

ABBOZZ TA' LIĠI
msejjah

ATT li jemenda l-Att dwar l-Istituzzjonijiet Finanzjarji (Kap. 376.).

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

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att ta' l-2007 li jemenda l-Att dwar Istituzzjonijiet Finanzjarji, u għandu jinqara u jiftiehem haġa waħda ma' l-Att dwar Istituzzjonijiet Finanzjarji, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor
u bidu fis-sehh.
Kap. 376.

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jiġu fis-sehh f'dik id-data jew dati li l-Ministru tal-Finanzi jista', b'avviż fil-Gazzetta, jistabbilixxa, u u jistgħu jiġu stabbiliti dati differenti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. L-artikolu 2 ta' l-Att prinċipali jiġi emendat kif ġej:

Emenda ta' l-
artikolu 2 ta' l-
Att prinċipali.

(a) id-disposizzjoni preżenti għandha tiġi enumerata mill-ġdid bhala s-subartikolu (1) tiegħu;

(b) fis-subartikolu (1), kif enumerat mill-ġdid, tiegħu:

(i) minnufih wara t-tifsira "awtorità kompetenti", għandha tiżdied it-tifsira ġdida li ġejja:

"awtorità regolatorja barranija" tfisser awtorità li f'pajjiż jew territorju barra Malta teżerċita kull funzjoni li taqbel mal-funzjonijiet ta' l-awtorità kompetenti taht dan l-Att;"

(ii) minnufih wara t-tifsira "Bank Ċentrali", għandha tiżdied it-tifsira ġdida li ġejja:

"Direttiva" tfisser id-Direttiva tal-Parlament Ewropew u tal-Kunsill dwar hlas għal servizzi fis-suq intern skond kif emendata minn żmien għal żmien u tinkludi kull miżuri ta' implimentazzjoni li saru jew jistgħu isiru taħtha;"

(iii) it-tifsira ta' "fergħa" għandha tiġi sostitwita bit-tifsira ġdida li ġejja:

"fergħa" tfisser post ta' negozju li ma jkollux personalità ġuridika u li jkun post iehor barra mill-uffiċċju prinċipali li jkun parti minn istituzzjoni finanzjarja, u minn fejn isiru xi wħud jew it-transazzjonijiet kollha inerenti fin-negozju ta' istituzzjoni finanzjarja;"

(iv) it-tifsira "istituzzjoni finanzjarja" għandha tiġi sostitwita bit-tifsira ġdida li ġejja:

" "istituzzjoni finanzjarja" tfisser kull persuna li regolarment jew abitwalment takkwista ishma jew tidħol għat-twettiq ta' xi attività msemmija f'xi waħda mill-Iskedi ta' dan l-Att:

Iżda dawk l-attivitajiet ma jkunux finanzjati billi jittiehdu depożiti jew fondi oħra li jithallsu lura mill-pubbliku kif imfisser fl-Att dwar il-Kummerċ Bankarju:

Iżda wkoll dan l-Att ma għandux japplika għal xi waħda mill-attivitajiet regolati taħt l-Att dwar Servizzi ta' Investiment;"

(v) minnufih wara t-tifsira "istituzzjoni finanzjarja", għandha tiżdied it-tifsira ġdida li ġejja:

"istituzzjonijiet ta' hlasijiet" għandha t-tifsira mogħtija lilha bl-artikolu 11A;" u

(vi) minnufih wara t-tifsira "rikostruzzjoni", għandhom jiżdiedu t-tifsiriet ġodda li ġejjin:

" "Stat Membru" tfisser Stat Membru tal-Komunitajiet Ewropej;

"Stat ŻEE" tfisser Stat li huwa parti kontraenti għall-ftehim dwar iż-Żona Ekonomika Ewropea iffirmit f'Oporto fit-2 ta' Mejju, 1992 kif emendat bil-Protokoll iffirmit fi Brussel fis-17 ta' Marzu, 1993 u kif emendat b'kull att li jiġi wara;" u

(ċ) minnufih wara s-subartikolu (1), kif enumerat mill-ġdid, tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(2) F'dan l-Att u f'kull regolament magħmul bis-saħħa tiegħu, jekk ikun hemm konflitt bejn it-test Inġliż u dak Malti, jipprevali t-test Inġliż."

3. L-artikolu 5 ta' l-Att prinċipali jiġi emendat kif ġej:

Emenda ta' l-artikolu 5 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu:

(i) il-paragrafu (d) għandu jiġi enumerat mill-ġdid bħala l-paragrafu (e);

(ii) minnufih wara l-paragrafu (ċ) tiegħu għandu jiżdied il-paragrafu ġdid li ġej:

"(d) l-awtorità kompetenti tkun sodisfatta li l-istituzzjoni finanzjarja għandha tmexxija soda u bil-għaqal, u għandha arrangamenti b'saħħithom ta' governanza, li fihom tidhol struttura ċara ta' organizzazzjoni b'limiti ta' responsabilità mfissra b'mod tajjeb, trasparenti u konsistenti, proċessi effettivi biex jiġu identifikati, immexxija, kontrollati u rrapurtati r-riskji li għalihom tkun jew tista' tkun esposta, u mekkaniżmi suffiċjenti għall-kontroll intern, inkluż proċeduri tajba amministrattivi u ta' konteġġ:

Iżda dawk l-arrangamenti, proċeduri u mekkaniżmi għandhom ikunu komprensivi u proporzjonati għax-xorta, livell u kompleksità tas-servizzi provduti mill-istituzzjoni;"

(iii) il-proviżo tal-paragrafu (e) kif enumerat mill-ġdid għandu jiġi sostitwit bil-proviżo ġdid li ġej:

"Iżda -

(i) fir-rigward tal-paragrafi (a), (b) u (ċ), jekk l-applikant tkun istituzzjoni finanzjarja liċenzjata jew li jkollha fil-pussess tagħha awtorizzazzjoni

ekwivalenti f'pajjiż ieħor, ikollha l-uffiċċju prinċipali tagħha fl-istess pajjiż fejn tkun reġistrata u, jew liċenzjata;

(ii) fir-rigward tal-paragrafu (e), il-kumpannija għandha, wara li tkun mogħtija liċenza taħt dan l-Att, tgħarraf minnufih lill-awtorità kompetenti b'kull bdil fiċ-ċirkostanzi li jirrigwardaw l-applikazzjoni ta' l-imsemmi paragrafu (e) u tkun barra minn hekk mitluba li ttiprovdi lill-awtorità kompetenti bit-tagħrif meħtieġ sabiex isir monitoraġġ fuq il-ħarsien tal-kondizzjonijiet imsemmija fl-imsemmi paragrafu (e) fuq bażi kontinwa.";

(b) is-subartikolu (4) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(4) (a) Meta tagħti liċenza l-awtorità kompetenti tista' timponi fuq l-istituzzjoni finanzjarja dawk il-kondizzjonijiet li tqies xierqa u wara li tkun tat liċenza tista', minn żmien għal żmien, tbiddel jew tħassar kull kondizzjoni hekk imposta jew timponi kondizzjonijiet ġodda.

(b) Sabiex id-disposizzjonijiet ta' dan l-Att jiġu implimentati aħjar, l-awtorità kompetenti tista', minn żmien għal żmien, toħroġ u tippubblika Regoli li jorbtu lid-detenturi ta' liċenza u oħrajn skond kif jista' jkun speċifikat f'dawk ir-Regoli. Dawk ir-Regoli jistgħu jimponu htigiet u kondizzjonijiet addizzjonali fir-rigward ta' l-attivitajiet tad-detenturi tal-liċenza, l-imġiba fin-negozju tagħhom, ir-relazzjonijiet tagħhom mal-klijenti, il-pubbliku u partijiet oħra, ir-responsabilitajiet tagħhom lejn l-awtorità kompetenti, htigiet ta' rappurtar u kull aspett ieħor skond kif l-awtorità kompetenti tista' tqies xieraq.";

(ċ) is-subartikolu (6) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (7);

(d) minnufih wara s-subartikolu (5) tiegħu għandu jiżded is-subartikolu ġdid li ġej:

"(6) Meta istituzzjoni finanzjarja tkun liċenzjata biex tagħti xi servizz imsemmi fl-Iskedi, u

fl-istess waqt tidhol f'attivitajiet ta' negozju mhux imsemmija fl-Iskedi, l-awtorità kompetenti tista' titlob ghat-twaqqif ta' entità separata, meta s-servizzi l-oħra jfixklu jew jheddu li jfiklu jew is-sura finanzjarja ta' l-istituzzjoni jew il-hila tal-awtorità kompetenti li twettaq monitoraġġ fuq il-harsien ta' l-osservanza min-naħa ta' l-istituzzjoni finanzjarja tad-dmirijiet kollha stabiliti f'dan l-Att jew f'kull regolament jew Regola magħmula bis-saħħa ta' dan l-Att."

4. L-artikolu 6 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 6 ta' l-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(1) Liċenza awtomatikament tiegħi mill-
jkollha effett jekk id-detentur tal-liċenza -

(a) jirrinunzja għal-liċenza, jew

(b) ma jibdiex il-kummerċ bis-saħħa tal-liċenza fi żmien tnax-il xahar mill-ħruġ tagħha, jew f'dak il-perijodu ieħor ta' żmien li jista' jkun speċifikat fil-liċenza; jew

(ċ) ikun akkwista l-liċenza permezz ta' dikjarazzjonijiet foloz jew kull mezz ieħor irregolari; jew

(d) jiġi dikjarat fallut jew jibda likwidazzjoni jew jagħmel ftehim mal-kredituri jew ikun xort'oħra xolt; jew

(e) ma jkunx baqa' jaħdem bħala riżultat ta' *merger* ma' istituzzjoni finanzjarja oħra; jew

(f) ikun fergħa ta' istituzzjoni finanzjarja inkorporata barra minn Malta u l-awtoritajiet kompetenti fil-pajjiż ta' inkorporazzjoni jirtiraw l-awtorizzazzjoni lil dik l-istituzzjoni.";

(b) fis-subartikolu (2) tiegħu:

(i) fil-paragrafu (b), minflok il-kliem "f'Malta għal aktar minn tliet xhur;", għandhom jidhlu l-kliem "f'Malta għal aktar minn tnax-il xahar;"

(ii) fil-paragrafu (g), minflok il-kliem "l-integrità tas-sistema finanzjarja tal-pajjiż tkun mhedda.", għandhom jidhlu l-kliem "ser ikun hemm theddida għall-istabilità tas-sistema finanzjarja f'Malta.";

(ċ) fis-subartikolu (3) tiegħu minflok il-kliem "id-disposizzjonijiet ta' dan l-Att u l-kundizzjonijiet,", għandhom jidhlu l-kliem "id-disposizzjonijiet ta' dan l-Att jew kull regolament u Regola magħmula bis-saħħa ta' dan l-Att u l-kundizzjonijiet,"; u

(d) fis-subartikolu (6) tiegħu, minflok il-kliem "għandha tavża lill-awtoritajiet kompetenti", għandhom jidhlu l-kliem "għandha tavża lill-awtoritajiet regolatorji barranin".

Emenda ta' l-artikolu 8 ta' l-Att prinċipali.

