

7. In sub-article (7) of article 43 of the principal Act, for the words "the provisions of this article and article 43A shall not apply -", there shall be substituted the words "the provisions of this article, article 43A and article 43B shall not apply -".

Amendment of article 43 of the principal Act.

8. Immediately after article 43A of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Family trusts. 43B. Notwithstanding the provisions of article 43A, a trustee set up as a company -

(a) whose object and activities are limited to acting as trustee in relation to a specific settlor or settlors and providing administrative services in respect of a specific family trust or trusts; and

(b) which does not otherwise hold itself out as a trustee to the public; and

(c) which does not act habitually as a trustee, in any case in relation to more than five settlors at a time,

shall not require authorisation in terms of this Act, but shall be required to apply for registration by the Authority under this article, and no company shall act as a trustee for a family trust unless it is so registered. The registration process shall be established by rules issued by the Authority under article 52(3), and trustees shall comply with any registration requirements and conditions imposed by the Authority:

Provided that for the purposes of this sub-article, a 'family trust' shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family members or family dependants who are definite and can be ascertained:

Provided further that for the purposes of this article, rules issued by the Authority in terms of article 52 may further define the meaning of the terms 'family members' and 'family dependants'.

C 432

Amendment of
article 51 of the
principal Act.

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

(a) in sub-article (1) thereof, for the words "fails to comply with any authorisation, condition,", there shall be substituted the words "fails to comply with any authorisation, registration, condition,";

(b) in sub-article (5) thereof, for the words "without being authorised to do so by the Authority,", there shall be substituted the words "without being authorised or registered to do so by the Authority,"; and

(c) in sub-article (7) thereof, for the words "or the conditions imposed in article 43A, or contravenes", there shall be substituted the words "the conditions imposed in article 43A, or the conditions imposed by the Authority upon registration in accordance with article 43B, or otherwise contravenes".

Amendment of
article 52 of the
principal Act.

10. Immediately after sub-article (2) of article 52 of the principal Act, there shall be added the following new sub-article:

"(3) The Authority may also issue rules to regulate trustees which are subject to a registration procedure in terms of article 43B. The rules may lay down additional requirements and conditions in relation to the activities of such trustees, their responsibilities to the Authority, adherence to a code of conduct, payment of fees, and any other matters as the Authority may consider appropriate."

Amendment of
article 55 of the
principal Act.

11. Sub-article (2) of article 55 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "to refuse the issue of an authorisation;", there shall be substituted the words "to refuse the issue of an authorisation or registration,"; and

(b) in paragraph (b) thereof, for the words "to impose or vary any condition of an authorisation;", there shall be substituted the words "to impose or vary any condition of an authorisation or registration;".

PART III**AMENDMENTS TO THE FINANCIAL MARKETS ACT**

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

Amendments to the Financial Markets Act. Cap. 345.

13. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) immediately after the definition "EEA State" there shall be added the following new definitions:

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;" and

(b) immediately after the definition "overseas regulatory authority" there shall be added the following new definition:

" "Prospectus Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;"

14. In the marginal note to article 4 of the principal Act, for the words "Application for recognition." there shall be substituted the words "Application for authorisation."

Amendment of article 4 of the principal Act.

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

Amendment of article 8 of the principal Act.

(a) in sub-article (2) thereof, for the words "the recognition order", there shall be substituted the words "the authorisation order"; and

(b) immediately after sub-article (4) thereof, there shall

C 434

be added the following new sub-article:

"(5) The competent authority shall notify ESMA of any revocation order."

Addition of new article to the principal Act.

16. Immediately after article 10A of the principal Act, there shall be added the following new article:

"Competent authority to draw up list when it is the home Member State of a regulated market.

10B. The competent authority shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States, EEA States and ESMA. A similar communication shall be effected in respect of each change to that list."

Amendment of article 11 of the principal Act.

