Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,496, 7 ta' Ottubru, 2020
Taqsima C

Nru. 162

7. 10. 2020

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Carmelo Abela, M.P., Ministru fl-Uffiċċju tal-Prim Ministru, f'isem il-Ministru għall-Finanzi u s-Servizzi Finanzjarji, u moqri għall-Ewwel darba fis-Seduta tal-5 ta' Ottubru 2020.

ATT biex jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, Kap. 519, u sabiex jipprovdi dwar ħwejjeġ anċillari jew inċidentali għalihom.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Carmelo Abela, M.P., Minister in the Office of the Prime Minister, on behalf of the Minister for Finance and Financial Services, and read the First time at the Sitting of the 5th October 2020.

AN ACT to amend the Company Service Providers Act, Cap. 529, and to provide for matters ancillary or incidental thereto.

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

ABBOZZ TA' LIĠI
msejjaħ

ATT biex jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, Kap. 519, u sabiex jipprovdi dwar ħwejjeġ anċillari jew inċidentali għalihom.

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

Titolu fil-qosor u bidu fis-seħħ.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji u dan l-Att għandu jinqara u jinftiehem ħaġa waħda mal-Att dwar Provdituri ta' Servizz lil Kumpanniji, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Kap. 529.

(2) Id-dispożizzjonijiet ta' dan l-Att għandhom jidħlu fis-seħħ f'dik id-data li l-Ministru responsabbli għall-Finanzi u s-Servizzi Finanzjarji jista', b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti tal-Att.

Emenda tal-artikolu 1 tal-Att prinċipali.

2. L-artikolu 1 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "l-Artikolu 36 tad-Direttiva 2005/60/KE tal-Parlament Ewropew u tal-Kunsill tad-29 ta' Ottubru 2005 dwar il-prevenzjoni tal-użu tas-sistema finanzjarja għall-fini ta' *money laundering* u l-iffinanzjar tat-terroriżmu,", għandhom jidħlu l-kliem "l-Artikolu 47 tad-Direttiva (UE) 2015/849 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Mejju 2015 dwar il-prevenzjoni tal-użu tas-sistema finanzjarja għall-finijiet tal-ħasil tal-flus jew il-finanzjament tat-terroriżmu, li temenda r-Regolament (UE) Nru

648/2012 tal-Parlament Ewropew u tal-Kunsill, u li tħassar id-Direttiva 2005/60/KE tal-Parlament Ewropew u tal-Kunsill u d-Direttiva tal-Kummissjoni 2006/70/KE, kif emendata minn żmien għal żmien,"; u

(b) fis-subartikolu (3) tiegħu:

(i) minflok il-kliem "tal-Artikolu 36 tad-Direttiva 2005/60/KE", għandhom jidħlu l-kliem "tal-Artikolu 47 tad-Direttiva (UE) 2015/849, kif emendata minn żmien għal żmien"; u

(ii) minflok il-kelma "għar-reġistrazzjoni", għandhom jidħlu l-kliem "għall-awtorizzazzjoni".

Emenda tal-artikolu 2 tal-Att prinċipali.

3. Is-subartikolu (1) tal-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fit-tifsira "ġurisdizzjoni approvata", minnufih wara l-kliem "jew kull ġurisdizzjoni oħra li" għandhom jiżdiedu l-kliem ", fl-opinjoni tal-Awtorità,";

(b) minnufih wara t-tifsira "il-Ministru", għandha tidħol it-tifsira ġdida li ġejja:

" "persuna" tfisser persuna fiżika jew ġuridika skont il-liġi, u għall-finijiet ta' dan l-Att il-kelma "persuna ġuridika" għandha tinkludi korp jew assoċjazzjoni oħra ta' persuni sew jekk tkun mogħtija personalità ġuridika skont id-dispożizzjonijiet tat-Tieni Skeda tal-Kodiċi Ċivili, sew jekk ma tkunx;";

(ċ) minnufih wara t-tifsira "persuna" kif miżjuda, għandha tidħol it-tifsira ġdida li ġejja:

" "persuna awtorizzata" tfisser persuna li fir-rigward tagħha tkun inħarġet awtorizzazzjoni biex taġixxi bħala provditur ta' servizz lil kumpanniji skont dan l-Att;";

(d) it-tifsira "persuna reġistrata" għandha tiġi mħassra;