5. Minnufih wara s-subartikolu (2) tal-artikolu 8 ta' l-Att prinċipali, għandu jiżdied is-subartikolu ġdid li ġej:

"(3) Meta l-awtorità kompetenti ikollha bażi raġonevoli biex tissuspetta li, permezz ta' dik il-fergħa, qed jitwettaq jew ġie mwettaq jew sar attentat għat-twettiq ta' riċiklaġġ ta' flus jew finanzjament tat-terroriżmu, skond it-tifsira tad-Direttiva tal-Kunsill 2005/60/KE, jew li l-funzjoni ta' dik il-fergħa tista' tkabbar ir-riskju ta' riċiklaġġ ta' flus jew ta' finanzjament tat-terroriżmu, hija għandha tgharraf lill-Istat Membru jew Stat ŻEE fejn hija stabilita l-istituzzjoni finanzjarja, li jista' jirrifjuta li jirreġistra l-fergħa, jew li jista' jnehhi r-registrazzjoni tal-fergħa."

Emenda ta' l-artikolu 8A ta' l-Att prinċipali.

6. L-artikolu 8A ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu minflok il-kliem "ta' l-awtorità kompetenti;" għandhom jidhlu l-kliem "ta' l-awtorità kompetenti wara li tkun għaddiet kull tagħrif li l-awtorità kompetenti tista' titlob;"

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

(ċ) minnufih wara s-subartikolu (1) għandu jiżdied is-subartikolu ġdid li ġej:

"(2) Meta l-istituzzjoni finanzjarja liċenzjata jew li jkollha fil-pussess tagħha awtorizzazzjoni ekwivalenti fi Stat Membru ieħor jew fi Stat ŻEE twettaq attivitajiet f'Malta billi tahtar aġent, l-istituzzjoni finanzjarja għandha

thares il-proċeduri stabbiliti f'Regola għal Istituzzjoni Finanzjarja:

Iżda jekk l-awtorità kompetenti ikollha bażi raġonevoli biex tissuspetta li, permezz ta' dak l-aġent, qed jitwettaq jew ġie mwettaq jew sar attentat għat-twertiq ta' riċiklaġġ ta' flus jew finanzjament tat-terroriżmu, skond it-tifsira tad-Direttiva tal-Kunsill 2005/60/KE, jew li l-hatra ta' dak l-aġent tista' tkabbar ir-riskju ta' riċiklaġġ ta' flus jew ta' finanzjament tat-terroriżmu, hija għandha tgharraf lill-Istat Membru jew Stat ŻEE fejn hija stabilita l-istituzzjoni finanzjarja, li jista' jirrifjuta li jirreġistra l-aġent, jew li jista' jneħhi r-reġistrazzjoni ta' l-aġent."

7. L-artikolu 9 ta' l-Att prinċipali qed jiġi emendat kif ġej:

Emenda ta' l-artikolu 9 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu minflok il-kliem "imposta taħt dan l-Att,", għandhom jidhlu l-kliem "imposta taħt dan l-Att jew taħt kull regolament u Regola maħruġa taħt dan l-Att,;" u

(b) fis-subartikolu (2) tiegħu minflok il-kliem "id-disposizzjonijiet ta' dan l-Att.", għandhom jidhlu l-kliem "id-disposizzjonijiet ta' dan l-Att jew ta' kull regolament u Regola maħruġa taħt dan l-Att."

8. Minnufih wara l-artikolu 11 ta' l-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej:

Żieda ta' artikolu ġdid fl-Att prinċipali.

"Istituzzjonijiet Finanzjarji li jidhlu f'attivitajiet ta' servizzi ta' hlasijiet.

11A. (1) Dan l-artikolu japplika għal istituzzjoni finanzjarja li tidhol f'attivitajiet ta' servizzi ta' hlasijiet skond it-tifsira tat-Tieni Skeda.

(2) Għall-finijiet ta' dan l-artikolu u tat-Tieni Skeda, istituzzjoni finanzjarja li tipprovdi servizzi ta' hlasijiet tissejjaħ istituzzjoni ta' hlasijiet.

(3) Istituzzjoni ta' hlasijiet tiġi regolata b'dan l-artikolu, bit-Tieni Skeda u, sakemm ma hemmx provdut xort'ohra fl-imsemmija Skeda, bid-disposizzjonijiet l-oħra ta' dan l-Att.

(4) Il-Ministru, li jaġixxi fuq il-parir ta' l-awtorità kompetenti, jista' jagħmel regolamenti għall-aħjar implimentazzjoni ta' kull waħda mid-disposizzjonijiet tat-Tieni Skeda u jista', bla ħsara għall-ġeneralità ta' dak hawn fuq imsemmi, b'dawk ir-regolamenti jipprovdi għal xi wieħed mill-aspetti li ġejjin:

(a) biex jiġi regolat l-ghoti ta' liċenzi lil dawk l-istituzzjonijiet ta' hlasijiet u kull aspekt inċidentali għalih;

(b) biex jemenda kul tifsira stabbilita fit-Tieni Skeda;

(c) biex jirregola kull aspekt li għandu jiġi preskritt taħt dan l-Att fir-rigward ta' dawk l-istituzzjonijiet ta' hlasijiet;

(d) biex jippreskrivi d-drittijiet li għandhom jithallsu minn istituzzjonijiet ta' hlasijiet taħt dan l-Att;

(e) biex jeżenta kull istituzzjoni ta' hlasijiet jew kull kategorija minnhom minn kull disposizzjoni tat-Tieni Skeda jew ta' dan l-Att, skond il-każ, bla ħsara għal dawk il-modifiki, bdil u kondizzjonijiet kif jistgħu jiġu speċifikati;

(f) biex tiġi regolata l-libertà ta' l-istabbiliment u l-libertà li jingħataw servizzi minn dawk l-istituzzjonijiet liċenzjati taħt dan l-Att matul il-Komunità;

(g) biex jiġu trasposti, implimentati u jingħataw effett lill-htigiet tad-Direttiva;

(h) biex jipprovdi għal arrangamenti temporanji fir-rigward ta' kull persuna li mad-dhul fis-seħħ tat-Tieni Skeda kienet diġà fil-pussess ta' liċenza mahruġa bis-saħħa ta' dan l-Att.

