

CHAPTER 371

BANKING ACT

To regulate the business of banking.

15th November, 1994

ACT XV of 1994 as amended by Acts XXIV and XXV of 1995, VI of 2001, XVII of 2002, IV and IX of 2003, XIII of 2004 and XX of 2007; Legal Notice 425 of 2007; and Acts III and XVII of 2009, II of 2010, and II and X of 2011.

1. The short title of this Act is the Banking Act.
2. (1) In this Act, unless the context otherwise requires -
 - "Advanced Measurement Approach" means an approach as defined in a Banking Rule on capital requirements;
 - "bank" or "credit institution" means an undertaking, the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;
 - "Banking Rule" means a Rule issued by the competent authority under various articles of this Act;
 - "body corporate" means a body of persons having a legal personality distinct from that of its members;
 - "branch" means premises of a credit institution, other than its head office, from which the business of banking is undertaken;
 - "business of banking" means the business of a person who as set out in subarticle (2) accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money;
 - "Capital Adequacy Directive" means [Directive 2006/49/EC](#) of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, as may be amended from time to time, and includes any implementing measures that have been issued or may be issued thereunder;
 - "Capital Requirements Directive" means [Council Directive 2006/48/EC of 14 June 2006](#), relating to the taking up and pursuit of the business of credit institutions (recast), as may be amended or updated from time to time, and includes any implementing measures that have been issued or may be issued thereunder;
 - "Central Bank" means the Central Bank of Malta as defined by the [Central Bank of Malta Act](#);
 - "close links" means a situation in which two or more persons are

Short title.

Interpretation.
 Amended by:
 XXIV. 1995.362;
 XXV. 1995.434;
 XVII. 2002.157;
 IX. 2003.76;
 XIII. 2004.82;
 XX. 2007.85;
 XVII. 2009.11;
 II. 2011.2;
 X. 2011.37.

Cap. 204.

linked in any of the following ways:

- Cap. 386.
- (a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate; or
 - (b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the [Companies Act](#), or a similar relationship between any natural or legal person and an undertaking; or
 - (c) permanently to one and the same third person by a control relationship;

Cap. 168.
Cap. 386.

"company" means a limited liability company constituted in Malta in accordance with the Commercial Partnerships Ordinance* or the [Companies Act](#), or any law which may from time to time be in force, or a company registered, licensed or holding an equivalent authorisation in another country outside Malta under the laws of any country provided that such company, if not constituted in Malta, would qualify to be so registered or licensed under the laws of Malta;

Cap. 330.

"competent authority" means the Malta Financial Services Authority established by the [Malta Financial Services Authority Act](#);

"connected persons" means persons defined as such in a Large Exposures Rule;

"consolidating supervisor" means the competent authority or the overseas regulatory authority, as the case may be, responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies;

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

"court" means the Civil Court, First Hall;

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

"deposit" means a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

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

*Repealed by Act XXV of 1995 ([Chapter 386](#)).

"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;

"EU parent credit institution" means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company set up in any Member State:

For the purpose of this definition, "parent credit institution in a Member State" means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

"EU parent financial holding company" means a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company set up in any Member State:

For the purpose of this definition, "parent financial holding company in a Member State" means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

"Financial Services Tribunal" or "the Tribunal" means the Financial Services Tribunal established under the [Malta Financial Services Authority Act](#); Cap. 330.

"holding company" has the same meaning as is assigned to the term "parent company" in the [Companies Act](#); Cap. 386.

"home Member State" means the Member State in which a credit institution has been authorised in accordance with article 6 to 9 and 11 to 14 of the [Capital Requirements Directive](#);

"host Member State" means the Member State in which a credit institution has a branch or in which it provides services;

"initial capital" means paid up capital and reserves as defined in a Banking Rule on own funds;

"Large Exposures Rule" means a Rule as shall be issued by the competent authority to regulate large exposures;

"licence", in relation to the business of banking, means a licence granted under this Act;

"Malta's international commitments" means commitments, responsibilities and obligations arising out of European Community law, or membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international or reciprocity agreement, however called, whether bilateral or multilateral, to which Malta or the competent authority is a party;

"manager" means a person who is placed in charge of the

business or part of the business of a company or otherwise who has a substantial supervisory role with the power to make policy and executive decisions on behalf of the company;

"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 the entity's risk management; and
- (iv) the management of risks related to these activities;

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

"Minister" means the Minister responsible for finance;

Cap. 373.

"money laundering" has the same meaning ascribed to it by the [Prevention of Money Laundering Act](#);

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

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

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

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

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

Provided that, in determining whether the criteria for a

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

"reconstruction" has the same meaning as in the [Companies Act](#); Cap. 386.

"representative office" means, in relation to a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a foreign country, premises in Malta from which the business of banking is promoted or assisted in any way, and in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of Malta, premises outside Malta from which the business of banking is promoted or assisted in any way;

"subsidiary" has the same meaning as is assigned to the term "subsidiary undertaking" by the [Companies Act](#); Cap. 386.

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

"working days" shall not include Saturdays and the days referred to in the [National Holidays and Other Public Holidays Act](#). Cap. 252.

(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of this Act and any regulations or Banking Rules made thereunder.

(3) The business activities of a credit institution may, besides the business of banking, include any or all of the additional activities listed in the Schedule as may be determined by the competent authority.

(4) The objective of this Act is, in part, to implement the provisions of the Directive and the Capital Adequacy Directive, and shall be interpreted and applied accordingly.

(5) 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.

Powers and duties of the Minister.
Amended by:
XVII. 2002.158;
XX. 2007.86;
II. 2011.3;
X. 2011.38.

- 3.(1) (a) The Minister, acting on the advice of the competent authority, may make regulations as may be required to give effect to the provisions of this Act, and may by such regulations transpose, implement and give effect to the requirements of the Capital Requirements Directive and the Capital Adequacy Directive.
- (b) The Minister, acting on the advice of the competent authority, may in addition amend or revoke such regulations.
- (2) (a) The Minister may, after consultation with the competent authority and the Central Bank, if he deems it expedient in the public interest so to do, by order published in the Gazette declare any day or days to be a bank holiday or holidays.
- (b) On any day declared to be a bank holiday under this article, whether such day is also a public holiday or not, no bank shall do any business with the public except to the extent allowed by the order.

Powers and duties of the competent authority.
Amended by:
XVII. 2002.159;
XX. 2007.85, 87;
II. 2011.4.

4. (1) It shall be the duty of the competent authority to carry out the functions prescribed by this Act and any regulations or Banking Rules made thereunder and to ensure that credit institutions carrying on business in Malta comply with this Act, and any regulations, directives and Banking Rules issued thereunder and with the conditions of their licences. In pursuance of that duty the competent authority shall at all times afford such co-operation to the Central Bank as the Central Bank may require in the discharge of its duties.
- (2) The competent authority may make, amend or revoke Banking Rules as may be required for carrying into effect any of the provisions of this Act and any regulations or Banking Rules made thereunder.
- (3) Banking Rules shall be binding on licence holders and others as may be specified therein.
- (4) Banking Rules and any amendment or revocation thereof shall be officially communicated to credit institutions and the competent authority shall make copies thereof available to the public.
- (5) Banking Rules imposing an obligation or requirement on the public shall be made by regulations in accordance with article 3(2).

Supervisory practices.
Added by:
II. 2011.5.

- 4A. (1) The competent authority, in the exercise of its duties, shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of this Act, and of the regulations and rules made thereunder.
- (2) For the purpose of subarticle (1):
- (a) the competent authority shall participate in the activities of the Committee of European Banking Supervisors;

- (b) the competent authority shall follow the guidelines, recommendations, standards and other measures agreed by the Committee of European Banking Supervisors and shall state the reasons if they do not do so; and
- (c) national mandates conferred on the competent authority shall not inhibit the performance of its duties under this Act or as a member of the Committee of European Banking Supervisors.

5. (1) No business of banking shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the competent authority.

Licences for banking activities.
Amended by:
XVII. 2002.160;
XX. 2007.85, 88;
L.N. 425 of 2007;
III. 2009.17;
XVII. 2009.12;
II. 2011.6.

(2) No credit institution licensed or holding an equivalent authorisation outside Malta may open a branch, agency or office or set up any subsidiary in Malta unless it is in possession of a licence granted under this Act by the competent authority:

Provided that a credit institution licensed or holding an equivalent authorisation in a Member State or EEA state shall be entitled to exercise its rights under European Community Law.

(3) In the event of reasonable doubt as to whether the business of banking or of accepting deposits is or is not being transacted in or from Malta by any person, the matter shall be conclusively determined by the competent authority.