(e) fil-verżjoni Ingliża, fit-tifsira "prescribed", il-kliem "under this Act;" għandhom jiġu sostitwiti bil-kliem "under this Act.";

(f) it-tifsira "provdituri ta' servizz lil kumpanniji" għandha tiġi emendata kif ġej:

(i) il-kliem "fiżika jew ġuridika" għandhom

jitħassru;

(ii) fil-paragrafu (ċ) tagħha, il-kliem "xi entità ġuridika oħra." għandhom jiġu sostitwiti bil-kliem "xi entità ġuridika oħra;";

(g) minnufih wara t-tifsira "provdituri ta' servizz lil kumpanniji", kif emendata, għandha tiżdied it-tifsira ġdida li ġejja:

" "rabtiet mill-qrib" tfisser sitwazzjoni li fiha żewġ persuni jew aktar ikunu marbuta b'xi wieħed mill-modi li ġejjin:

(a) bil-parteċipazzjoni, fil-forma ta' proprjetà diretta jew kontroll, ta' 20% jew aktar tad-drittijiet ta' votazzjoni jew tal-kapital ta' korp ġuridiku;

(b) bil-kontroll, permezz tar-relazzjoni bejn impriża prinċipali u impriża sussidjarja kif imfisser fl-artikolu 2(2) tal-Att dwar il-Kumpaniji, jew ta' xi relazzjoni simili bejn persuna fiżika jew ġuridika u impriża; jew Kap. 386.

(ċ) mal-istess terza persuna meta:

(i) dik il-persuna tkun membru tal-familja tal-persuna awtorizzata , inkluż, iżda mhux limitatament għall-konjuġi jew is-sieħeb tal-persuna awtorizzata, it-tfal, jew it-tfal minn missier jew omm oħra, tal-persuna awtorizzata, il-ġenituri tal-persuna awtorizzata u dipendenti oħra tal-persuna awtorizzata;

(ii) dik il-persuna tkun qegħda taġixxi fil-kapaċità ta' provditur ta' servizz lil kumpanniji ta' xi kumpannija, li s-sidien benefiċjarji tagħha jinkludu:

(a) il-persuna awtorizzata, id-dipendenti tal-persuna awtorizzata, inklużi, iżda mhux limitatament għall-konjuġi, it-tfal, jew it-tfal minn missier jew omm oħra, tal-persuna awtorizzata; jew

(b) korp ġuridiku li miegħu persuna tkun assoċjata skont (a) u (b) aktar' il fuq;

(iii) dik il-persuna tkun qegħda taġixxi bħala sieħeb fin-negozju tal-persuna awtorizzata jew ta' xi persuna li, bis-saħħa tas-subparagrafi (i) jew (ii) aktar 'il fuq, tkun konnessa mal-persuna awtorizzata;";

(h) minnufih wara t-tifsira "rabtiet mill-qrib", kif miżjuda, għandhom jidħlu t-tifsiriet ġodda li ġejjin:

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

"Stat taż-ŻEE" tfisser Stat li huwa parti kontraenti fil-ftehim dwar iż-Żona Ekonomika Ewropea ffirmat f'Porto fit-2 ta' Mejju 1992 kif emendat bil-Protokoll iffirmat fi Brussel fis-17 ta' Marzu 1993, u kif emendat b'kull att sussegwenti.".

Emenda tal-artikolu 3 tal-Att prinċipali.

4. L-artikolu 3 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fin-nota marġinali tiegħu, minflok il-kelma "jirreġistraw", għandhom jidħlu l-kliem "jiġu awtorizzati";

(b) minflok is-subartikolu (1) tiegħu għandu jidħol dan li ġej:

"(1) Kull persuna li topera f'Malta jew minn Malta u li taġixxi, jew li tippreżenta ruħha bħala li taġixxi bħala provditur ta' servizz lil kumpanniji permezz tan-negozju tagħha, għandha tapplika lill-Awtorità għal awtorizzazzjoni skont dan l-Att.";

(ċ) minnufih wara s-subartikolu (1) tiegħu, kif sostitwit, għandhom jiżdiedu dawn is-subartikoli ġodda li ġejjin:

"(1a) Kull persuna li jkollha *warrant*, jew l-ekwivalenti, biex teżerċita l-professjoni ta' avukat, nutar pubbliku, prokuratur legali jew *accountant* pubbliku ċertifikat, m'għandhiex għalfejn tikseb awtorizzazzjoni mill-Awtorità skont dan l-Att:

Iżda dan is-subartikolu ma jibqax applikabbli u dawn il-persuni m'għandhomx, minn dak iż-żmien 'il quddiem, jibqgħu jitqiesu bħala eżentati mid-dispożizzjonijiet ta' dan l-Att, wara l-iskadenza ta' tmien xhur mill-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar

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(1b) Kull persuna li taqa' taħt l-artikolu 19(1)(b) u, li fi żmien it tnax-il xahar imsemmi fl-ewwel proviso ta' dak is-subartikolu ma tkunx kisbet l-awtorizzazzjoni taħt dan l-Att, għandha minnufih tiddesisti milli tibqa' tipprovdi s-servizzi ta' provditur ta' servizz lil kumpanniji.".

(d) is-subartikolu (2) tiegħu għandu jiġi mħassar;

(e) is-subartikolu (3) tiegħu għandu jiġi mħassar;

(f) fis-subartikolu (4) tiegħu, minflok il-kelma "reġistrazzjoni", għandha tidħol il-kelma "awtorizzazzjoni";

(g) fil-paragrafu (a) tas-subartikolu (5) tiegħu:

(i) minflok il-kliem "Kull min ikollu liċenza jew reġistrazzjoni biex jipprovdi servizz lil kumpanniji, maħruġa mill-awtorità regolatorja rilevanti f'ġurisdizzjoni approvata, m'għandux ikun soġġett għal reġistrazzjoni taħt dan l-Att,", għandhom jidħlu l-kliem "Kull min ikollu liċenza, reġistrazzjoni jew xi awtorizzazzjoni oħra biex jipprovdi servizz lil kumpanniji, maħruġa mill-awtorità regolatorja rilevanti f'ġurisdizzjoni approvata, m'għandu jkun soġġett għall-ebda awtorizzazzjoni taħt dan l-Att,";

(ii) minflok il-kliem "ħamsa u erbgħin", għandhom jidħlu l-kliem "disgħin"; u

(iii) minnufih wara l-kliem "ebda oġġezzjoni għal dan.", għandhom jidħlu l-kliem "Dawk il-persuni għandhom jiġu wkoll klassifikati, fid-diskrezzjoni tal-Awtorità, f'xi waħda mit-tliet klassijiet stabbiliti fl-Iskeda li tinsab ma' dan l-Att, li għandha tapplika *mutatis mutandis* għal dawk il-persuni."; u

(h) minnufih wara s-subartikolu (5) tiegħu, kif emendat, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(6) L-Awtorità tista', fid-diskrezzjoni tagħha u fi kwalunkwe waqt, titlob lil xi persuna minn dawk imsemmija fis-subartikoli (1a) u (5) biex jgħaddulha kwalunkwe informazzjoni jew dokumentazzjoni li jkollhom x'jaqsmu mal-operat u l-attivitajiet ta' dik il-persuna bħala provditur ta' servizz lil kumpanniji, kif

jidhrilha li jkun meħtieġ, u dik il-persuna għandha tikkollabora mal-Awtorità u għandha minnufih tiġbor u tittrażmetti mingħajr ebda dewmien dik l-informazzjoni u dokumentazzjoni li tista' titlob l-Awtorità.".

Emenda tal-artikolu 4 tal-Att prinċipali.

5. L-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fin-nota marġinali tiegħu, minflok il-kelma "reġistrazzjoni", għandha tidħol il-kelma "awtorizzazzjoni";

(b) minflok il-kliem "Applikazzjoni għal reġistrazzjoni", għandhom jidħlu l-kliem "Applikazzjoni għal awtorizzazzjoni";

(ċ) fil-paragrafu (ċ) tiegħu, minflok il-kliem "għar-reġistrazzjoni", għandhom jidħlu l-kliem "għall-awtorizzazzjoni"; u

(d**)** fil-paragrafu (d) tiegħu, minflok il-kliem "ir-reġistrazzjoni", għandhom jidħlu l-kliem "l-awtorizzazzjoni".

Emenda tal-artikolu 5 tal-Att prinċipali.