(5) Regolamenti magħmula taħt dan l-artikolu jistgħu jiddisponu b'mod differenti għal każijiet differenti jew klassijiet ta' każi.

(6) Meta jkunu saru regolamenti bis-saħħa ta' dan l-artikolu, l-awtorità kompetenti tista' toħroġ regoli skond it-tifsira ta' dan l-Att għall-aħjar twettiq u għall-aħjar implimentazzjoni tad-disposizzjonijiet ta' l-imsemmija regolamenti.

(7) Id-disposizzjonijiet ta' dan l-artikolu u tat-Tieni Skeda ifittxu li jagħmlu t-traspożizzjoni tal-htigiet rilevanti tad-Direttiva partikolarment it-Titoli I, II, il-kapitoli 3 u 4 tat-Titolu IV, l-Artikolu 82 tat-Titolu VI u l-Anness.

(8) L-awtorità kompetenti nominata mill-Ministru skond l-artikolu 12 tkun l-awtorità kompetenti għall-finijiet kollha ta' dan l-artikolu u tat-Tieni Skeda t u għall-finijiet tad-Direttiva kif trasposta f'dan l-Att."

9. L-artikolu 12 ta' l-Att prinċipali qed jiġi emendat kif ġej:

Emenda ta' l-artikolu 12 ta' l-Att prinċipali.

(a) is-subartikolu (2) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(2) Il-Ministru, li jaġixxi fuq il-parir ta' l-awtorità kompetenti, jista' jagħmel regolamenti sabiex jagħmel effettivi d-disposizzjonijiet ta' dan l-Att, jista' jemenda jew jirrevoka dawk ir-regolamenti u, bla ħsara għall-ġeneralità ta' dak hawn fuq imsemmi, jista', b'dawk ir-regolamenti, partikolarment, jagħmel kull waħda minn dan li ġej:

(a) jemenda kull Skeda;

(b) jemenda kull tifsira stabilita fl-artikolu 2.";

u

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

"(3) Meta jkunu saru regolamenti bis-saħħa ta' dan l-artikolu, l-awtorità kompetenti tista' toħroġ Regoli għall-Istituzzjonijiet Finanzjarji skond it-tifsira ta' dan l-Att għall-aħjar twettiq u għall-aħjar implimentazzjoni tad-disposizzjonijiet tar-regolamenti."

10. L-artikolu 12A ta' l-Att prinċipali għandu jiġi mħassar.

Thassir ta' l-artikolu 12A ta' l-Att prinċipali.

Emenda ta' l-artikolu 12B ta' l-Att prinċipali.

11. L-artikolu 12B ta' l-Att prinċipali qed jiġi enumerat mill-ġdid bħala l-artikolu 12A ta' l-Att prinċipali.

Żieda ta' artikolu ġdid fl-Att prinċipali.

12. Minnufih wara l-artikolu 13 ta' l-Att prinċipali, għandu jiżdied l-artikolu ġdid li ġej:

"Reġistrazzjoni.

13A. L-awtorità kompetenti jkollha d-dmir li tistabbilixxi reġistru pubbliku ta' l-istituzzjonijiet finanzjarji liċenzjati kollha u l-fergħat u l-aġenti tagħhom, u f'dan ir-reġistru għandhom jiġu identifikati s-servizzi li għalihom l-istituzzjoni finanzjarja tkun liċenzjata:

Iżda dak ir-reġistru għandu jkun disponibbli għall-pubbliku biex jiġi kkonsultat, ikun aċċessibbli *online* u għandu jiġi aġġornat fuq bażi regolari."

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

13. L-artikolu 14 ta' l-Att prinċipali għandhu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "taħt dan l-Att jew kull liġi oħra.", għandhom jidhlu l-kliem "taħt dan l-Att jew kull regolament u Regola maħruġa taħt dan l-Att jew kull liġi oħra.";

(b) fil-paragrafu (ċ) tas-subartikolu (6) tiegħu, minflok il-kliem "taħt dan l-Att.", għandhom jidhlu l-kliem "taħt dan l-Att jew kull regolament u Regola maħruġa taħt dan l-Att."; u

(ċ) fis-subartikolu (13) tiegħu, minflok il-kliem "taħt dan l-Att.", għandhom jidhlu l-kliem "taħt dan l-Att jew kull regolament u Regola maħruġa taħt dan l-Att."

Emenda ta' l-artikolu 19 ta' l-Att prinċipali.

14. Fil-paragrafu (a) ta' l-artikolu 19 ta' l-Att prinċipali, minflok il-kliem "tad-disposizzjonijiet ta' dan l-Att jew li tenħtieġ li tiġi komunikata bis-saħħa ta' dan l-Att;", għandhom jidhlu l-kliem "tad-disposizzjonijiet ta' dan l-Att jew ta' xi regolament jew Regola maħruġa taħt dan l-Att jew li tenħtieġ li tiġi komunikata bis-saħħa ta' dan l-Att jew ta' xi regolament jew REgola maħruġa taħt dan l-Att;".

Emenda ta' l-artikolu 20 ta' l-Att prinċipali.

15. Fis-subartikolu (5) ta' l-artikolu 20 ta' l-Att prinċipali, minflok il-kliem "tikxef lill-Bank Ċentrali kull informazzjoni", għandhom jidhlu l-kliem "tikxef lill-Bank Ċentrali Ewropew u, jew lill-Bank Ċentrali kull informazzjoni".