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

(5) The Minister may, after consulting the competent authority, establish or recognise other forms of authorisation and notification procedures, subject to such conditions, additions, adaptations, and modifications and exemptions as may be prescribed; and different provisions may be made for different cases or classes of cases, under such terms and conditions as may be prescribed, and account shall be taken of Malta's international commitments.

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

Application for a licence.
Amended by:
XVII. 2002.161;
XX. 2007.85;
II. 2011.7.

(2) All applications for a licence shall be 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 and an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused.

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

Issuing of a licence.

Amended by:
XVII. 2002.162;
IV. 2003.178;
XX. 2007.85, 89;
L.N. 425 of 2007;
XVII. 2009.13;
II. 2011.8.

7. (1) No company shall be granted a licence unless -
- (a) its initial capital amounts to not less than five million euro (€5,000,000.00):
Provided that, without prejudice and subject to the provisions of article 16A, the competent authority may by a provision contained in a Banking Rule, increase the amounts laid down in this paragraph, and such amounts may be designated in such other currency as may be specified in a Banking Rule;
 - (b) there are at least two individuals who will effectively direct the business of the credit institution in Malta and such persons are of sufficiently good repute and have sufficient experience to perform such duties;
 - (c) all qualifying shareholders, controllers and all persons who will effectively direct the business of the credit institution are suitable persons to ensure its prudent management;
 - (d) the competent authority is satisfied that, where there are close links between that company and another person or persons, such links do not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of that company under the provisions of this Act and any regulations or Banking Rules made thereunder:

Provided that in respect of subarticle (1)(a), (b) and (c), if the applicant is a credit 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:

Provided further that in respect of subarticle (1)(d), 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 subarticle (1)(d) and shall further provide the competent authority with information necessary to monitor compliance with the conditions referred to in the said subarticle (1)(d) on a continuous basis.

(2) The competent authority shall determine each application for a licence within six months of receipt of the application or, if the application does not comply with article 6(2) or additional information is required, within six months of compliance with the said subarticle or the furnishing of the information as the case may be, whichever be the later. In any event an application shall be determined within twelve months of its receipt.

(3) The competent authority shall determine an application by doing any of the following:

- (a) granting a licence without conditions;
- (b) granting a licence subject to such conditions as it may deem appropriate;
- (c) refusing to grant a licence:

and if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal.

(4) In granting a licence the competent authority may subject it 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.

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

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

(7) When there is a merger of two or more credit institutions following the consent of the competent authority, the own funds of the credit institution resulting from the merger shall not be less than the total own funds of the merged credit institutions at the time of the merger.

(8) The competent authority shall notify the Commission of the European Union of every licence issued to a credit institution in terms of the Act and any regulations or Banking Rules made thereunder.

7A. (*Deleted by Act II. 2011.9.*)

Right of redemption.
Added by:
XVII. 2002.163.
Amended by:
IX. 2003.77;
XX. 2007.90;
L.N. 425 of 2007.

8. (1) A company licensed or holding an equivalent authorisation in another country outside Malta which carries on the business of banking shall not establish a representative office in Malta unless it has given not less than two months' notice to the competent authority that it proposes to establish such an office. Such notice shall -

Representative offices of non-Maltese banks.
Amended by:
XVII. 2002.164;
XX. 2007.85, 91.

- (a) specify the name it is proposed to use in relation to the activities of the representative office and the address of such office;
- (b) be accompanied by a certified copy of the authorisation of the company to conduct the business of banking in a country other than Malta.

(2) A company mentioned in subarticle (1) having a representative office in Malta shall likewise notify the competent authority -

- (a) at least two months in advance of any proposed change in name of the representative office;
- (b) of any change in its licence to conduct the business of banking in a country other than Malta, no more than

two months after such change.

(3) The competent authority may, at any time, serve on a representative office in Malta a notice objecting to the name or the proposed name of such office.

(4) The competent authority shall not give a notice pursuant to subarticle (3) unless it considers that the name or proposed name is misleading to the public or otherwise undesirable, and upon receipt of such notice, the representative office shall not use the name to which the competent authority has objected in relation to activities conducted in Malta.

(5) The competent authority may, by notice in writing, require any company having a representative office in Malta or which has given notice pursuant to subarticle (1) to provide the competent authority with such information or documents as the competent authority may reasonably require, and the said company shall comply with such notice in the period as is reasonably specified by the notice.

(6) A representative office in Malta shall supply the competent authority with a copy of any document which it is required to provide to the Registrar of Companies no later than the time by which such document must be provided to the said Registrar.

(7) The competent authority may by a Banking Rule provide that the provisions of articles 20 to 24 shall apply to representative offices in Malta in the same manner as they apply to credit institutions subject to such variations and conditions as may be established in the Banking Rule.

(8) The competent authority may by Banking Rule impose on companies which have established or which propose to establish representative offices in Malta such requirements as the competent authority considers appropriate in connection with those offices and the activities conducted from them and may impose on such companies such annual fee as may be determined from time to time.

(9) The competent authority may, within the two months referred to in subarticle (1), order a company referred to in the said subarticle (1) not to establish a representative office in Malta and at any time thereafter order the closure of any representative office so established.

9. (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) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or
- (d) has ceased to operate as a result of a merger with another credit institution; or

Restriction and revocation of a licence.

Amended by:
XVII. 2002.165;
XX. 2007.92;
XVII. 2009.14;
II. 2011.10.

- (e) is a branch of a credit institution licensed or holding an equivalent authorisation in another country outside Malta and the competent authorities in the country of incorporation withdraw the authorisation to the credit institution.

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

- (a) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act or any regulations or Banking Rules made thereunder; or
- (b) if the holder ceases to carry on the business of banking in Malta for more than six months; or
- (c) if the holder fails to comply with any of the provisions of this Act or any regulations or Banking Rules made thereunder or with the conditions under which the licence is granted; or
- (d) if the holder no longer possesses sufficient own funds in terms of article 16A; or
- (e) if the holder is likely to become unable to meet its obligations or can no longer be relied upon to fulfil its obligations towards depositors and creditors; or
- (f) if the holder has insufficient assets to cover its liabilities; or
- (g) if the holder has suspended payment or is about to suspend payment; or
- (h) if the competent authority considers that, by reason of the manner in which the credit institution is conducting or proposes to conduct its affairs, or for any other reason, the interests of the depositors of the credit institution are threatened.

(3) Restrictions imposed by the competent authority pursuant to subarticle (2) shall be such restrictions as the competent authority shall consider appropriate for the proper compliance by the credit institution with the provisions of this Act and any regulations or Banking Rules made thereunder and the conditions, if any, of its licence and for the protection of depositors and may include (without prejudice to the generality hereof) -

- (a) the removal of any officer of the credit institution or the replacement of any officer by such person as the competent authority may designate;
- (b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the credit institution to divest himself of all or part of that

holding;

- (c) the requirement for the credit institution to take or refrain from any action;
- (d) the requirement that the credit institution be prohibited from undertaking any transaction or transactions or any class of business or be permitted to undertake any transaction or transactions or any class of business only upon such terms as the competent authority may prescribe.

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

(5) Where the competent authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention on the credit institution; such notice shall specify the grounds upon which the competent authority intends to take action and shall specify a period in which the credit institution shall be entitled to make representations to the competent authority as to why such action should not be taken. Unless the competent authority decides that the matter is urgent, it shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(6) A licence granted for the establishment in Malta of a branch of a credit institution licensed or holding an equivalent authorisation in another country outside Malta may only be revoked after consultation with the competent authorities of the country of incorporation, unless the competent authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(7) Upon the restriction or revocation of a licence of a credit institution licensed in Malta, the competent authority shall inform the competent authorities of the country of any foreign states in which the credit institution or its subsidiaries are carrying on the business of banking. The competent authority shall notify the Commission of the European Union of any revocation of a licence.

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

10. Any person who is aggrieved by a decision of the competent authority:

- (a) to refuse an application for a licence;
- (b) to impose any condition on the grant of a licence;
- (c) to impose or vary any restriction;
- (d) to revoke a licence;
- (e) to issue a notice under article 8(3);
- (f) to close a representative office;
- (g) to impose an administrative penalty under the provisions of article 35A;

Appeals.
 Amended by:
 VI. 2001.24.
 Substituted by:
 XVII. 2002.166.
 Amended by:
 XVII. 2009.15.

- (h) to issue any notice or make any order under articles 13, 13A and 13C;
- (i) to make any order under article 14; or
- (j) by failure of the competent authority to determine an application for a licence under article 7(5),

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

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11. (1) A credit institution licensed in Malta shall inform the competent authority in writing before opening a new branch, agency or office in Malta.

