

PART V

AMENDMENT OF THE FINANCIAL INSTITUTIONS ACT

Amendment of the Financial Institutions Act. Cap. 376.

2. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on the 30th April, 2011.

Amendment of article 2 of the principal Act.

3. Subarticle (1) of article 2 of the principal Act shall be amended as follows:

(a) for the definition “agent”, there shall be substituted the following:

“ “agent” means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule to the Act, other than issuing electronic money;”;

(b) immediately after the definition “agent” there shall be inserted the following new definition:

“ “average outstanding electronic money” means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;”;

(c) for the definition “the competent authority”, there shall be substituted the following:

“Cap. 330.

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

(d) The definition “the Directive” shall be deleted;

(e) immediately after the definition “EEA State”, there shall be inserted the following new definitions:

“ “Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder;

“electronic money” shall have the meaning assigned to it in the Third Schedule;”;

(f) immediately after the definition “payment institution” there shall be inserted the following new definition:

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

Amendment of article 3 of the principal Act.

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

(a) for subarticle (5) thereof, there shall be substituted the following :

“(5) A licensed financial institution may not take deposits or other repayable funds from the public within the meaning of the Banking Act.”; and

(b) immediately after subarticle (6) thereof, there shall be inserted the following new subarticles:

“(7) The competent authority may, in relation to a company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in this Act and in any Financial Institutions Rules applying to financial institutions authorised to issue electronic money, in cases where:

- (a) the total business activities of the company generate an average outstanding electronic money that does not exceed the amount of one million Euro (€ 1,000,000); and
- (b) none of the natural persons responsible for the management or operation of the company’s business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes;

Provided that, the underlying contractual arrangements of the company shall provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty Euro (€ 250).

(8) A company that issues electronic money which has

been granted a waiver in terms of the preceding subarticle shall be entered into a public register of financial institutions held in accordance with Article 8D of this Act.

(9) The competent authority shall determine which of the activities in the Third Schedule to the Act may be provided by the companies registered in accordance with the provisions of subarticle (8) of this article.

(10) A company that has been granted a waiver in terms of subarticle (7) of this article shall:

(a) notify the competent authority of any change in its situation which is relevant to the conditions laid down in subarticle (7); and

(b) report periodically, at least annually or during any other period which the competent authority may determine, on its average outstanding electronic money:

Provided that, where the conditions laid down in subarticle (7) are no longer met, the company shall apply for a licence under this Act to the competent authority within thirty calendar days;

Provided further that where a company as referred to in the preceding proviso has not sought licensing within such period, it shall be prohibited from issuing electronic money in accordance with article 3(1) of the Act.

(11) A company as referred to in subarticle (7), shall be treated as a financial institution authorised to issue electronic money but shall not benefit from the freedom to provide services

and the right of establishment.

(12) For the better carrying out of the provisions of this article on the granting of waivers, the competent authority may, from time to time publish Financial Institutions Rules which shall be binding on licence holders as specified therein.

(13) Notwithstanding anything provided for in this article, the application of the provisions of the Prevention of Money Laundering Act shall not be waived.”

Amendment of article 5 of the principal Act.

5. In paragraph (b) of subarticle (4) of article 5 of the principal Act, for the words “to better transpose the provisions of the Directive”, there shall be substituted the words “to better transpose the provisions of the Electronic Money Directive and the Payment Services Directive”.

Amendment of article 5A of the principal Act.

6. In subarticle (2) of article 5A of the principal Act, for the words “listed in the Second Schedule”, there shall be substituted the words “listed in the Second or the Third Schedule”.

Amendment of article 6 of the principal Act.

7. In paragraph (h) of subarticle 1 of article 6 of the principal Act, for the words “within the meaning of the Second Schedule.”, there shall be substituted the words “within the meaning of the Second and the Third Schedules to this Act.”.

Amendment of article 8 of the principal Act.

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

(a) in paragraph (a) of subarticle (3) thereof, for the words “other than paragraph 4 thereof”, there shall be substituted the words “other than paragraphs 4 and 10 thereof”; and

(b) in subarticle (4) thereof, for the words “any licensed financial institution carrying out payment services”, there shall be substituted the

words “any licensed financial institution carrying out payment services or issuing electronic money, or both,”.

Amendment of article 8A of the principal Act.

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

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

(b) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle (2):

“(2) A financial institution authorised to issue electronic money shall not issue electronic money through agents:

Provided that a financial institution authorised to issue electronic money may, subject to such conditions as may be established by the competent authority, distribute and redeem electronic money through agents.”; and

(c) immediately after subarticle (4) thereof, as renumbered, there shall be inserted the following new subarticle (5):

“(5) Where the financial institution licensed or holding an equivalent authorisation in another Member State or EEA State carries out the activities listed in the Schedules to the Act in Malta through a branch or by engaging an agent, the financial institution shall follow the procedures laid out in a Financial Institutions Rule:

Provided that if the competent authority has reasonable grounds to suspect that, through such branch or agent, money laundering or terrorist financing, within the meaning of Council Directive

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

Amendment of article 8B of the principal Act.