16. L-artikolu 22 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu:

(i) fil-paragrafu (b), minflok il-kliem "id-disposizzjonijiet ta' xi direttiva lill-istituzzjonijiet finanzjarji, regolament jew kundizzjoni tal-liċenza;", għandhom jidhlu l-kliem "id-disposizzjonijiet ta' xi regolament jew xi Regola għall-Istituzzjonijiet Finanzjarji maħruġa taħt dan l-Att jew xi kondizzjoni tal-liċenza;"

(ii) fil-paragrafu (f), minflok il-kliem "xi persuna skond dan l-Att,", għandhom jidhlu l-kliem "xi persuna skond dan l-Att jew xi regolament u xi Regola maħruġa taħt dan l-Att,"

(b) is-subartikolu (3) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(3) Persuna li tinsab haġja ta' reat taħt id-disposizzjonijiet ta' dan l-artikolu tehel, meta tinsab haġja, multa ta' mhux iżjed minn mitejn elf lira jew priġunerija għal mhux iżjed minn erba' snin jew dik il-multa u dik il-priġunerija flimkien.";

(ċ) is-subartikolu (4) tiegħu għandu jiġi mħassar; u

(d) is-subartikoli (5) and (6) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (4) u (5) rispettivament.

17. L-artikolu 23 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 23 ta' l-Att prinċipali.

(a) is-subartikoli (1) u (2) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2) u (3) rispettivament; u

(b) minnufih qabel is-subartikolu (2), kif numerat mill-ġdid, għandu jidhrol s-subartikolu ġdid li ġej:

"(1) Meta l-awtorità kompetenti tkun sodisfatta li l-imġiba ta' xi persuna tfisser ksur ta' xi waħda mid-disposizzjonijiet ta' dan l-Att jew ta' xi regolament u Regola maħruġa taħt dan l-Att, l-awtorità kompetenti tista', b'avviż bil-miktub u mingħajr ma tirrikorri għal smiġh fil-qorti, timponi penali amministrattiva li ma tistax

tkun oghla minn erbghin elf lira."

Emenda ta' l-artikolu 25 ta' l-Att prinċipali.

18. L-artikolu 25 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "Ebda haġa f'dan l-Att ma tawtorizza", għandhom jidhlu l-kliem there shall be substituted the words "Ebda haġa f'dan l-Att jew f'xi regolament u Regola maħruġa taht dan l-Att ma tawtorizza";

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "skond dan l-Att hlief", għandhom jidhlu l-kliem "skond dan l-Att jew xi regolament u Regola maħruġa taht dan l-Att, hlief"; u

(ċ) fis-subartikolu (6) tiegħu, minflok il-kliem "imsemmija fl-Iskeda.", għandhom jidhlu l-kliem "imsemmija fl-Iskedi."

Sostituzzjoni ta' l-artikolu 26 ta' l-Att prinċipali.

19. L-artikolu 26 ta' l-Att prinċipali għandu jiġi sostitwit bl-artikolu ġdid li ġej:

"Applikabilità ta' l-Att għall-Bank Ċentrali.

26. Xejn f'dan l-Att ma għandu jaffettwa l-funzjonijiet u s-setgħat tal-Bank Ċentrali kif joħorġu mill-Att dwar il-Bank Ċentrali ta' Malta jew xi liġi oħra."

Sostituzzjoni ta' l-artikolu 27 ta' l-Att prinċipali.

20. L-artikolu 27 ta' l-Att prinċipali għandu jiġi sostitwit bl-artikolu ġdid li ġej:

"Għan.

27. L-għan ta' dan l-Att huwa, in parti, biex jimplementa d-disposizzjonijiet tad-Direttiva tal-Parlament Ewropew u tal-Kunsill dwar hlas għal servizzi fis-suq intern u għandu jiġi interpretat u applikat skond hekk. F'każ li xi wiehed mill-artikoli ta' dan l-Att ikun konfliġġenti mad-disposizzjonijiet tad-Direttiva, għandhom jipprevalu d-disposizzjonijiet tad-Direttiva."

Emenda ġenerali fl-Att prinċipali.

21. Fl-att prinċipali, minflok il-kliem "direttiva lill-istituzzjonijiet finanzjarji", "direttivi lill-istituzzjonijiet finanzjarji", u "direttivi", kull fejn jinsabu, għandhom jidhlu l-kliem "Regola għall-Istituzzjonijiet Finanzjarji", "Regoli għall-Istituzzjonijiet Finanzjarji", u "Regoli" rispettivament.

Sostituzzjoni ta' l-Iskeda li tinsab ma' l-Att prinċipali.

22. L-Iskeda li tinsab ma' l-Att prinċipali għandha tiġi sostitwita bl-Iskeda ġdida li ġejja:

"L-EWWEL SKEDA

(Artikolu 2)

ATTIVITAJIET TA' ISTITUZZJONIJIET FINANZJARJI

1. Self (li jinkludi krediti persunali, krediti taht *mortgage*, xiri ta' fatturi kemm bi jew minghajr dritt ta' rikors, finanzjament ta' transazzjonijiet kummerċjali inkluż *forfaiting*);
2. *Financial leasing*;
3. Kapital ta' sogru jew riskju;
4. Hruġ u amministrazzjoni ta' mezzi ta' pagament rigward *travellers' cheques*;
5. Garanziji u rabtiet;
6. Negozju għall-persuna nnifisha jew f'isem klijenti fi:
 - (a) strumenti ta' swieq finanzjarji (ċekkijiet, kambjali, ċertifikati ta' depożitu, eċċ);
 - (b) kambju ta' flus;
 - (ċ) *financial futures* u *options*;
 - (d) strumenti ta' rati ta' kambju u imghax;
 - (e) strumenti oħra finanzjarji li jistgħu jiġu trasferiti;
7. *Underwriting* ta' hruġ ta' ishma u s-sehem f'dak il-hruġ;
8. Senserija ta' flus."

