) the words "the Fund" shall be substituted by the words "the Protection and Compensation Fund";

(b) paragraph (a) thereof shall be substituted by the

following new paragraph:

Cap. 386. "(a) with respect to a claim in accordance with article 49(a)(i), within two years from the date that the name of the undertaking is struck off the register established in the Companies Act or such undertaking is otherwise definitely wound up, in those circumstances only where compensation would be due from Fund A;"

(c) immediately after paragraph (a) thereof, as substituted, there shall be added the following new paragraph:

"(aa) with respect to a claim in accordance with article 49(a)(ii), within the period and in the manner prescribed by the Insurance Business (Protection and Compensation Fund) Regulations;" and

(d) paragraph (b) thereof shall be substituted by the following new paragraph:

"(b) with respect a claim in accordance with article 49(b), within two years from the date of occurrence of the accident relating to that claim:

Provided that for the purposes of this article, the words "Fund A" shall have the same meaning as assigned to them under the Insurance Business (Protection and Compensation Fund) Regulations."

40. In article 53 of the principal Act the words "and any income of any funds belonging to the Fund shall be exempted" shall be substituted by the words "and any income and assets belonging to the Protection and Compensation Fund shall be exempted".

Amendment of article 53 of the principal Act.

PART VII AMENDMENTS TO THE INVESTMENT SERVICES ACT

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

Amendments to the Investment Services Act.
Cap. 370.

42. Immediately after paragraph (o) of sub-article (1) of article 12

Amendment of article 12 of the principal Act.

of the principal Act there shall be added the following new paragraph:

Cap. 386. "(oa) establish and regulate limited partnerships not having legal personality, and which the deed of partnership thereof expressly limits their object either to the collective investment of their funds in securities and in other movable and immovable property, or in any of them, with the aim of giving the partners the benefit of the results of the management of their funds, and to matters ancillary or incidental thereto, and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of this Act; and shall be distinct from limited partnerships as set out within the provisions of the Companies Act. Regulations made under this paragraph may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that insofar as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;"

Passed by the House of Representatives at Sitting No. 258 of the 15th July, 2024.

ANĠLU FARRUGIA
Speaker

ELEANOR SCERRI
Clerk of the House of Representatives