Opening of branches.
Amended by:
XVII. 2002.167;
XX. 2007.93;
XVII. 2009.16;
II. 2011.11.

(2) Unless with the written consent of the competent authority, no credit institution licensed in Malta may open a new branch, agency or office or set up or acquire any subsidiary in any place outside Malta.

(3) A credit institution licensed in Malta shall be prohibited from opening a branch, subsidiary or representative office in a third country where the secrecy laws or other regulations of that country prohibit the information flows deemed necessary for adequate consolidated supervision.

(4) A credit institution licensed in Malta shall be entitled to exercise its rights under the [European Passport Rights for Credit Institutions Regulations](#).

S.L. 371.11

11A. (1) The competent authority may not apply provisions which result in more favourable treatment to a branch of a credit institution having its head office outside the European Community than that accorded to branches of credit institutions having their head office within the European Community.

Opening of branches having their head office outside the European Union.
Added by:
II. 2011.12.

(2) The competent authority shall notify the European Commission and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office outside the European Community.

12. (1) Subject to subarticles (2) and (3), save with the written permission of the competent authority, no person other than a credit institution with a current licence may use the word "bank" or any of its derivatives or other words as may indicate or purport to indicate the carrying on of the business of banking in any language in the description or title under which such person is carrying on business, or make any such use on any letter paper, in any notice or advertisement, or in any other similar manner.

Use of the word "bank".
Amended by:
XVII. 2002.168;
XX. 2007.94;
II. 2011.13.

(2) A credit institution licensed or holding an equivalent authorisation in another country outside Malta may use the name used in the country where it is licensed or holds an equivalent authorisation, save that, where there is a risk that the use of such a name may be misleading, such credit institution shall add such explanatory particulars to its name as the competent authority shall direct.

(3) Every credit institution shall use as part of its description or title the word "bank" or one or more of its derivatives.

Participation in a credit institution.
Amended by:
XVII. 2002.169;
XIII. 2004.83;
XX. 2007.85, 95;
III. 2009.18.
Substituted by:
XVII. 2009.17.

13. (1) Notwithstanding anything contained in any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed acquirer"), who have taken a decision either to -

- (a) acquire, directly or indirectly, a qualifying shareholding in a credit institution;
- (b) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in a credit institution; or
- (c) further increase, directly or indirectly, such qualifying shareholding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the credit institution would become its subsidiary,

(hereinafter referred to in this Act as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Banking Rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person.

(2) Notwithstanding anything contained in any other law, any person who -

- (a) acquires, directly or indirectly, at least five per centum but less than ten per centum of the share capital or of the voting rights in a credit institution; or
- (b) increases, directly or indirectly, an existing shareholding so that the proportion of the voting rights or of the capital held would amount to at least five per centum but less than ten per centum,

shall inform the competent authority in writing, indicating the size of the shareholding and providing any relevant information as and in the manner that the competent authority may by a Banking Rule require. Such Banking Rule may provide, *inter alia*, general guidance as to when the shareholding would be deemed to result in significant influence.

(3) Notwithstanding anything contained in any other law, any person who has taken a decision either to -

- (a) dispose, directly or indirectly, of a qualifying shareholding in a credit institution;
- (b) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

- (c) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the credit institution would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Banking Rule require.

(4) Subarticles (1), (2) and (3) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated market within the meaning of the [Financial Markets Act](#) or on an equivalent market in a third country.

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(5) It shall be the duty of a credit institution and of the directors thereof, to notify the competent authority forthwith upon becoming aware that any person decides to take any of the actions set out in subarticles (1), (2) or (3).

(6) If any person takes or decides to take any action set out in subarticle (1) or (3) without notifying the competent authority or obtaining its approval in terms of article 13A, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

- (a) restraining such person or credit institution from taking, or continuing with, such action;
- (b) declaring such action to be void and of no effect;
- (c) requiring such person or credit institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining such person or credit institution from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;
- (e) restraining such person or credit institution from taking any similar action or any other action within the categories set out in subarticles (1) and (3).

(7) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of a credit institution, the competent authority may exercise any of its powers under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable in the circumstances.

(8) The competent authority, may, by means of a Banking Rule issued under this Act indicate the circumstances when persons are to be regarded as "acting in concert".

Assessment
procedure.
Added by:
XVII. 2009.18.
Amended by:
II. 2011.14.

13A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under article 13(1), as well as following the possible subsequent receipt of the information referred to in subarticle (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under article 13(1) and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out the assessment on the basis of such information as may be determined by a Banking Rule issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

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

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption period referred to in subarticle (5) up to thirty working days if the proposed acquirer is:

- (a) situated or regulated in a third country; or
- (b) a person not subject to supervision under:
 - (i) the [Capital Requirements Directive](#);
 - (ii) [Council Directive 85/611/EEC](#) of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
 - (iii) [Council Directive 92/49/EEC](#) of 18 June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending [Directives 73/239/EEC](#) and 88/357/EEC (third non-life insurance Directive);
 - (iv) [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5 November 2002 concerning life assurance;

- (v) [Directive 2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending [Council Directives 85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing [Council Directive 93/22/EEC](#); or
- (vi) [Directive 2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council [Directives 73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).

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

- (a) granting unconditional approval to the proposed acquisition;
- (b) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or
- (c) refusing the proposed acquisition.

(8) In making the assessment referred to in subarticle (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Banking Rule referred to in article 13(1) or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to any other penalty which may be imposed under this Act, where a qualifying shareholding in a credit institution is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this subarticle shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of subarticles (1) to (6), where two or more proposals to acquire or increase qualifying shareholdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Co-operation with overseas regulatory authorities in the case of acquisitions.
Added by:
XVII. 2009.18.

13B. (1) The competent authority shall work in full consultation with overseas regulatory authorities when carrying out the assessment referred to in article 13A(2) if the proposed acquirer is one of the following:

- (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed; or
- (c) the person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in article 13A(2) to the overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 13A shall indicate any views or reservations expressed by the overseas regulatory authority responsible for the proposed acquirer.

Mergers, reconstructions, divisions and changes in share capital or voting rights.
Added by:
XVII. 2009.18.

13C. (1) Notwithstanding anything contained in any other law and without prejudice to article 13(1) and (3), the consent of the competent authority given in writing shall be required before any credit institution may lawfully:

- (a) sell or dispose of its business or any significant part thereof;
- (b) merge with any other company, whether a credit institution or otherwise;
- (c) undergo any re-construction or division; or
- (d) increase or reduce its nominal or issued share capital or effect any material change in the voting rights.

(2) It shall be the duty of all directors and qualifying

shareholders of a credit institution to notify the competent authority forthwith in writing upon becoming aware that such credit institution intends to take any of the actions set out in subarticle(1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice -

- (a) granting unconditional consent to the taking of the action;
- (b) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or
- (c) refusing consent to the taking of the action,

and if it refuses to grant consent it shall inform the person or the credit institution concerned in writing of the reason for its refusal.

(4) If any person or any credit institution takes or decides to take any action set out in subarticle (1) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

- (a) restraining such person or credit institution from taking or continuing with such action;
- (b) declaring such action to be void and of no effect;
- (c) requiring such person or credit institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining such person or credit institution from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;
- (e) restraining such person or credit institution from taking any similar action or any other action within the categories set out in subarticle(1).

14. (1) Any person who is a controller or director of a credit institution shall be a suitable person to exercise such control.

(2) A credit institution shall forthwith notify to the competent authority -

- (a) full particulars of all persons who are controllers or directors of credit institution;
- (b) full particulars of any person who is proposed to become a controller or director of the credit institution;
- (c) full particulars of any person who is proposed to cease to be a controller or director of the credit institution.

Control of a credit institution.
Amended by:
XVII. 2002.170;
XX. 2007.96;
XVII. 2009.19.

(3) A credit institution shall furnish the competent authority with any further information it may require concerning any existing or proposed controller or director.

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

(5) For the purposes of this article control includes the power to determine in any manner the financial and operating policies of a body corporate, the power to appoint or remove the majority of the members of the board of directors or equivalent governing body or the power to cast the majority of votes at meetings of the board of directors or equivalent governing body.

Prohibited transactions.
Substituted by:
XVII. 2002.171.
Amended by:
IV. 2003.179;
XX. 2007.85, 97;
L.N. 425 of 2007;
XVII. 2009.20;
II. 2011.15.