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

(a) in paragraph (e) thereof, for the words "Takeover Bids Directive.", there shall be substituted the words "Takeover Bids Directive;"; and

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

"(f) to cooperate with ESMA for the purposes of the Prospectus Directive, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010."

Amendment of article 16 of the principal Act.

18. Immediately after sub-article (9) of article 16 of the principal Act there shall be added the following new sub-article:

"(10) The Listing Authority shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the applicant, and shall provide ESMA with a copy of such prospectus and any supplement thereto."

Amendment of article 17 of the principal Act.

19. In paragraph (c) of sub-article (1) of article 17 of the principal Act, for the words "and inform the European regulatory authorities", there shall be substituted the words "and inform ESMA and the European regulatory authorities".

Addition of new articles to the principal Act.

20. Immediately following article 21 of the principal Act, there shall be added the following new articles:

"Cooperation with other European regulatory authorities.

21A. The Listing Authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties and exercising its powers under the Prospectus Directive and the Transparency Directive. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory or supervisory function.

Reference of cases to ESMA.

21B. The Listing Authority may refer to ESMA cases where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Obligation of professional secrecy.

21C. The obligation of professional secrecy shall not prevent the Listing Authority from exchanging confidential information or from transmitting confidential information to other European regulatory authorities, ESMA or ESRB, subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No 1095/2010 and Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board respectively. Information exchanged between the Listing Authority and other European regulatory authorities, ESMA or the ESRB shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authority receiving the information are subject.

Notification to ESMA.

21D. The Listing Authority shall notify ESMA of any cooperation agreements it enters into providing for the exchange of information with the regulatory authorities or bodies enabled by their respective legislation to carry out tasks under the Transparency Directive."

PART IV**AMENDMENTS TO THE INVESTMENT SERVICES ACT**

Amendments to the Investment Services Act. Cap. 370.

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

Amendment of article 2 of the principal Act.

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

(a) for the definition "competent authority" there shall be substituted the following:

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

(b) immediately after the definition "EEA State" there shall be added the following new definitions:

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;"

(c) immediately after the definition "European investment firm", there shall be added the following new definition:

" "European management company" has the same meaning assigned to it in regulations made under this Act;"

(d) immediately after the definition "regulated market", there shall be added the following new definition:

" "Regulation (EU) No 1095/2010" refers to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No

716/2009/EC and repealing Commission Decision 2009/77/EC;"; and

(e) immediately after the definition "subsidiary", there shall be added the following new definition:

" "UCITS" means undertakings for collective investment in transferable securities in terms of the UCITS Directive as defined herein;".

23. Article 2A of the principal Act shall be renumbered as sub-article (1) of the said article, and immediately after sub-article (1) there shall be inserted the following new sub-articles:

Amendment of article 2A of the principal Act.

"(2) The competent authority shall also carry out the duties as competent authority for all purposes of the MIFID Directive and the UCITS Directive, and the Commission of the European Union, ESMA and European regulatory authorities shall be informed accordingly.

(3) Without prejudice to any other duty arising from this Act, the MIFID Directive or the UCITS Directive, the competent authority shall:

(a) notify ESMA of the complaint and redress procedures which are available in Malta;

(b) notify the Commission of the European Union, ESMA and the other European regulatory authorities that it is the contact point in terms of article 17(1) and that it is the authority designated to receive requests for exchange of information or cooperation in terms of this Act;

(c) send to ESMA and to the Commission of the European Union, a list of the categories of bonds referred to in Article 54(1) of the UCITS Directive together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in Article 54 of the UCITS Directive. A notice specifying the status of the guarantees offered shall be attached to those lists;

(d) ensure that all information received under the third paragraph of Article 51 of the UCITS Directive aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in

C 438

accordance with Article 35 of Regulation (EU) No 1095/2010, and ESRB in accordance with Article 15 of Regulation (EU) No 1092/2010 for the purpose of monitoring systemic risks at European Union level."