23. Minnufih wara l-Ewwel Skeda ta' l-Att prinċipali, għandha tiżdied l-Iskeda ġdida li ġejja:

Żieda ta' Skeda ġdida fl-Att prinċipali.

"IT-TIENI SKEDA

(Artikolu 11A)

ATTIVITAJIET TA' ISTITUZZJONIJIET FINANZJARJI
LI JWETTQU SERVIZZI TA' HLASIJET

Interpretation

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

"agent" means a person who acts on behalf of a payment institution in carrying out payment services;

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

"funds" means banknotes and coins, scriptural money and electronic money as referred to in Directive 2000/46/EC;

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

"material activities" means:

(i) activities of such importance that any weakness or failure in the provision of these activities could have a significant effect on the licensed entity's ability to meet its regulatory responsibilities and, or to continue in business;

(ii) any other activities requiring a licence from the supervisory authority;

(iii) any activities having a significant impact on its risk management; and

(iv) the management of risks related to these activities;

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

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

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

"payment institutions" means a company or other corporate body that have been licensed in accordance with this Act to provide and execute payment services;

"payment service" means business activities as listed in this Schedule;

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

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

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

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

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

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

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

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

"payment instrument" means any personalised device(s) and, or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order.

List of Activities

2. Payment institutions shall be entitled to engage in the following activities:

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

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

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

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

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

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

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

(f) Money remittance;

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

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

(i) The operation of payment systems;

(j) Business activities other than the provision of payment services, having regard to applicable Community and national law;

(k) When payment institutions engage in the provision of payment services, they may only hold payment accounts used exclusively for transactions;

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

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction; and

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the Act shall be repaid within a short period which shall in no case exceed twelve months; and

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

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

General Rules

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

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

thereunder.

(2) The competent authority may issue a Payment Institution Rule, as the case may be, laying down the requirements for the recognition of the outsourcing service providers and the provision of such outsourced services.

4. (1) Where the payment institution relies on third parties for the performance of operational functions, the payment institution shall take reasonable steps to ensure that it complies with this Act, regulations and Rules issued under this Act and with the conditions of their licences.

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

Għanijiet u Raġunijiet

L-għan prinċipali ta' dan l-Abbozz ta' Liġi huwa biex jimplimenta d-disposizzjonijiet tad-Direttiva tal-Parlament Ewropew u tal-Kunsill dwar servizzi ta' ħlasijiet fis-suq intern u li temenda d-Direttivi 97/7/KE, 2002/65/KE, 2006/48/KE u 2006/49/KE.

**A BILL
entitled**

AN ACT to amend the Financial Institutions Act (Cap. 376).

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 Financial Institutions (Amendment) Act, 2007, and it shall be read and construed as one with the Financial Institutions Act, hereinafter referred to as "the principal Act".

Short title and commencement.
Cap. 376.

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

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

Amendment of article 2 of the principal Act.

(a) the present provision shall be re-numbered as subarticle (1) thereof;

(b) in subarticle (1), as re-numbered, thereof:

(i) the definition "branch" shall be substituted by the following new definition:

" "branch" means a place of business not having a legal personality and being other than the head office which is a part of a financial institution, and which carries out directly some or all of the transactions inherent in the business of a financial institution;"

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

" "Directive" means the Directive of the European Parliament and of the Council on payment services in the internal market as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder;"

(iii) immediately after the definition "director", there shall be added the following new definition:

" "EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;"

(iv) the definition "financial institution" shall be substituted by the following new definition:

" "financial institution" means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in any of the Schedules to this Act:

Provided that these activities are not funded through the taking of deposits or other repayable funds from the public as defined in the Banking Act:

Provided further that this Act shall not apply to any of the activities regulated under the Investment Services Act;"

(v) immediately after the definition "licence", there shall be added the following new definition:

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

(vi) immediately after the definition "own funds", there shall be added the following new definitions:

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

"payment institutions" shall have the meaning assigned to it in article 11A;" and

(c) immediately after subarticle (1), as re-numbered, thereof, there shall be added the following new subarticle:

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

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

Amendment of article 5 of the principal Act.

(a) in subarticle (1) thereof:

(i) paragraph (d) shall be re-numbered as paragraph (e);

(ii) immediately after paragraph (c) thereof there shall be added the following new paragraph (d):

"(d) the competent authority is satisfied that the financial institution has sound and prudent management, and has robust governance arrangements, which includes a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the services provided by the institution;"

(iii) the proviso to paragraph (e), as re-numbered, shall be substituted by the following new proviso:

"Provided that -

(i) in respect of paragraphs (a), (b) and (c), if the applicant is a financial institution licensed or holding an equivalent authorisation in another country, it has its head office in the same country where it is registered and, or licensed;

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

(b) subarticle (4) thereof shall be substituted by the following new subarticle:

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

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

(c) subarticle (6) thereof shall be re-numbered as subarticle (7);

(d) immediately after subarticle (5) thereof there shall be inserted the following new subarticle:

"(6) Where a financial institution is licensed to carry out any of the services listed in the Schedules, and at the same time engages in business activities not listed in the Schedules, the competent authority may require the establishment of a separate entity, where the other services activities impair or threaten to impair either the financial soundness of the institution or the ability of the competent authority to monitor the financial institution's compliance with all the obligations laid down in this Act or any regulations and Rules made under this Act."