15. (1) A credit institution shall not -

- (a) grant any credit facility against the security of its own shares or against any other securities issued by the credit institution itself or against any shares or any other securities of another body corporate in which the credit institution has control;
- (b) grant or permit to be outstanding credit facilities or extend other banking services, under terms and conditions more favourable than the credit institution would have otherwise applied -
 - (i) to any one of its directors or their spouses whether jointly or severally, as well as with third parties:

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

- (ii) to any person in whom or in which the credit institution or any one or more of its directors is interested as a director, partner, manager, agent or member or to any person of whom or of which any one or more of the credit institution's directors is a guarantor;
- (iii) to any body of persons in which the credit institution or any one or more of its directors jointly or severally maintains control, not being itself a credit institution or the parent undertaking of the credit institution, a subsidiary of this parent undertaking or a subsidiary of the credit institution;

and where the competent authority has reason to believe that such favourable terms and conditions have been applied, it shall have the power to require the credit institution to rectify the position and if the credit

institution fails to take the necessary action to rectify the position as required, the competent authority shall take such measures as it deems appropriate until the position is rectified;

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

Provided that the competent authority may by Banking Rule extend the restrictions listed in paragraphs (a), (b) and (c) or any of them to other officers, employees or shareholders of credit institutions or to other categories of persons in such manner and to such extent as may be specified;

- (d) acquire or hold directly or indirectly any qualifying shareholding in any company which is not another credit institution, or a financial institution licensed in terms of the [Financial Institutions Act](#), or any other company carrying out an activity which is supervised on a consolidated basis by the competent authority, the original cost value of which exceeds fifteen per centum of the credit institution's own funds or its consolidated own funds, as the case may be:

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Provided that:

- (i) the limit of fifteen per centum shall apply to any one company or group of connected persons;
- (ii) the total amount of such holdings shall not exceed sixty per centum of the credit institution's own funds or of its consolidated own funds, as the case may be;
- (iii) where the limits established are exceeded due to unavoidable circumstances, the competent authority shall require the credit institution concerned either to increase its own funds accordingly or to take other equivalent measures over a transition period, not exceeding twelve months, as may be established by the competent authority;
- (iv) shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in a credit institution's own name on behalf of others shall not be considered as a qualifying shareholding for the purposes of the limits established under this paragraph;
- (v) the competent authority may not apply the limits established under this paragraph where the total excesses are deducted from the credit institution's own funds for the calculation of the capital requirements under article 17, and where

both limits are exceeded, the greater of the excess amounts shall be deducted from the own funds;

- (vi) where the credit institution is a parent or subsidiary undertaking, compliance with the limits laid down in this paragraph shall be monitored on a consolidated basis;
- (e) without the consent of the competent authority acquire or hold shares in another company which is not a credit institution, which exceeds five per centum of that company's issued share capital or any other subsequent acquisition which exceeds the per centum amount approved by the competent authority;
- (f) purchase, acquire or otherwise hold any immovable property or any right thereon except as may be reasonably necessary for the purpose of conducting its business or housing or providing amenities for its staff:

Provided that this paragraph shall not prevent a credit institution -

- (i) from letting part of any building which is used for the purpose of conducting its business; or
- (ii) from securing a debt on any immovable property and, in the event of default in payment of such debt, from acquiring or holding such property, for realisation within twelve months, or any longer period as may be determined by the competent authority;
- (iii) in other instances from acquiring immovable property with the prior approval of the competent authority the original cost of which property shall not in the aggregate exceed five per centum of the credit institution's own funds.

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

Supervision on a consolidated basis.
Added by:
XVII. 2002.172.
Amended by:
XX. 2007.85.

15A. The competent authority shall monitor and supervise credit institutions that are parent undertakings on a consolidated basis and shall issue a Banking Rule as it considers appropriate to this effect.

Large exposures.
Amended by:
XX. 2007.85.

16. The competent authority shall issue a Banking Rule as it shall consider appropriate for the regulation of large exposures.

16A. (1) Without prejudice to the minimum level of the capital requirements laid down in the Banking Rule issued in terms of article 17(1), the own funds of a credit institution may not fall below the amount of initial capital established in its licence in terms of article 7(1)(a) or such higher amount as may be required by the competent authority from time to time.

Own funds.
Added by:
XVII. 2002.173.
Amended by:
XX. 2007.85, 98;
XVII. 2009.21.

(2) A specific own funds requirement in excess of the minimum level laid down in the above mentioned sub-article shall be imposed by the competent authority at least on the credit institutions which do not meet the requirements laid down in a Banking Rule and in article 17B of this Act, or in respect of which a negative determination has been made on the issue described in article 17D(3) of this Act, if the sole application of other measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe.

(3) In certain specific circumstances and with the written approval of the competent authority, where there is a merger of two or more credit institutions, the own funds of the credit institutions resulting from the merger may not fall below the total own funds of the merged credit institutions at the time of the merger as long as the level specified in article 7(1)(a) have not been attained.

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

Provided that if the level of own funds of a credit institution is not restored within the determined period, the competent authority may, in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 9(2).

(5) The competent authority shall issue a Banking Rule as it shall consider appropriate for the regulation of own funds.

17. (1) A credit institution shall -

- (a) maintain capital requirements to risk-weighted and notional risk-weighted assets as defined in and calculated according to the provisions of a Banking Rule;
- (b) notify the capital requirements to the competent authority at such times and in such manner as shall be prescribed by a Banking Rule;
- (c) notify the competent authority forthwith upon the capital requirements falling below the level required by paragraph (a) whereupon the competent authority shall require the credit institution, to the exclusion of an electronic money institution, to take necessary measures to restore the capital requirements to the required level within such period as the competent authority may determine.

Capital adequacy.
Amended by:
XVII. 2002.174;
XX. 2007.85, 99;
III. 2009.19;
XVII. 2009.22;
II. 2011.16.

(2) Where the level of the capital requirement of a credit institution is not restored within the determined period, the competent authority may in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 9(2).

Bad and doubtful debts.

Added by:
XVII. 2002.175.
Amended by:
XX. 2007.85, 100.
Substituted by:
XVII. 2009.23.
Amended by:
II. 2011.17.

17A. (1) Every credit institution shall maintain adequate provisions for bad and doubtful debts.

(2) The competent authority may issue a Banking Rule as it shall consider appropriate for the regulation of provisioning for bad and doubtful debts.

Internal governance.

Added by:
XX. 2007.101.
Amended by:
III. 2009.20;
II. 2011.18.

17B. (1) Every credit institution shall put in place robust governance arrangements which include 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, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

(2) Such arrangements, processes and mechanisms referred to in subarticle (1), shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's activities. Credit institutions shall take into account the technical criteria laid down in a Banking Rule.

Credit institutions' internal capital adequacy assessment process.

Added by:
XX. 2007.101.
Amended by:
II. 2011.19.

17C. All credit institutions shall have in place sound, effective and complete strategies and processes to assess and maintain on an on-going basis, the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of risks to which they are or might be exposed. These strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the credit institution concerned. The competent authority shall issue a Banking Rule providing for, *inter alia* the internal capital adequacy assessment process that has to be maintained by credit institutions in relation to their risk profile.

Supervisory review and evaluation process.

Added by:
XX. 2007.101.
Amended by:
II. 2011.20.

17D. (1) In carrying out its supervisory review and evaluation process, the competent authority shall review the arrangements, strategies, processes and mechanisms implemented by the credit institutions to comply with this Act, and any regulations or Banking Rules made thereunder and the technical criteria set out in Annex XI of the [Capital Requirements Directive](#), in order to evaluate the risks to which the credit institutions are or might be exposed.

(2) The scope of such review and evaluation referred to in subarticle (1) shall be that of the requirements of this Act and any regulations or Banking Rules made thereunder.

(3) On the basis of such review and evaluation referred to in

subarticle (1), the competent authority shall determine whether the arrangements, strategies, processes and mechanisms implemented by the credit institutions and the own funds held by these ensure a sound management and coverage of their risks.

(4) The competent authority shall establish the frequency and intensity of such review and evaluation referred to in subarticle (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned and taking into account the principle of proportionality. Such review and evaluation shall be updated at least on an annual basis.

(5) Such review and evaluation performed by the competent authority shall include the exposure of credit institutions to the interest rate risk arising from non-trading activities.

18. The competent authority may issue a Banking Rule specifying what shall constitute the specified liquid assets and the deposit liabilities of a credit institution and laying down the minimum holding of specified assets as a proportion of deposit liabilities which a credit institution must hold.

Liquidity.
Amended by:
XVII. 2002.176;
XX. 2007.85, 102.

19. (1) A credit institution shall submit to the competent authority -

- (a) periodic statements showing its assets and liabilities and profit and loss position on an individual and, where appropriate, on a consolidated basis including analysis thereof;
- (b) such information as is required by the competent authority for prudential and statistical purposes;
- (c) such information as the competent authority may require to satisfy itself that the credit institution is complying with the provisions of this Act and any regulations or Banking Rules made thereunder;
- (d) such separate statements relating to its offices and branches outside Malta in such form and at such times as the competent authority may require in the discharge of its duties.