Amendment of article 6 of the principal Act.

24. Immediately after sub-article (9) of article 6 of the principal Act, there shall be added the following new sub-article:

"(10) The competent authority shall notify ESMA whenever an investment services licence has been granted by the competent authority in terms of this article."

Amendment of article 7 of the principal Act.

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

(a) in sub-article (2) thereof -

(i) paragraph (c) thereof shall be substituted by the following new paragraph:

"(c) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading, or if the licence holder has obtained the licence by making false statements or by any other irregular means; or";

(ii) in paragraph (f) thereof, for the words "licence holder;", there shall be substituted the words "licence holder; and";

(iii) in paragraph (g) thereof, for the words "of such licence; and", there shall be substituted the words "of such licence."; and

(iv) paragraph (h) thereof shall be deleted; and

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

"(4) The competent authority shall notify ESMA of any cancellation of an investment services licence in terms of sub-article (1)."

Amendment of article 16A of the principal Act.

26. Immediately after sub-article (4) of article 16A of the principal Act, there shall be added the following new sub-articles:

"(5) Where the competent authority has made a public statement in terms of sub-article (4), it shall simultaneously report that fact to ESMA.

(6) The competent authority shall annually provide ESMA with aggregated information about all the administrative measures and sanctions imposed in accordance with this article."

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

Amendment of article 17 of the principal Act.

(a) in sub-article (8) thereof, for the words "Subarticle (7) and article 26" there shall be substituted the words "Sub-article (7) of this article and article 26";

(b) in sub-article (9) thereof, for the words "to the contact point in the other Member State or EEA State", there shall be substituted the words "to the contact point in the other Member State or EEA State and to ESMA"; and

(c) in sub-article (11) thereof, for the words "shall inform the notifying European regulatory authority", there shall be substituted the words, "shall inform the notifying European regulatory authority and ESMA".

28. In article 17B of the principal Act, for the words "In any case above-mentioned, the competent authority shall notify the requesting European regulatory authority accordingly providing as much detailed information as possible for such refusal.", there shall be substituted the words "In the case of such a refusal, the competent authority shall notify the European regulatory authority and ESMA accordingly, providing as detailed information as possible for such refusal."

Amendment of article 17B of the principal Act.

29. Article 17D of the principal Act shall be renumbered as article 17F.

Renumbering of article 17D of the principal Act.

30. Immediately after article 17C of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"Referral to ESMA.

17D. The competent authority may refer to ESMA, situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

(a) to exchange information as provided for in article 17;

C 440

(b) to carry out a supervisory activity, an on-site verification or an investigation, as provided for in article 17A; and

(c) to seek authorisation for its officials to accompany those of the European regulatory authority as provided for in article 17A.

Cooperation with ESMA.

17E. (1) The competent authority shall cooperate with ESMA for the purposes of the MIFID Directive and the UCITS Directive in accordance with Regulation (EU) No 1095/2010.

(2) The competent authority shall, without delay, provide ESMA with all information necessary to carry out its duties under the MIFID Directive and the UCITS Directive in accordance with Article 35 of Regulation (EU) No 1095/2010."

Addition of new article to the principal Act.

31. Immediately after article 17F, as renumbered, of the principal Act, there shall be added the following new article:

"Competent authority to inform the Commission and ESMA of general difficulties.

17G. The competent authority shall inform the Commission of the European Union and ESMA of any general difficulties which:

(a) an investment services licence holder encounters in establishing itself or providing investment services and, or performing investment activities in any overseas country or territory; and

(b) UCITS encounter in marketing their units in any overseas country or territory."

Amendment of article 26 of the principal Act.