6. L-artikolu 5 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fin-nota marġinali tiegħu, minflok il-kliem "tagħti reġistrazzjoni.", għandhom jidħlu l-kliem "tagħti awtorizzazzjoni.";

(b) fis-subartikolu (1) tiegħu:

(i) minflok il-kliem "tista' tirreġistra jew tirrofta applikazzjoni għal reġistrazzjoni li ssir taħt dan l-Att. Dik ir-reġistrazzjoni", għandhom jidħlu l-kliem "tista' tikkonċedi jew tirrifjuta l-awtorizzazzjoni li dwarha tkun saret applikazzjoni taħt dan l-Att. Tali awtorizzazzjoni";

(ii) minflok il-kliem "tagħti reġistrazzjoni", għandhom jidħlu l-kliem "tagħti awtorizzazzjoni";

(iii) minflok il-paragrafu (b) tiegħu, għandu jidħol dan li ġej:

"l-applikant ikun qiegħed jopera f'Malta jew minn Malta;";

(iv) fil-paragrafu (ċ) tiegħu:

(i) minflok il-kliem "kumpannija jew xi tip ieħor ta' entità ġuridika", għandhom jidħlu l-kliem "persuna ġuridika";

(ii) fis-subparagrafu (iii) tiegħu, minflok il-kliem "id-diretturi tal-kumpannija", għandhom jidħlu l-kliem "id-diretturi, l-amministraturi jew soċji, kif jista' jkun il-każ, tal-persuna ġuridika";

(iii) minflok is-subparagrafu (iv) tiegħu għandu jidħol dan li ġej:

"(iv) kull persuna li direttament jew indirettament tkun proprjetarja jew tikkontrolla 25% jew aktar tal-kapital jew tad-drittijiet ta' votazzjoni fil-persuna ġuridika, jew inkella teżerċita kontroll fuq il-ġestjoni tal-persuna ġuridika, tkun persuna xierqa u idonea;";

(iv) fis-subparagrafu (v) tiegħu, minflok il-kliem "il-kumpannija", għandhom jidħlu l-kliem "il-persuna ġuridika"; u

(v) fis-subparagrafu (vi) tiegħu, minflok il-kliem "l-kumpannija", għandhom jidħlu l-kliem "l-persuna ġuridika";

(ċ) fis-subartikolu (2) tiegħu, minflok il-kelma "reġistrazzjoni", għandha tidħol il-kelma "awtorizzazzjoni";

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

"(2a) Bħala parti mill-proċess ta' awtorizzazzjoni, l-applikant għandu jiġi klassifikat fid-diskrezzjoni tal-Awtorità f'waħda mit-tliet klassijiet li jiddeterminaw ir-rekwiżiti ta' persuni awtorizzati skont id-dispożizzjonijiet tal-Iskeda li tinsab ma' dan l-Att.".

(e) fis-subartikolu (3) tiegħu:

(i) minflok il-kliem "tagħti r-reġistrazzjoni", għandhom jidħlu l-kliem "tagħti l-awtorizzazzjoni"; u

(ii) minflok il-kliem "tat ir-reġistrazzjoni", għandhom jidħlu l-kliem "tat l-awtorizzazzjoni";

(f) is-subartikolu (4) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "jew tirroftax ir-reġistrazzjoni", għandhom jidħlu l-kliem "jew tirrifjuta l-

awtorizzazzjoni";

(ii) minflok il-kliem "kull regola magħmula taħtu.", għandhom jidħlu l-kliem "kull regolamenti jew regoli magħmula taħtu:

Iżda, l-Awtorità tista' f'kull waqt titlob lill-applikant jipprovdilha kull informazzjoni addizzjonali li jidhrilha li tkun meħtieġa biex tkun tista' tqis aħjar l-applikazzjoni, u minn dak il-mument li l-Awtorità tagħmel tali talba sakemm tiġi provduta dik l-informazzjoni, id-dekorrenza tal-perjodu ta' sitt xhur imsemmi f'dan is-subartikolu għandha tiġi sospiża:

Iżda wkoll, meta l-applikant jonqos milli jipprovdi kwalunkwe informazzjoni addizzjonali li tista' tintalab mill-Awtorità, fi żmien tliet xhur minn meta ssirlu t-talba, l-Awtorità għandha tqis li dik l-applikazzjoni ġiet irtirata mill-applikant.";

(g) fis-subartikolu (6) tiegħu:

(i) minflok il-kliem "jkunu ngħataw reġistrazzjoni", għandhom jidħlu l-kliem "jkunu ngħataw awtorizzazzjoni"; u

(ii) il-kliem "u għandu jkun fih l-ismijiet tal-persuni li jkunu ngħataw dik ir-reġistrazzjoni, kif ukoll il-partikolaritajiet tagħhom fejn jista' jsir kuntatt magħhom", għandhom jitħassru; u

(i) fis-subartikolu (7) tiegħu:

(i) minflok il-kliem "bħala persuna reġistrata", għandhom jidħlu l-kliem "bħala persuna awtorizzata"; u

(ii) minflok il-kliem "li bih titwaqqaf il-kumpannija, jew b'kull tibdil fid-diretturi jew membri tagħha", għandhom jidħlu l-kliem "li bih titwaqqaf il-persuna ġuridika, jew b'kull tibdil fid-diretturi, amministraturi jew membri tagħha, kif jista' jkun il-każ".