Information to be submitted to the competent authority and the Central Bank.
Amended by:
XVII. 2002.177;
XX. 2007.85, 103;
XVII. 2009.24;
II. 2011.21.

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

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

(4) All statements required under subarticle (1) shall be submitted in such form and at such periods as shall be prescribed by Banking Rule.

(5) All statements and other information furnished by any credit institution under subarticles (1) and (2) shall be regarded as secret and confidential except as between that credit institution and the competent authority or the Central Bank as the case may be

save that the competent authority shall furnish such information under this article as may be required by the Minister or the Central Bank and shall inform the Minister and the Central Bank if at any time in its opinion there is concern regarding the state of affairs of that credit institution.

Outsourcing
service providers.
Added by:
XX. 2007.104.
Amended by:
II. 2011.22.

19A. (1) No credit institution shall outsource its material services or activities unless the outsourcing service provider is granted recognition by the competent authority under this article.

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

Supervision of
credit institutions.
Amended by:
XVII. 2002.178;
XX. 2007.105;
XVII. 2009.25;
II. 2011.23.

20. (1) Every credit institution shall submit to the competent authority any information which it may reasonably require in the exercise of its duties under this Act and any regulations or Banking Rules made thereunder, and the competent authority may enquire into and ask for clarification of any information so submitted.

(2) Any request for information or for clarification thereof under this article shall be made by notice in writing and shall require the recipient to provide the information at such time or times or at such intervals or in respect of such period or periods as may be specified by the notice.

(3) Further, the competent authority may -

- (a) by notice in writing served on a credit institution, require the credit institution to provide a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the competent authority has required or could require the credit institution to provide information under subarticle (1);
- (b) by notice in writing served on a credit institution, require it to produce within such time and at such place as may be specified in that notice, such document or documents of such description as may be so specified in the notice;
- (c) authorise an officer, servant or agent of the competent authority, on producing evidence of his authority, to require any credit institution to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the competent authority may reasonably require for the performance of its functions under this Act and any regulations or Banking Rules made thereunder.

(4) The accountant or other person appointed by a credit institution to make any report required under subarticle (3)(a) shall be a person nominated or approved by the competent authority; and the competent authority may require the report to be in such form as is specified in the notice.

(5) Where, by virtue of subarticle (3), any person has power to require the production of any documents from a credit institution, that person shall have the like power to require the production of those documents from any person who appears to be in possession of them.

(6) The power under this article to require a credit institution or any other person to produce any documents includes power -

- (a) if the documents are produced, to take copies of them or extracts from them and to require that credit institution or person, or any other person who is a present or past officer of, or is or was at any time employed by or acting as an employee of, the credit institution in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(7) If it appears to the competent authority to be desirable in the interests of the depositors or potential depositors of a credit institution to do so, or if otherwise required to fulfil its supervisory responsibilities, it may also exercise the powers conferred by subarticles (1) and (3) in relation to any person who is or has at any relevant time been -

- (a) a holding company, subsidiary or a company which is a connected person of that credit institution;
- (b) a subsidiary or a person which is a company connected to a holding company of that credit institution;
- (c) a holding company of a subsidiary of that credit institution; or
- (d) a controller of that credit institution; or
- (e) an outsourcing service provider of that credit institution.

(8) The competent authority may by notice in writing served on any person who is or is to be an officer of a credit institution require him to furnish, within such time as may be specified in the notice, such information or documents as the competent authority may reasonably require for determining whether he is a suitable person to hold the particular position which he holds or is to hold.

(9) The competent authority may exercise the powers conferred by subarticles (1) and (3) in relation to any person who has a qualifying shareholding in a credit institution if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that credit institution.

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

(11) The competent authority shall have the power to recover from a credit institution reported on under subarticle (3) the costs

and expenses incurred in relation to such report.

Right of entry to obtain information and documents.

21. (1) Any officer, employee or agent of the competent authority may, on producing, if required, evidence of his authority -

- (a) enter any premises occupied by a person on whom a notice has been served under article 20 above or article 22 below for the purpose of obtaining there the information or documents required by that notice;
- (b) enter any premises occupied by any person on whom a notice could be served under article 20 above or article 22 below for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the competent authority shall not authorise any person to act under this paragraph unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed:

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

(2) No person shall intentionally obstruct a person exercising rights conferred by this article.

Investigations.
Amended by:
XVII. 2002.179;
XX. 2007.106;
XVII. 2009.26;
II. 2011.24.

22. (1) If it appears to the competent authority desirable to do so in the interests of the depositors or potential depositors of a credit institution, or if otherwise required to fulfil its supervisory responsibilities, it may appoint one or more competent persons to investigate and report on -

- (a) the nature, conduct or state of the credit institution's business or any particular aspect of it, or
- (b) the ownership or control of the credit institution,

and the competent authority shall give written notice of any such appointment to the credit institution concerned.

(2) If a person appointed under subarticle (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of any person who is or has at any relevant time been -

- (a) a holding company, subsidiary or a company which is a connected person of the credit institution under investigation;
- (b) a subsidiary or a company which is a connected person of a holding company of that credit institution;
- (c) a holding company of a subsidiary of that credit institution; or

- (d) a controller of that credit institution; or
- (e) an outsourcing service provider of that credit institution.

(3) The competent authority may exercise the powers conferred by subarticle (1) in relation to any person who has a qualifying shareholding in a credit institution if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that credit institution.

(4) Where a person appointed under subarticle (1) decides to investigate the business of any person by virtue of subarticle (2) or subarticle (3) he shall inform that person by notice in writing.

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

- (a) to produce to the persons appointed under subarticle (1), within such time and at such place as they may require, all documents relating to the body concerned which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

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

(7) No person shall -

- (a) without lawful excuse fail to produce any documents which it is his duty to produce under subarticle (5);
- (b) without lawful excuse fail to attend before the persons appointed under subarticle (1) when required to do so; or
- (c) without lawful excuse fail to answer any question which is put to him by persons so appointed with respect to any credit institution which is under investigation or a body which is being investigated by virtue of subarticle (2) or (3).

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

(9) The competent authority shall have the power to recover

from a credit institution reported on under subarticle (1) the costs and expenses incurred in relation to such report.

(10) For the purposes of this article, reference to a credit institution shall include reference to persons appearing to be carrying out the business of banking.

Suspected offences.
Amended by:
XX. 2007.107;
II. 2011.25.

23. (1) Where the competent authority has reasonable grounds for suspecting that a person is guilty of committing any offence under this Act and any regulations or Banking Rules made thereunder, it may by notice in writing require that person or any other person -

- (a) to provide at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected offence;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description as may be specified which it may reasonably require for that purpose;
- (c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such an offence has occurred.

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

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

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

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

Obstruction.
Amended by:
XX. 2007.108.

24. No person who knows or suspects that an investigation is being or is likely to be carried out -

- (a) under article 20, article 22 or article 23 ; or
- (b) into the suspected commission of any offence under this Act,

may falsify, conceal, destroy or otherwise dispose of, or cause or

permit the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

25. (1) On the basis of Malta's international commitments, the competent authority may share its supervisory duties with overseas regulatory authorities in the case of a credit institution or branch operating in Malta which is fully or partly owned by a foreign person or in the case of a credit institution fully or partly owned by Maltese residents which is operating abroad.

Co-operation and sharing of information.
Amended by:
XVII. 2002.180;
IV. 2003.180;
XX. 2007.109;
XVII. 2009.27;
II. 2011.26.

(2) The competent authority may further, on the basis of Malta's international commitments, disclose information to overseas regulatory authorities.

(3) The competent authority may also conclude co-operation agreements, providing for exchange of information, with third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) of the [Capital Requirements Directive](#), if such information disclosed is subject to guarantees of professional secrecy as provided for under this Act and any regulations or Banking Rules made thereunder:

Provided that such exchange of information shall be for the purpose of performing the supervisory tasks of the authorities or bodies mentioned in this subarticle:

Provided further that where the information originates in another Member State, it may not be disclosed without the express agreement of the overseas regulatory authority which has disclosed it, and where appropriate, solely for the purposes for which such overseas regulatory authority gave its agreement.

(4) The competent authority may disclose information under the provisions of subarticle (2) only to the extent that the overseas regulatory authorities receiving the information restrict its use for supervisory and regulatory purposes or for such other purposes as may specifically be agreed upon with the competent authority.

(5) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, authorise overseas regulatory authorities to carry out themselves, or through the intermediation of competent persons they appoint, on-site inspections for supervisory and regulatory purposes in branches or subsidiaries of credit institutions having their head office in the country of the overseas regulatory authority making the inspection.