32. Article 26 of the principal Act shall be amended as follows:

(a) in the first proviso of sub-article (1) thereof, for the words "or market operators:", there shall be substituted the words "or market operators, including the exchange or transmission of confidential information to ESMA or the ESRB:"; and

(b) in sub-article (3) thereof -

(i) for the words "The provisions of this article and of articles 17 and 17D" there shall be substituted the words "The provisions of this article and of articles 17 and 17F"; and

(ii) for the words "performance of their functions:" there shall be substituted the words "performance of their functions. Likewise, the competent authority shall be entitled to the receipt of such information as it may require for the purpose of performing its functions under the MIFID Directive:".

PART V

AMENDMENTS TO THE BANKING ACT

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

Amendments to the Banking Act.
Cap. 371.

34. In article 2 of the principal Act, immediately after the definition "director" there shall be added the following new definition:

Amendment of article 2 of the principal Act.

" "EBA" means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of the 24 November 2010;"

35. In sub-article (2) of article 4A of the principal Act, for the words "Committee of European Banking Supervisors" wherever they appear, there shall be substituted the words "EBA".

Amendment of article 4A of the principal Act.

36. Sub-article (2) of article 6 of the principal Act shall be substituted by the following new sub-article:

Amendment of article 6 of the principal Act.

"(2) All applications for a licence shall be made in such form and accompanied by such information, and shall conform with such requirements as may be prescribed from time to time by a Banking Rule. Such requirements shall be notified to the Commission of the European Union and the EBA:

Provided that an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused."

37. In sub-article (8) of article 7 of the principal Act, for the words "The competent authority shall notify the Commission of the European Union of every licence issued", there shall be substituted the words "The competent authority shall notify the EBA of every

Amendment of article 7 of the principal Act.

C 442

licence issued".

Amendment of article 9 of the principal Act.

38. In sub-article (7) of article 9 of the principal Act, for the words "The competent authority shall notify the Commission of the European Union of any revocation of a licence", there shall be substituted the words "The competent authority shall notify the Commission of the European Union and the EBA the reasons for the revocation of a licence".

Amendment of article 11A of the principal Act.

39. In sub-article (2) of article 11A of the principal Act, for the words "The competent authority shall notify the European Commission", there shall be substituted the words "The competent authority shall notify the Commission of the European Union, the EBA".

Amendment of article 16A of the principal Act.

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

(a) sub-article (2) thereof shall be renumbered as sub-article (2)(a); and

(b) immediately after paragraph (a) of sub-article (2) thereof, as renumbered, there shall be added the following new paragraph:

"(b) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with article 17D, the competent authority shall assess whether any imposition of a specific own funds requirement in excess of the minimum level is required to capture risks to which a credit institution is or might be exposed, taking into account the following:

(i) the quantitative and qualitative aspects of the credit institutions' assessment process referred to in article 17C;

(ii) the credit institutions' arrangements, processes and mechanisms referred to in article 17B;

(iii) the outcome of the review and evaluation carried out in accordance with article 17D."

Amendment of article 25 of the principal Act.

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

(a) sub-article (2) thereof shall be substituted by the

following new sub-article:

"(2) The competent authority may further, on the basis of Malta's international commitments, disclose information to overseas regulatory authorities and the EBA in accordance with the Capital Requirements Directive, other European Union Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. Such information shall be subject to professional secrecy provided for under this Act and any regulations made thereunder."; and

(b) sub-article (6) thereof shall be amended as follows:

(i) for the words from "The competent authority shall further, upon a request" to the words "mentioned above, under the law:", there shall be substituted the following:

"The competent authority shall further, upon a request in writing, disclose:

(a) to the Central Bank, central banks of the European system of the central banks, other overseas central banks, other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight payments, clearing and settlement systems and the safeguarding of the stability of the financial system;

(b) where appropriate, to other authorities responsible for overseeing payment systems;

(c) to the European Systemic Risk Board, where the information is relevant for the exercise of statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament,

any information in the possession of or accessible to the competent authority, which is required for the discharge of the duties of the Central Bank and the other authorities mentioned above, under the law"; and

C 444

(ii) in the first proviso thereto, for the words "clearing and settlement systems, and safeguarding the stability of the financial system:", there shall be substituted the words "clearing and securities settlement systems, and safeguarding the stability of the financial system, and shall also communicate information to the European Systemic Risk Board under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory tasks:".