4. Article 6 of the principal Act shall be amended as follows: Amendment of article 6 of the principal Act.
- (a) subarticle (1) thereof shall be substituted by the following new subarticle:

"(1) A licence shall automatically cease to have any effect if the holder

- (a) renounces the licence, or
 - (b) does not commence business pursuant to the licence within twelve months of its issue or within such other period of time as may be specified in the licence; or
 - (c) has obtained the licence through false statements or any other irregular means; or
 - (d) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or
 - (e) has ceased to operate as a result of a merger with another financial institution; or
 - (f) is a branch of an institution incorporated outside Malta and the competent authorities in the country of incorporation withdraw the licence of the institution.";
- (b) in subarticle (2) thereof:
- (i) in paragraph (b), for the words "in Malta for more than three months;", there shall be substituted the words "in Malta for more than twelve months;";
 - (ii) in paragraph (g), for the words "the integrity

of the country's financial system is threatened.", there shall be substituted the words "there would constitute a threat to the stability of the financial system in Malta.";

(c) in subarticle (3) thereof for the words "the provisions of this Act and the conditions,", there shall be substituted the words "the provisions of this Act or any regulations and Rules issued under this Act and the conditions,"; and

(d) in subarticle (6) thereof, for the words "shall inform the competent authorities", there shall be substituted the words "shall inform the overseas regulatory authorities".

Amendment of article 8 of the principal Act.

5. Immediately after subarticle (2) of article 8 of the principal Act, there shall be inserted the following new subarticle:

"(3) Where the competent authority has reasonable grounds to suspect that, through such branch, money laundering or terrorist financing, within the meaning of Council Directive 2005/60/EC, is being or has been committed or attempted, or that the engagement of such branch could increase the risk of money laundering or terrorist financing, it shall inform the Member State or EEA State in which the financial institution is established, who may refuse to register the branch, or may withdraw the registration of the branch."

Amendment of article 8A of the principal Act.

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

(a) in subarticle (1) thereof for the words "of the competent authority;" there shall be substituted the words "of the competent authority after having communicated any information which the competent authority may require;";

(b) subarticles (2) and (3) thereof shall be re-numbered as subarticles (3) and (4) respectively; and

(c) immediately after subarticle (1) there shall be added the following new subarticle:

"(2) Where the financial institution licensed or holding an equivalent authorisation in another Member State or EEA State carries out activities in Malta by engaging an agent, the financial institution shall follow the procedures laid out in a Financial Institution Rule:

Provided that if the competent authority has

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

7. Article 9 of the principal Act shall be amended as follows: Amendment of article 9 of the principal Act.

(a) in subarticle (1) thereof for the words "imposed under this Act,", there shall be substituted the words "imposed under this Act or any regulations and Rules issued under this Act,"; and

(b) in subarticle (2) thereof for the words "the provisions of this Act.", there shall be substituted the words "the provisions of this Act or any regulations and Rules issued under this Act."

8. Immediately after article 11 of the principal Act there shall added the following new article: Addition of new article to the principal Act.

"Financial Institutions carrying out payment services activities.

11A. (1) This article shall apply to a financial institution carrying out payment services activities within the meaning of the Second Schedule.

(2) For the purposes of this article and the Second Schedule, a financial institution carrying out payment services shall be referred to as a payment institution.

(3) A payment institution shall be regulated by this article, by the Second Schedule and, unless otherwise provided in the said Schedule, by the remaining provisions of this Act.

(4) The Minister, acting on the advice of the competent authority, may make regulations for the better carrying out of any of the provisions of the Second Schedule and may, without prejudice to the generality of the foregoing, by such regulations make provisions as to any of the following matters:

(a) to regulate the licensing of such payment institutions and any matters incidental thereto;

(b) to amend any of the definitions laid down in the Second Schedule;

(c) to regulate any matter to be prescribed under this Act in relation to such payment institutions;

(d) to prescribe fees payable by payment institutions under this Act;

(e) to exempt any payment institution or any category thereof from any of the provisions of the Second Schedule or of this Act, as the case may be, subject to such modifications, variations and conditions as may be specified;

(f) to regulate the freedom of establishment and the freedom to provide services by such institutions licensed under this Act throughout the Community;

(g) to transpose, implement and give effect to the requirements of the Directive;

(h) to provide for transitory arrangements in respect to any person who on the coming into force of the Second Schedule was already in possession of a licence issued in terms of this Act.

(5) Regulations made under this article may make different provisions for different cases or classes of cases.

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

(7) The provisions of this article and of the Second Schedule seek to transpose the relevant requirements of the Directive in particular Titles I, II, chapters 3 and 4 of Title IV, Article 82 of Title VI and the Annex.

(8) The competent authority nominated by the Minister in terms of article 12 shall serve as the competent authority for all purposes of this article and of the Second Schedule and for the purposes of the Directive as transposed in this Act."

9. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) subarticle (2) thereof shall be substituted by the following new subarticle:

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

(a) amend any of the Schedules;

(b) amend any of the definitions laid down in article 2."; and

(b) immediately after subarticle (2) thereof there shall be added the following new subarticle:

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

10. Article 12A of the principal Act shall be repealed. Repeal of article 12A of the principal Act.

11. Article 12B of the principal Act shall be re-numbered as article 12A of the principal Act. Amendment of article 12B of the principal Act.

12. Immediately after article 13 of the principal Act, there Addition of new article to the principal Act.

shall be added the following new article:

"Registration. **13A.** It shall be the duty of the competent authority to establish a public register of all licensed financial institutions and their branches and agents, within which there shall be identified the services for which the financial institution is licensed:

Provided that such register shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis."

Amendment of article 14 of the principal Act.

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

(a) in subarticle (1) thereof for the words "under this Act or any other law.", there shall be substituted the words "under this Act or any regulations and Rules issued under this Act or any other law.";

(b) in paragraph (c) of subarticle (6) thereof for the words "under this Act.", there shall be substituted the words "under this Act or any regulations and Rules issued under this Act."; and

(c) in subarticle (13) thereof for the words "under this Act.", there shall be substituted the words "under this Act or any regulations and Rules issued under this Act."

Amendment of article 19 of the principal Act.