(6) The competent authority shall further, upon a request in writing, disclose 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 of payments, clearing and settlement systems and the safeguarding of the stability of the financial system. The competent authority shall

also, upon a request in writing and where appropriate, disclose to other authorities responsible for overseeing payment systems, 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:

Provided that in an emergency situation as referred to in article 25B(5), the competent authority shall communicate information to the central banks of the European system of central banks and the Central Bank when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system:

Provided further that where the information is subject to professional secrecy, the competent authority may authorise the disclosure of certain information to other government departments of other Member States' central government administrations responsible for legislation on the supervision of credit institutions solely where necessary for reasons of prudential control.

(7) The competent authority may further communicate information, received *inter alia* under the provisions of this Act, to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services of the relevant national market, if it considers that it is necessary to communicate such information in order to ensure the proper functioning of these bodies in relation to defaults or potential defaults by market participants:

Provided that the information received under this article shall be subject to the conditions of professional secrecy:

Provided further that the information received under this subarticle may not be disclosed by the competent authority without the express consent of the overseas regulatory authority which had disclosed it.

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

25A. (1) The competent authority shall co-operate closely with overseas regulatory authorities in all matters with respect to supervision on a consolidated basis. In particular such co-operation shall include the provision to the overseas regulatory authority of any information which is essential or relevant for the exercise of the overseas regulatory authorities' functions under the [Capital Requirements Directive](#). In this regard the competent authority shall communicate upon request all relevant information and it shall communicate on its own initiative all essential information.

(2) For the purposes of this article, information shall be regarded as essential if it could materially influence the assessment

Co-operation and sharing of information with respect to supervision on a consolidated basis.
Added by:
XX. 2007.110.
Amended by:
XVII. 2009.28;
II. 2011.27.

of the financial soundness of a credit institution or financial institution in another Member State or EEA State and shall include, in particular, the following items:

- (i) identification of the group structure of all major credit institutions in a group;
- (ii) identifying the supervisory authority or the overseas regulatory authority of the credit institutions in the group, as the case may be;
- (iii) procedures for the collection of information from the credit institutions in a group and the verification of that information;
- (iv) adverse developments in credit institutions or in other entities of a group, which could seriously affect the credit institutions; and
- (v) major sanctions and exceptional measures taken by the competent authority in accordance with this Act and any regulations or Banking Rules made thereunder including the imposition of an additional capital charge in terms of article 16A and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the credit institution's own funds requirements as provided for in a Banking Rule issued by the competent authority.

(3) The competent authority may, on the basis of written coordination and cooperation arrangements, entrust additional functions to an overseas regulatory authority responsible for supervision on a consolidated basis and may specify procedures for the decision making process and for its cooperation with overseas regulatory authorities.

(4) The competent authority shall, prior to its decision, consult overseas regulatory authorities with regard to the following items, in so far as the decisions referred to in the preceding subarticle are of importance for such overseas regulatory authorities' supervisory functions:

- (a) changes in the shareholding, organisational or management structure of the credit institutions in a group, which require the approval or authorisation of the overseas regulatory authorities; and
- (b) major sanctions or exceptional measures taken by the competent authority, including the imposition of an additional capital charge in terms of article 16A and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the credit institution's own funds requirements for operational risk under a Banking Rule.

(5) The competent authority shall, in all cases, consult with the overseas regulatory authorities responsible for supervision on a consolidated basis with respect to the items described in sub-article (4)(b), provided that the competent authority may decide not to

consult in cases of urgency or where such consultation might jeopardise the effectiveness of its decisions. In this case, the competent authority shall, without delay, inform the overseas regulatory authorities.

(6) The competent authority may, by bilateral agreement, delegate its responsibility for supervision of the subsidiary of a parent undertaking which is a credit institution, to the overseas regulatory authority which authorised and supervised the parent undertaking so that such overseas regulatory authority assumes responsibility for supervising the subsidiary in accordance with the Capital Requirements Directive. The Commission shall be kept informed of the existence and the content of any such agreements.

(7) Where a parent undertaking is situated in Malta and the competent authority does not itself exercise supervision on a consolidated basis pursuant to Articles 125 and 126 of the [Capital Requirements Directive](#), the competent authority shall, upon request by the overseas regulatory authority responsible for exercising such supervision, require the parent undertaking to provide any information relevant for the purposes of supervision on a consolidated basis and the competent authority shall transmit such information to the overseas regulatory authority making the request.

(8) Where the competent authority is responsible for supervision on a consolidated basis, it shall, when it needs information which has already been given to an overseas regulatory authority, contact such authority, whenever possible, in order to avoid duplication of reporting to the various overseas regulatory authorities involved in supervision.

(9) Where the competent authority is the home supervisor of a parent credit institution it shall communicate to the overseas regulatory authorities of the host Member State, where a significant branch is established, the information referred to in subarticle (2)(iv) and (v) and carry out the tasks referred to in article 25B(1)(c) in cooperation with the overseas regulatory authorities of the host Member State.

(10) (a) The competent authority, in its role as consolidating supervisor, shall establish colleges of supervisors, as prescribed in a Banking Rule, to facilitate the exercise of the tasks referred to in Articles 129 and 130(1) of the [Capital Requirements Directive](#) and subject to the confidentiality requirements of this Act, and compatibility with European Community law, and shall ensure appropriate coordination and cooperation with relevant third country overseas regulatory authorities where appropriate.

(b) The competent authority, in its role as consolidating supervisor, shall ensure that there is close co-operation between all the overseas regulatory authorities participating in the colleges of supervisors. The confidentiality requirements prescribed in this Act shall not prevent the exchange of confidential

information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authority under this Act.

(11) Where the competent authority is not a consolidating supervisor and where the competent authority is the supervisor of a credit institution with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate the cooperation in terms of this article and article 25. The establishment and functioning of the college shall be based on written arrangements determined after consultation with the overseas regulatory authorities concerned. The competent authority shall decide which overseas regulatory authorities participate in a meeting or in an activity of the college.

(12) The competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

25B. (1) In addition to the obligations imposed by the provisions of this Act, where the competent authority is responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies, it shall carry out the following functions:

Competent authority as consolidating supervisor.
Added by:
II. 2011.29.

- (a) co-ordination of the gathering and dissemination of relevant or essential information in going concern situations and emergency situations;
- (b) planning and co-ordination of supervisory activities in going concern situations, including the activities referred to in articles 16A, 17C and 17D and in a Banking Rule, in cooperation with the overseas regulatory authorities involved;
- (c) planning and co-ordination of supervisory activities in co-operation with the overseas regulatory authorities involved, and if necessary with the Central Bank and with other central banks in other Member States, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

(2) The planning and coordination of supervisory activities referred to in subarticle (1)(c) includes exceptional measures referred to in article 25A(5), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

(3) Where the competent authority is the consolidating supervisor, the overseas regulatory authority of the host Member

State may make a request to the competent authority, for a branch of the credit institution to be considered as significant. The competent authority shall issue a Banking Rule determining the reasons for considering the branch as significant.

(4) The competent authority in its role as consolidating supervisor shall, subject to article 25, alert as soon as it is practicable the authority referred to in subarticle (7) and shall communicate all information that is essential for the pursuance of their tasks, where an emergency situation, including 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.

(5) If the competent authority becomes aware of an emergency situation, 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.

(6) Where possible, the competent authority and the central banks of the European system of central banks shall use existing defined channels of communication.

(7) If the competent authority as home supervisor of a parent credit institution becomes aware of an emergency situation within a credit institution as referred to in subarticle (4), it shall alert as soon as practicable the central banks of the European system of central banks when this information is relevant for the exercise of their statutory tasks including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system and, as the case may be, those other government departments responsible for legislation on the supervision of credit institutions. Such disclosures may only be made where necessary for reasons of prudential control.

Verification of
information in
specific cases.
Added by:
XX. 2007.110.
Re-numbered by:
II. 2011.28.
Amended by:
II. 2011.30.

25C. (1) In specific cases referred to in the provisions of this Act and Banking Rules implementing the [Capital Requirements Directive](#), the competent authority may request an overseas regulatory authority to verify information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company or its subsidiary situated in another Member State or EEA State and, a subsidiary which is not included within the scope of supervision on a consolidated basis exercised by the competent authority.

(2) In the cases referred to in the preceding subarticle the competent authority may:

- (i) request the overseas regulatory authority to enable the competent authority to carry out the verification itself;
- (ii) request the overseas regulatory authority to carry out the verification on its behalf;
- (iii) in cases where it does not carry out the verification itself, request to participate in the carrying out of such

verification; or

- (iv) request the overseas regulatory authority to appoint an auditor or expert to carry out such verification.