Amendment of article 25A of the principal Act.

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

(a) sub-articles (6) to (12) thereof shall be renumbered as sub-articles (7) to (13) respectively;

(b) immediately after sub-article (5) thereof, there shall be added the following new sub-article:

"(6) (a) The competent authority shall cooperate with the EBA for the purposes of the Capital Requirements Directive, in accordance with Regulation (EU) No 1093/2010, and shall provide the EBA with all the information necessary to carry out its duties under the Capital Requirements Directive and in accordance with Article 35 of the said Regulation (EU) No 1093/2010.

(b) The competent authority may refer to the EBA situations where:

(i) an overseas regulatory authority has not communicated essential information; or

(ii) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.";

(c) in sub-article (7) thereof, as renumbered, for the words "The competent authority may, by bilateral agreement, delegate its responsibility", there shall be substituted the words "The competent authority may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility", and for the words "The Commission shall be kept informed of the existence and the content of any such agreements.", there shall be substituted the words "The EBA shall be kept informed of the existence and the content of any such agreements."; and

(d) in paragraph (a) of sub-article (11) thereof, as renumbered, for the words "and compatibility with European Community Law,", there shall be substituted the words "and compatibility with European Union Law,".

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

Amendment of article 25B of the principal Act.

(a) sub-articles (2) to (7) thereof shall be renumbered as sub-articles (3) to (8) respectively;

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

"(2) Where, with respect to the exchange of information within the provisions of this article, an overseas regulatory authority does not co-operate with the competent authority to the extent required in carrying out the functions listed in sub-article (1), the competent authority may refer the matter to the EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.";

(c) for sub-article (5) thereof, as renumbered, there shall be substituted the following:

"(5) The competent authority in its role as consolidating supervisor shall, subject to article 25, alert as soon as it is practicable the EBA, the European Systemic Risk Board and the authority referred to in sub-article (8) and shall communicate all information that is essential for the pursuance of their tasks, where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010, or a situation of adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches are established."; and

(d) in sub-article (6) thereof, as renumbered, for the words, "it shall alert as soon as it is practicable the overseas regulatory authorities referred to in Articles 125 and 126 of the Capital Requirements Directive.", there shall be substituted the words, "it shall alert as soon as it is practicable the overseas regulatory authorities referred to in Articles 125 and 126 of the Capital Requirements Directive and the EBA.".

C 446

PART VI**AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT**

Amendments to the Financial Institutions Act. Cap. 376.

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

Amendment of article 3 of the principal Act.

45. In paragraph (b) of sub-article (7) of article 3 of the principal Act, for the words "money laundering or terrorist financing", there shall be substituted the words "money laundering or the funding of terrorism".

Amendment of article 8A of the principal Act.

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

(a) in paragraph (b) of sub-article (1) thereof, for the words "money laundering and terrorist financing", there shall be substituted the words "money laundering and the funding of terrorism"; and

(b) in the proviso to sub-article (5) thereof, for the words "money laundering or terrorist financing", wherever they appear, there shall be substituted the words "money laundering or the funding of terrorism".

Amendment of article 21 of the principal Act.

47. In paragraph (g) of article 21 of the principal Act, for the words "article 25A", there shall be substituted the words "article 6(8)".

PART VII**AMENDMENTS TO THE COMPANIES ACT**

Amendment of the Companies Act. Cap. 386.

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

Amendment of article 70 of the principal Act.