10. Subarticle (4) of article 8B of the principal Act shall be deleted.

Addition of new articles 8E and 8F to the principal Act.

11. Immediately after article 8D of the principal Act, there shall be inserted the following new articles 8E and 8F:

“Opening of branches having their head office outside the European Union.

8E. (1) In the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community, the competent authority may not apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community.

(2) The competent authority shall notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community as stated in subarticle (1) of this article.

Issuance and redeemability of electronic money.

8F. (1) Financial institutions authorised to issue electronic money shall issue electronic money at par value on the receipt of funds.

(2) A financial institution authorised to issue electronic money shall ensure that, at any moment, upon request by the holder thereof, it is in a position to redeem

the monetary value of any electronic money held, at par value and without delay.

(3) For the better carrying out of the provisions of this article and to better transpose the provisions of the Electronic Money Directive on issuance and redeemability of electronic money, the competent authority, may, from time to time publish Financial Institutions Rules which shall be binding on licence holders as specified therein.”.

Amendment of article 9 of the principal Act.

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

(a) in paragraph (a) of subarticle (1) thereof, for the words “or to increase or reduce, directly or indirectly”, there shall be substituted the words “or to further increase or reduce, directly or indirectly”;

(b) for subarticle (4) thereof, there shall be substituted the following:

“(4) (a) Where a person intends to take any action as set out in subarticle (1) (a) and (b) of this article, such person 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 Financial Institutions 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. The competent authority shall, within two months of receiving such notification, give its approval or otherwise and if such period elapses without the competent authority having notified its decision, such

decision shall be deemed to be an approval.

(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the competent authority shall, regardless of any other sanction which may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast or the possibility of annulling those votes.”; and

(c) immediately after subarticle (5) thereof, there shall be inserted the following new subarticle (6):

“(6) The competent authority may, by means of a Financial Institutions Rule and subject to such criteria as may be established therein, provide that all or part of the provisions of this article be waived.”.

Addition of new articles 10A and 10B to the principal Act.

13. Immediately after article 10 of the principal Act, there shall be inserted the following: new articles 10A and 10B:

“Prohibition of interest.

10A. The granting of interest or of any other benefit related to the length of time during which a financial institution providing the services listed in the Third Schedule to this Act holds electronic money shall be prohibited.

Safeguarding requirements.

10B. (1) A financial institution shall safeguard all funds received from payment services users or in exchange for electronic money that has been issued.

(2) For the better carrying out of the provisions of this Act on safeguarding requirements, the

competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on licence holders as specified therein.”.

Amendment of article 12 of the principal Act.

14. Article 12 of the principal Act shall be amended as follows:

- (a) subarticle (1) thereof shall be deleted;
- (b) subarticles (2) and (3) thereof shall be respectively renumbered as subarticles (1) and (2); and
- (c) subarticle (1) thereof, as renumbered, shall be amended as follows:
 - (i) for paragraph (b) (1) thereof, there shall be substituted the following:

“(b) determine the circumstances under which a company may be exempted from requiring a licence under this Act;”; and
 - (ii) immediately after paragraph (b) thereof, there shall be inserted the following new paragraph (c):

“(c) transpose, implement and give effect to the requirements of the Electronic Money Directive and the Payment Services Directive.”.

Amendment of article 13 of the principal Act.

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

- (a) in paragraph (d) of subarticle (1) thereof, for the words “other than those listed in the Schedule”, there shall be substituted the words “other than those listed in the Schedules”; and
- (b) immediately after subarticle (4) thereof, there shall be inserted the following new subarticle (5):

“(5) Where the competent authority has availed itself of the waiver provided for in subarticle (7) of article 3, it shall:

- (i) notify the European Commission forthwith of any subsequent change;
- (ii) inform the European Commission of the number of legal persons concerned; and,
- (iii) inform the European Commission, on an annual basis, of the total amount of outstanding electronic money issued as at 31 December of each calendar year.”.

Amendment of article 14 of the principal Act.

16. For subarticle (3) of article 14 of the principal Act, there shall be substituted the following:

“(3) Financial institutions providing the services listed in paragraphs 2 and 3 of the Second Schedule to this Act and financial institutions authorised to issue electronic money carrying out the additional activities listed in paragraph 2(b) to (e) of the Third Schedule, shall provide separate accounting information as specified in a Financial Institutions Rule issued by the competent authority. The accounting information shall be subject to an auditor’s report.”.

Amendment of article 20 of the principal Act.