(3) Where the competent authority receives a request to verify information from an overseas regulatory authority -

- (i) where an overseas regulatory authority makes a request to the competent authority to carry out the verification of the information, the competent authority shall allow the overseas regulatory authority making the request to carry out such verification;
- (ii) where the overseas regulatory authority makes a request to the competent authority to carry out the verification, the competent authority shall carry out the verification itself on behalf of the overseas regulatory authority;
- (iii) where the overseas regulatory authority requests the competent authority to participate in the verification of the information in those cases where the overseas regulatory authority does not carry out the verification itself, the competent authority shall allow the overseas regulatory authority to participate in such verification; or
- (iv) where the overseas regulatory authority so requests, the competent authority shall appoint an auditor or expert to carry out such verification.

(4) In this article, a financial holding company, a financial institution, an ancillary services undertaking and a mixed-activity holding company shall have the same meaning as that assigned to them by Article 4 of the Directive.

26. (1) No duty to which -

- (a) an auditor of a credit institution; or
- (b) a person appointed to make a report under article 20(3)(a) or article 22(1),

Communication by auditors, etc., with the competent authority.
Amended by:
XVII. 2002.181;
XX. 2007.111;
II. 2011.31.

may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request made by it, any information or opinion on a matter to which this article applies and which is relevant to any function of the competent authority under this Act and any regulations or Banking Rules made thereunder.

(2) In relation to an auditor of a credit institution this article applies to any matter falling within article 31(9).

(3) In relation to a person appointed to make a report under article 20(3)(a), this article applies to any matter of which he becomes aware in his capacity as the person making the report and which -

- (a) relates to the business or affairs of the credit institution in relation to which his report is made or

any associated body of that credit institution; or

- (b) if by virtue of article 20(7) the report relates to an associated body of a credit institution, to the business or affairs of that body.

(4) In relation to a person appointed to make a report under article 22(1), this article applies to any matter of which he becomes aware in his capacity as the person making the report and which -

- (a) relates to the business or affairs of the credit institution in relation to which his report is made or any associated body of that credit institution, or

- (b) if, by virtue of article 22(2), the report relates to an associated body of a credit institution, to the business or affairs of that body.

(5) In this article "associated body", in relation to an institution, means any such body as is mentioned in article 20(7) or in article 22(2).

Joint Banking
Committee.

27. *Repealed by Act XVII. 2002.182.*

Credit institutions
unable to meet
obligations.

*Amended by:
XVII. 2002.183;
XX. 2007.112;
II. 2011.32.*

28. Notwithstanding any investigation provided for in this Act and any regulations or Banking Rules made thereunder -

- (a) where a credit institution considers that it is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the competent authority and the Governor of the Central Bank in writing;

- (b) where the competent authority becomes aware that a credit institution is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the Governor of the Central Bank in writing;

- (c) where the Central Bank becomes aware that a credit institution is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the competent authority in writing.

Depositor
protection.

*Added by:
XVII. 2002.184.
Amended by:
IV. 2003.181;
XX. 2007.113.*

28A. Without prejudice to the powers arising under article 3, the Minister, acting on the advice of the competent authority, may make regulations to establish schemes or other arrangements with such distinct legal personality or otherwise as may be prescribed, for the protection of depositors in cases where credit institutions are unable to satisfy their obligations towards depositors and to regulate the management and the financing of any such schemes or arrangements for compensation and the contributions and levies to be paid thereto, to set out minimum and maximum levels of compensation, to exclude certain deposits from the application of such schemes or arrangements, and to make provision for any other aspect related to depositor protection schemes including rules on advertising; and such schemes shall be exempt from the payment of income tax as from the date of establishment of such schemes.

29. (1) If, whether from any report made under article 20 or article 22 or otherwise, it appears to the competent authority that any of the circumstances indicated in article 9(2) apply, the competent authority, after consulting with the Central Bank, may, without prejudice to the provisions of article 9(2) -

Power of competent authority to take control of credit institutions.
Amended by:
XVII. 2002.185;
XX. 2007.114.

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

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

- (a) under subarticle (1)(b), the credit institution shall act in accordance with the advice given by such person unless and until the competent authority otherwise directs;
- (b) under subarticle (1)(c), the credit institution shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the credit institution in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the credit institution, shall be exercisable by and vest in him to the exclusion of the credit institution;
- (c) under subarticle (1)(d), the credit institution shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the credit institution, whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial

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

- (3) Where a person is appointed under subarticle (1)(c) or (d) -
- (a) any function, power or duty exercisable by any other person, including the curator of a bankrupt or any other person appointed by or under any other law, and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall, unless or until the competent authority otherwise directs or an express provision of law specifically provides otherwise, cease to be so exercisable;
 - (b) the person appointed under either of the paragraphs aforesaid shall, in respect of such property, partnerships, firms or other business as the competent authority may specify and in which the credit institution has an interest, whether directly or indirectly, including any interest arising from advances or loans made or credit facilities given or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the competent authority may direct, and any such power, function or duty shall be exercisable by and vest in such person to the exclusion of any other person:

Provided that:

- (i) the competent authority shall have power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the competent authority may specify and unless and until the competent authority otherwise directs, the powers, functions and duties to which the direction of the competent authority applies shall be exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;
 - (ii) where the competent authority is of the opinion that the credit institution has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;
- (c) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may

deem necessary to carry out any of the powers, functions or duties under this article;

- (d) the provision of law relating to bankruptcy and in particular Part III of the [Commercial Code](#) shall cease to apply to, and shall cease to operate in respect of any property, partnership, firm or other business specified by the competent authority under paragraph (b), unless and until, or except to the extent that, the competent authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the competent authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made; Cap. 13.
- (e) any person appointed by the competent authority under any of the provisions of this article shall submit six-monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions audited by an independent auditor to the Minister who will place such reports and accounts on the table of the House of Representatives within fifteen days.

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

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

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

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

(8) In respect of a credit institution operating in Malta and elsewhere the offices and branches in Malta of that credit institution shall, if the competent authority so directs and to the extent it so directs, be deemed to constitute a separate credit institution.

(9) Upon receipt of a report as is mentioned in subarticle (1), the competent authority shall inform the Central Bank on whether it intends to take any action pursuant to such report and of any action it intends to take thereon.

Minister may make regulations.
Added by:
XVII. 2002.186.
Substituted by:
XX. 2007.115.

29A. The Minister shall, after consulting the competent authority, make regulations for the transposition of [Directive 2001/24/EC](#) of the European Parliament and of the Council of the European Union of 4 April 2001 on reorganisation and winding-up of credit institutions with respect to credit institutions established in Malta and of branches of credit institutions established outside Malta, and different provisions may be made for different cases or classes of cases, and account shall be taken of Malta's international commitments in this regard. Such regulations may provide for the implementation of detailed re-organisation measures and procedures, including the following matters: the publication and submission of information in such language or languages and in such newspapers or other publications as may be prescribed; the submission of information to creditors, and the manner and procedure thereof; the notification to creditors and the procedure for the submission of claims or representations; measures for the protection of the rights of creditors and other third parties, including netting arrangements; consultation between the competent authority and any other regulatory, administrative or judicial authorities in Malta and outside Malta with competence over the winding-up or re-organisation of credit institutions or of branches thereof; the publication of decisions relating to such winding-up or re-organisation procedures; the establishment of Banking Rules governing the applicability of the proper or applicable law and other issues of conflict of laws.

Language of regulations.
Added by:
XIII. 2004.84.
Amended by:
XX. 2007.117.

29B. Regulations and Banking Rules made under this Act and any amendment thereto or revocation thereof may be made in the English language only.

Publication of audited financial statements.
Amended by:
XVII. 2002.187;
XX. 2007.85, 118;
II. 2010.5.

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

- (a) forward to the competent authority and the Central Bank, and
- (b) exhibit in a conspicuous position in each of its offices and branches in Malta and keep so exhibited throughout the year,

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

Auditors.
Amended by:
XXI. 1995.434;
XVII. 2002.188;
XX. 2007.85, 119.

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

- (b) For the purpose of this article an approved auditor shall be a person who is qualified to be an auditor in accordance with the [Companies Act](#), and holds the authorisation of the competent authority to act as auditor of a credit institution.

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

(3) The auditors' report shall include statements as to the following matters -

- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit;
- (b) whether in their opinion, proper books of account have been kept by the credit institution, so far as appears from their examination of those books,
- (c) whether the credit institution's financial statements dealt with by the report are in agreement with the books of account;
- (d) whether, in their opinion, and to the best of their knowledge and according to the explanations given to them, the said financial statements give the information required by any law which may from time to time be in force in the manner so required and give a true and fair view.