49. In sub-article (1) of article 70 of the principal Act, for the words "abbreviation "p.l.c."", there shall be substituted the words "abbreviation "p.l.c.:" and immediately thereafter there shall be added the following new proviso:

"Provided that where the public company is a 'societas europaea' in accordance with Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company, in lieu of the words "public limited company" or their abbreviation "p.l.c.", the name of the public company shall be preceded or followed by the abbreviation "SE"."

50. In the proviso of sub-article (2) of article 82 of the principal Act, for the words "may, in addition to the manner of authentication laid down in subarticle (1), be authenticated by an individual specifically authorised for such purpose by the memorandum", there shall be substituted the words "may be authenticated by a director, the company secretary, an authorised officer of the company or by an individual specifically authorised for such purpose by the memorandum".

Amendment of article 82 of the principal Act.

51. In sub-article (1) of article 183 of the principal Act, for the words "prescribed by article 182." there shall be substituted the words "prescribed by article 182. Where a copy of the annual accounts, auditors' report and directors' report is delivered to the Registrar by electronic means, without prejudice to the requirements of articles 176(3), 178(3) and 179(6), such electronic copy shall be authenticated in accordance with article 82."

Amendment of article 183 of the principal Act.

52. In sub-article (2) of article 184 of the principal Act, for the words "by electronic means, in addition to the manner of signing laid down in this subarticle, such annual return may be signed by an individual specifically authorised", there shall be substituted the words "by electronic means it may be signed by one director or the company secretary or by an individual specifically authorised".

Amendment of article 184 of the principal Act.

53. In the proviso to article 210 of the principal Act, for the words "or otherwise purports to deprive the auditors of the right granted to them by virtue of the provisions of article 155", there shall be substituted the words "or otherwise purports to deprive the auditors of the right to attend and be heard at any general meeting of the company on any part of the business of the meeting which concerns them as auditors".

Amendment of article 210 of the principal Act.

54. Article 211 of the principal Act shall be amended as follows:

Amendment of article 211 of the principal Act.

(a) in paragraph (b) of sub-article (2) thereof, the words "is holder of, or has any interest in, any shares or debentures of the company or" shall be deleted;

(b) sub-article (3) thereof shall be deleted; and

(c) sub-articles (4), (5) and (6) thereof shall be renumbered as sub-articles (3), (4) and (5) respectively.

55. In sub-article (1) of article 212 of the principal Act, for the words "its main trading activity", there shall be substituted the words "its main activity".

Amendment of article 212 of the principal Act.

C 448

Amendment of
article 225 of
the principal
Act.

56. Article 225 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "The Minister shall appoint an individual to be the official receiver" there shall be substituted the words "The Minister, acting on the advice of the competent authority under the Malta Financial Services Authority Act, shall appoint a senior official of the said Authority to be the official receiver";

(b) in sub-article (2) thereof, for the words "The Minister may authorise in writing any individual to assist the official receiver", there shall be substituted the words "The Minister, acting on the advice of the competent authority under the Malta Financial Services Authority Act, may authorise in writing any individual to assist the official receiver";

(c) sub-article (3) thereof shall be substituted by the following new sub-article:

"(3) The remuneration, expenses incurred or disbursements made by the official receiver in the performance of his functions shall be payable out of the company's assets."; and

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

"(4) Notwithstanding anything to the contrary contained in any other law, the official receiver and any other individual authorised in terms of sub-article (2), shall be exempt from any liability whatsoever, including any liability in damages, for anything done or omitted to be done in the discharge or purported discharge of any of his functions under this Act or under any other law, or otherwise in the exercise of his official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith."

Amendment of
article 229 of
the principal
Act.

57. Article 229 of the principal Act shall be amended as follows:

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

"(1) The official receiver, by virtue of his office and upon notification by the Court, becomes the liquidator of the company and continues in office until another

person becomes liquidator under the provisions of this title and shall be the liquidator during any vacancy."; and

(b) sub-article (2) thereof shall be substituted by the following new sub-article:

"(2) The official receiver shall, within fourteen days of notification by the court, deliver an authenticated copy of such notification to the Registrar for registration."