14. In paragraph (a) of article 19 of the principal Act for the words "the provisions of this Act or is required to be communicated by virtue of this Act;", there shall be substituted the words "the provisions of this Act or any regulations and Rules issued under the Act or is required to be communicated by virtue of this Act or any regulations and Rules issued under this Act;"

Amendment of article 20 of the principal Act.

15. In subarticle (5) of article 20 of the principal Act for the words "disclose to the Central Bank any information", there shall be substituted the words "disclose to the European Central Bank and, or the Central Bank any information".

Amendment of article 22 of the principal Act.

16. Article 22 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof:

(i) in paragraph (b), for the words "with the

provisions of any financial institutions directive, regulations or licence condition;", there shall be substituted the words "with the provisions of any regulations or Financial Institutions Rules issued under this Act or any licence condition;"

(ii) in paragraph (f) thereof, for the words "any person under this Act,", there shall be substituted the words "any person under this Act or any regulations and Rules issued under this Act,";

(b) for subarticle (3) thereof, there shall be substituted the following new subarticle:

"(3) A person guilty of an offence under the provisions of this article shall be liable on conviction to a fine (*multa*) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.";

(c) subarticle (4) thereof shall be deleted; and

(d) subarticles (5) and (6) thereof shall be re-numbered as subarticles (4) and (5) respectively.

17. Article 23 of the principal Act shall be amended as follows:

Amendment of article 23 of the principal Act.

(a) subarticles (1) and (2) thereof shall be re-numbered as subarticles (2) and (3) respectively; and

(b) immediately before subarticle (2), as re-numbered, there shall be inserted the following new subarticle:

"(1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act or any regulations and Rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any person as the case may be, an administrative penalty which may not exceed forty thousand liri."

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

Amendment of article 25 of the principal Act.

(a) in subarticle (1) thereof for the words "Nothing in this Act shall", there shall be substituted the words "Nothing in this Act or any regulations and Rules issued under the Act

shall";

(b) in subarticle (2) thereof for the words "under this Act except", there shall be substituted the words "under this Act or any regulations and Rules issued under the Act, except"; and

(c) in subarticle (6) thereof for the words "referred to in the Schedule.", there shall be substituted the words "referred to in the Schedules."

Substitution of article 26 of the principal Act.

19. Article 26 of the principal Act shall be substituted by the following new article:

"Applicability of Act to the Central Bank.

26. Nothing in this Act shall affect the functions and powers of the Central Bank arising under the Central Bank of Malta Act or any other law."

Substitution of article 27 of the principal Act.

20. Article 27 of the principal Act shall be substituted by the following new article:

"Objective.

27. The objective of this Act is, in part, to implement the provisions of the Directive of the European Parliament and of the Council on payment services in the internal market and it shall be interpreted and applied accordingly. In the event that any of the articles of this Act are in conflict with the provisions of the Directive, the provisions of the Directive shall prevail."

General amendment of the principal Act.

21. In the principal Act, for the words "financial institutions directive", "financial institutions directives", and "directives", wherever they appear, there shall be substituted the words "Financial Institutions Rule", "Financial Institutions Rules", and "Rules" respectively.

Substitution of the Schedule to the principal Act.

22. The Schedule to the principal Act shall be substituted by the following new schedule:

"FIRST SCHEDULE

(Article 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);

2. Financial leasing;
3. Venture or risk capital;
4. Issuing and administering means of payment with respect to travellers' cheques;
5. Guarantees and commitments;
6. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposits, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
7. Underwriting share issues and the participation in such issues;
8. Money broking."

23. Immediately after the First Schedule of the principal Act, there shall be added the following new Schedule:

Addition of new Schedule to the principal Act.

"SECOND SCHEDULE

(Article 11A)

ACTIVITIES OF FINANCIAL INSTITUTIONS CARRYING OUT PAYMENT SERVICES

Interpretation

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

"agent" means a person who acts on behalf of a payment institution in carrying out payment services;

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

service provider;

"funds" means banknotes and coins, scriptural money and electronic money as referred to in Directive 2000/46/EC;

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

"material activities" means:

(i) activities of such importance that any weakness or failure in the provision of these activities could have a significant effect on the licensed entity's ability to meet its regulatory responsibilities and, or to continue in business;

(ii) any other activities requiring a licence from the supervisory authority;

(iii) any activities having a significant impact on its risk management; and

(iv) the management of risks related to these activities;

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

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

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

"payment institutions" means a company or other corporate body that have been licensed in accordance with this Act to provide and execute payment services;

"payment service" means business activities as listed in this

Schedule;

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

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

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

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

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

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

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

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

"payment instrument" means any personalised device(s) and, or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order.

List of Activities

2. Payment institutions shall be entitled to engage in the following activities:

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

account as well as all the operations required for operating a payment account;

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

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

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

(i) execution of direct debits, including one-off direct debits;

(ii) execution of payment transactions through a payment card or a similar device;

(iii) execution of credit transfers, including standing orders;

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

(f) Money remittance;

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

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

(i) The operation of payment systems;

(j) Business activities other than the provision of payment services, having regard to applicable Community and

national law;

(k) When payment institutions engage in the provision of payment services, they may only hold payment accounts used exclusively for transactions;

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

(i) the credit is ancillary and granted exclusively in connection with the execution of a transaction; and

(ii) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the Act shall be repaid within a short period which shall in no case exceed twelve months; and

(iii) such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and

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

General Rules

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

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

(2) The competent authority may issue a Payment Institution Rule, as the case may be, laying down the requirements for the recognition of the outsourcing service providers and the provision of such outsourced services.

4. (1) Where the payment institution relies on third parties for the performance of operational functions, the payment institution

shall take reasonable steps to ensure that it complies with this Act, regulations and Rules issued under this Act and with the conditions of their licences.

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

Objects and Reasons

The main object of this Bill is to implement the provisions of the Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 97/7/EC, 2002/65/EC, 2006/48/EC and 2006/49/EC.