(4) The report of the auditors shall be read together with the report of the directors of the credit institution at the annual meeting of shareholders.

(5) Every auditor of a credit institution shall have the right to demand such information or explanation as he deems necessary in the performance of his duties from any officer or employee of the credit institution.

(6) A credit institution shall forthwith give written notice to the competent authority -

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

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

(8) An auditor shall immediately advise the competent authority if -

- (a) he resigns;

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

(9) If, in his capacity as an auditor of a credit institution or due to a direct request by the competent authority under article 20 or under article 22, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the depositors of that credit institution, of the branches in Malta of a credit institution which is not licensed in Malta, or of any connected person which is a credit institution, he shall immediately inform the competent authority through the credit institution's management or, if circumstances so warrant, directly to the competent authority.

(10) Notwithstanding any of the provisions of the foregoing subarticles, the competent authority may in the case of a credit institution not licensed in Malta grant exemption by way of Banking Rule from any of the requirements of this article provided that the same does not materially detract from the main objects of this article.

Cap. 386. (11) In so far as the provisions of this article are inconsistent with the provisions of the [Companies Act](#), the provisions of this article shall prevail and the provisions of the said Act shall, to the extent of the inconsistency, not apply to credit institutions.

Disqualification of officers.
Amended by:
XVII. 2002.188;
XX. 2007.120.

- 32.** (1) No person -
- (a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a credit institution which has had its licence revoked under article 9(2); and who has not been exempted in writing by the competent authority from the provisions of this article; or
 - (b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud,

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

Duties of officers.
Amended by:
XVII. 2002.188;
XX. 2007.85.

- 33.** Every officer of a credit institution shall take all reasonable steps -
- (a) to secure compliance by the credit institution with all of the provisions of this Act and of its licence or any Banking Rule or regulation issued under this Act, and
 - (b) to ensure that no incorrect information is provided either wilfully or as the result of gross negligence.

Confidentiality.
Amended by:
XVII. 2002.189;
XX. 2007.85, 121;
II. 2011.33;
X. 2011.39.

- 34.** (1) Nothing in this Act shall authorise the Central Bank or the competent authority to enquire or cause an enquiry to be made in a credit institution into the affairs of any individual customer of a credit institution except -
- (a) for the purpose of ensuring compliance with any of the provisions of this or any other Act, or

- (b) to facilitate monitoring on a consolidated or non-consolidated basis, of the conduct of business of the credit institution, especially with regard to the monitoring of liquidity, solvency, deposit guarantees, large exposures, administrative and accounting procedures and internal control mechanisms, or
- (c) for the purpose of enabling the Central Bank to satisfy its responsibilities under the [Central Bank of Malta Act](#), or Cap. 204.
- (d) for the purpose of enabling the Central Bank or the competent authority, as the case may be, to satisfy their respective obligations arising under Malta's international commitments.

(2) No person, including past and present officers or agents of a bank, shall disclose any information relating to the affairs of a bank or of a customer of a bank which he has acquired in the performance of his duties or the exercise of his functions under this Act and any regulations or Banking Rules made thereunder except -

- (a) when authorised to do so under any of the provisions of this Act and any regulations or Banking Rules made thereunder; or
- (b) for the purpose of the performance of his duties or the exercise of his functions;
- (c) when lawfully required to do so by any court or under a provision of any law;
- (d) for the purpose of enabling the Central Bank or the competent authority, as the case may be, to satisfy their respective obligations arising under Malta's international commitments; or
- (e) when the customer expressly consents, in writing, to the disclosure of information relating to his affairs, to the extent authorised by the customer.

(3) Where an officer of a credit institution has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the [Prevention of Money Laundering Act](#), and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality. Cap. 373.

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

Provided that the said officers, auditors or experts may

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

Cap. 376.

(5) Notwithstanding the provisions of any other law and where necessary for the proper carrying out of its activities, a credit institution may communicate any information which is in its possession and which is related to the affairs of a customer to other members of the group of companies of which that institution forms part, which carry out any of the activities referred to in Schedule I to the [Financial Institutions Act](#), or banking or other equivalent activities which they are duly licensed to carry out, or complementary and, or supplementary functions thereto:

Provided that any such communication of information shall be made subject to proper controls and safeguards, so that it shall be the responsibility of the credit institution to ensure that the said group company member is subject to equivalent obligations of data protection, confidentiality and care as required under Maltese law;

Provided further that for the purpose of this article, advertising, marketing or promotion, shall not, under any circumstances, be considered as necessary for the proper carrying out of the activities of a credit institution.

Offences and penalties.
Amended by:
XVII. 2002.190;
XX. 2007.85, 122;
L.N. 425 of 2007;
II. 2011.34;
X. 2011.40.

35. (1) Any person who -

- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or
- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not to the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

- (i) to make, or refrain from making, a deposit with him or any other person; or
- (ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

(2) Subarticle (1) does not apply unless -

- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, Malta, or arrangements are made in or from Malta for the statement, promise or forecast to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in Malta; or
- (c) the deposit is or would be made, or the agreement is or would be entered into, in Malta.

- (3) Any person who -
- (a) contravenes or fails to comply with any of the provisions of this Act;
 - (b) contravenes or fails to comply with the provisions of any Banking Rule, regulation or licence condition;
 - (c) fails to comply with any lawful order or requirement of the competent authority or the Central Bank;
 - (d) fails to comply with any lawful order or requirement of the Financial Services Tribunal;
 - (e) fails to comply with any lawful order or requirement of any other person made under this Act and any regulations or Banking Rules made thereunder;
 - (f) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act and any regulations or Banking Rules made thereunder,

shall be guilty of an offence.

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

(5) The Minister shall issue regulations prescribing penalties for offences against this Act, and such regulations may -

- (a) prescribe penalties which are enforceable by prosecution in the courts of Malta;
- (b) prescribe different penalties for contraventions of different provisions of this Act and any regulations made thereunder;
- (c) prescribe penalties calculated in accordance with the duration of the commission of the offence;
- (d) provide for an appeal to the Financial Services Tribunal from any decision of the competent authority to impose an administrative penalty.

(6) The penalties prescribed by regulations issued under subarticle (5) -

- (a) in the case of imprisonment, shall not provide for a sentence of imprisonment greater than two years;
- (b) in the case of a fine imposed after a prosecution in the courts of Malta, shall not provide for a fine of less than two hundred and thirty-two euro and ninety-four cents (232.94) or greater than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

(7) The Minister may by regulations provide for administrative penalties which may be imposed by the competent authority without recourse to a court hearing:

Provided that an administrative penalty may not impose a financial penalty greater than one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be.

(8) No proceedings for an offence under this Act and any regulations made thereunder, other than proceedings imposing an administrative penalty, shall be commenced without the sanction of the Attorney General.

Administrative penalties.
Added by:
XVII. 2002.191.
Amended by:
XX. 2007.123.

35A. (1) Where the competent authority decides to impose an administrative penalty, it shall notify the person on whom the penalty is being imposed by means of a notice in writing.

(2) Where the person upon whom such notice is served:

- (a) fails to pay to the competent authority the amount of the penalty within a period of thirty days of the service of the notice, and fails to appeal from the decision of the competent authority to the Financial Services Tribunal; or
- (b) appeals to the Financial Service Tribunal and fails within a period of fifteen days from the decision of Tribunal to pay the administrative penalty as confirmed or as reduced by that Tribunal;

then, in every case, the amount of the administrative penalty, as originally imposed or as reduced, as the case may be, shall be due to the competent authority as a civil debt, and the provisions of subarticle (3) shall apply.

(3) A notice as is referred to in subarticle (1), or the decision of the Financial Services Tribunal, as the case may be, shall upon the service by judicial Act of a copy thereof on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the [Code of Organization and Civil Procedure](#).

Cap. 12.

Application of Act to the Central Bank.

36. The provisions of this Act shall not apply to the Central Bank, save where and to the extent that the Central Bank is referred to by name.

Added by:
XVII. 2002.192.
Amended by:
II. 2010.6;
II. 2011.35.

SCHEDULE

(Article 2(3))

List of Additional Activities

1. Financial leasing;
2. Payment Services as defined in the Financial Institutions Act;
3. Issuing and administering other means of payment (travellers' cheques, bankers' drafts and similar instruments) insofar as this activity is not covered by activity 2 above;

4. Guarantees and commitments;
 5. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, certificates of deposit, and similar instruments);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
 6. Participation in securities issues and the provision of services related to such issues;
 7. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
 8. Money broking;
 9. Portfolio management and advice;
 10. Safekeeping and administration of securities;
 11. Credit reference services;
 12. Safe custody services;
 13. Issuing electronic money.
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