58. In sub-article (2) of article 241 of the principal Act, for the words "If any such liquidator retains for more than ten days a sum exceeding four hundred and sixty-five euro and eighty-seven cents (465.87)", there shall be substituted the words "If any such liquidator retains for more than ten days, other than in a bank account mentioned in sub-article (1), a sum exceeding five hundred euro (500)".

Amendment of article 241 of the principal Act.

59. Article 258 of the principal Act shall be amended as follows:

Amendment of article 258 of the principal Act.

(a) in sub-article (2) thereof:

(i) in paragraph (h) thereof, for the words "any necessary disbursements by the liquidator" there shall be substituted the words "any necessary disbursements by the official receiver or by the liquidator";

(ii) in paragraph (i) thereof, for the words "the remuneration of any person employed by the liquidator" there shall be substituted the words "the remuneration of any person employed by the official receiver or by the liquidator"; and

(iii) in paragraph (j) thereof, for the words "the remuneration of the liquidator" there shall be substituted the words "the remuneration of the official receiver or of the liquidator"; and

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

"(3) For the purposes of sub-article (2), "official receiver" shall include any individual authorised by the Minister in terms of article 225(2)."

C 450

PART VIII**AMENDMENTS TO THE PREVENTION OF FINANCIAL
MARKETS ABUSE ACT**

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

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

Amendment of
article 2 of the
principal Act.

61. In sub-article (1) of article 2 of the principal Act, immediately after the definition "EEA State", there shall be added the following new definition:

" "ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;"

Amendment of
article 20 of the
principal Act.

62. Article 20 of the principal Act shall be amended as follows:

(a) in sub-article (3) thereof, immediately after the words "for the purpose of carrying out its duties in the investigation and detection in terms of the Market Abuse Directive,", there shall be added the words, "including a request by the foreign authority for them to accompany officers, employees or other agents of the competent authority during the course of an investigation,"; and

(b) immediately after sub-article (6) thereof, there shall be added the following new sub-article:

"(7) Without prejudice to Article 258 of the Treaty on the Functioning of the European Union, where a request for information, co-ordination of efforts or other form of collaboration, including a request to accompany officials of the foreign authority during the course of an investigation in terms of the Market Abuse Directive, made by the competent authority to a foreign authority in terms of this article is not acted upon within a reasonable time or is rejected, the competent authority may refer such rejection or absence of action to ESMA within a reasonable timeframe."

Addition of new
article to the
principal Act.

63. Immediately after article 20 of the principal Act, there shall be added the following new article:

"Collaboration
with ESMA.

20A. The competent authority shall collaborate with ESMA for the purposes of the Market Abuse Directive in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council of the 24 November 2010, and in particular it shall forward to ESMA, without delay, all information necessary for ESMA to carry out its duties in accordance with Article 35 of the said Regulation."

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

Amendment of
article 22 of the
principal Act.

(a) in sub-article (3) thereof, for the words "Upon the conclusion of any appeal proceedings in terms of article 23, or the lapse of time required to lodge such an appeal, the competent authority may," there shall be substituted the words "The competent authority may,";

(b) sub-article (5) thereof shall be renumbered as sub-article (6);

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

"(5) Where the competent authority has disclosed an administrative measure or sanction to the public in terms of sub-article (3), it shall contemporaneously report that fact to ESMA."; and

(d) immediately after sub-article (6) thereof, as renumbered, there shall be added the following new sub-article:

"(7) The competent authority shall provide ESMA annually with aggregated information regarding all administrative measures and sanctions imposed in terms of this Act and any applicable regulations made thereunder."

OBJECTS AND REASONS

The object of this Bill is to transpose the provisions of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/

C 452

EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), to amend the Companies Act, mainly to further regulate the office of the Official Receiver, and to amend the Trusts and Trustees Act to introduce for the first time the concept of "Family Trusts".