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

(a) subarticle (2) thereof shall be amended as follows:

- (i) in paragraph (a) thereof, for the words “financial institutions carrying out payment services solely for their supervisory and regulatory purposes”, there shall be substituted the words “financial institutions carrying out

payment services or issuing electronic money or both solely for their supervisory and regulatory purposes.”;

(ii) for paragraph (c) thereof, there shall be substituted the following:

“(c) other than relevant authorities designated under Directive 2007/64/EC, Directive 2009/110/EC, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to financial institutions authorised to provide payment services and to issue electronic money, including measures regulating the protection of individuals with regard to the processing of personal data and the prevention of money laundering and terrorist financing.”; and

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

“Provided that the competent authority may exchange information and communicate with other overseas regulatory authorities either upon their request or on its own initiative;

Provided further that in the case of cross-border consumer disputes, the competent authority may use any of its powers under this article and shall co-operate and exchange information for the purpose of investigating and resolving any such disputes.”.

XX. For subarticle (3) of article 25 of the principal Act, there shall be substituted the following:

“ Cap. 373

(3) Where an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in compliance with the reporting and other obligations set out in the regulations 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.”.

Amendment of
article 26 of the
principal Act.

21. For article 26 of the principal Act there shall be substituted the following:

“**26.**(1)(a) Without prejudice to the generality of article 20 of the Malta Financial Services Authority Act, the Consumer Complaints Manager shall also have the function of investigating complaints from a payment service user and a holder of electronic money arising out of, or in connection with, any alleged infringement by a financial institution of the provisions of this Act implementing the Payment Services Directive and the Electronic Money Directive.

(b) The provisions of article 20 of the Malta Financial Services Authority Act shall apply, *mutatis mutandis*, to complaints made under this article.

(c) Complaints as described in subarticle (1) of this article may include complaints from interested parties, within the meaning of the Payment Services Directive and the Electronic Money Directive, as well as complaints from registered consumer associations as defined in the Consumer Affairs Act.

(2) (a) A dispute between a payment service user or a holder of

electronic money and a financial institution may, at the discretion of the payment service user or a holder of electronic money, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.

(b) Reference of a dispute to arbitration in accordance with paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.

(c) The Consumer Complaints Manager shall, when replying to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article:

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

Amendment of
article 27 of the
principal Act.

22. For article 27 of the principal Act there shall be substituted the following:

“**27.** The objective of this Act is, in part, to implement the provisions of Directive 2007/64/EC of the European

Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and of Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions and shall be interpreted and applied accordingly.”.

Amendment of
the First
Schedule to the
Principal Act.

23. For the First Schedules to the principal Act, there shall be substituted the following:

“FIRST SCHEDULE

(Article 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

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

2. Financial leasing;

3. Venture or risk capital;

4. Payment services as defined in the Second Schedule;

5. Issuing and administering other means of payment (travellers cheques and bankers’ drafts and similar instruments) in so far as this activity is not covered by point 4 above;

6. Guarantees and commitments;

7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, Certificates of deposit and

- similar instruments);
- (b) foreign exchange;
- (c) financial futures and options;
- (d) exchange and interest rate instruments;
- (e) transferable instruments;

8. Underwriting share issues and participation in such issues;

9. Money broking;

10. Issuing of electronic money as defined in the Third Schedule.”.

Amendment of the Second Schedule to the principal Act.

24. In article 2 of the Second Schedule to the principal Act, for the definition

“payment institution”, there shall be substituted the following:

“ “payment institution” means a company that has been licensed in accordance with this Act or that holds an equivalent authorisation in another country in terms of the Payment Services Directive, to provide and execute payment services.”.

Addition of a Third Schedule to the principal Act.

25. Immediately after the Second Schedule to the principal Act, there shall be inserted the following new Third Schedule:

THIRD SCHEDULE

FINANCIAL INSTITUTIONS ISSUING ELECTRONIC MONEY

Objective

The purpose of this Schedule is to set out the activities that may be undertaken

by financial institutions that issue electronic money in terms of this Act.

Interpretation

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

“electronic money” means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in paragraph 1 of the Second Schedule to this Act and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money;

“electronic money institution” means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money;

Activities

2. In addition to issuing electronic money, electronic money institutions may also engage in any of the following activities:

(a) the provision of payment services listed in paragraph 2 of the Second Schedule to this Act;

(b) the granting of credit related to payment services referred to in points (d), (e) and (g) of paragraph 2 of the Second Schedule to this Act, where the conditions laid down in paragraph 3(e) of the Second Schedule are met;

(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);

(d) the operation of payment systems as defined in the Second Schedule to this Act;

(e) business activities other than the issuance of electronic money, having regard to the applicable law regulating such activities.

Credit referred to in point (b) above shall not be granted from the funds received in exchange of electronic money and held in accordance with safeguarding requirements prescribed.

DRAFT & UNOFFICIAL