Emenda tal-artikolu 6 tal-Att prinċipali.

7. L-artikolu 6 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fin-nota marġinali tiegħu, minflok il-kelma "reġistrazzjoni", għanda tidħol il-kelma "awtorizzazzjoni";

(b) fis-subartikolu (1) tiegħu:

(i) minflok il-kelma "reġistrazzjoni", għandha tidħol il-kelma "awtorizzazzjoni";

(ii) fil-paragrafu (a) tiegħu, minflok il-kelma "reġistrata", għandha tidħol il-kelma "awtorizzata";

(iii) fil-paragrafu (b) tiegħu:

- minflok il-kliem "il-persuna reġistrata", għandhom jidħlu l-kliem "il-persuna awtorizzata";

- minflok il-kliem "l-Att jew xi regoli", għandhom jidħlu l-kliem "Att jew regolamenti jew regoli";

- minflok il-kliem "dik il-persuna reġistrata jew ir-reġistrazzjoni jkunu soġġetti għalihom bis-saħħa ta' dan l-Att u ta' kull regola", għandhom jidħlu l-kliem "dik il-persuna awtorizzata jew l-awtorizzazzjoni jkunu soġġetti għalihom bis-saħħa ta' dan l-Att u ta' kull regolamenti u regoli"; u

- minnufih wara l-kliem "maħruġa taħtu", għandhom jiżdiedu l-kliem ", inkluż kull ksur fir-rigward tal-qafas ta' governanza u kontroll tal-persuna awtorizzata";

(iv) fil-paragrafu (ċ) tiegħu, minflok il-kliem "il-persuna reġistrata jew xi persuna li tkun qegħda taġixxi f'isem dik il-persuna reġistrata", għandhom jidħlu l-kliem "il-persuna awtorizzata jew xi persuna li tkun qegħda taġixxi f'isem dik il-persuna awtorizzata";

(v) fil-paragrafu (d) tiegħu, minflok il-kelma "reġistrata", għandha tidħol il-kelma "awtorizzata";

(vi) fil-paragrafu (e) tiegħu, minflok il-kliem "ir-reġistrazzjoni", għandhom jidħlu l-kliem "l-awtorizzazzjoni";

(vii) minflok il-paragrafu (f) tiegħu għandu jidħol dan li ġej:

"(f) il-persuna awtorizzata tkun talbet li jsir dan;";

(viii) minnufih wara l-paragrafu (f) tiegħu, kif sostitwit, għandhom jiżdiedu dawn is-subparagrafi ġodda li

ġejjin:

(fA) il-persuna awtorizzata tinstab responsabbli, mill-Korp għall-Analiżi ta' Informazzjoni Finanzjarja, għal xi ksur serju, ripetut jew sistematiku tal-Att kontra *Money Laundering* u, jew ta' kull regolamenti maħruġa taħtu; jew

Kap. 373.

(ix) fil-paragrafu (g) tiegħu:

- minflok il-kliem "tagħti reġistrazzjoni", għandhom jidħlu l-kliem "tagħti awtorizzazzjoni"; u

- minflok il-kliem "dik ir-reġistrazzjoni.", għandhom jidħlu l-kliem "dik l-awtorizzazzjoni.";

(ċ) fis-subartikolu (2) tiegħu, minflok il-kliem "ir-reġistrazzjoni", għandhom jidħlu l-kliem "l-awtorizzazzjoni"; u

(d) minflok is-subartikolu (3) tiegħu għandu jidħol dan li ġej:

"(3) Kull persuna li l-awtorizzazzjoni tagħha tiġi mħassra għandha, fi żmien sittin ġurnata mid-data tat-tħassir tal-awtorizzazzjoni, tiżgura li s-servizzi li kienet qed tipprovdi lil kumpanniji jew lil persuni ġuridiċi oħra fit-termini tal-awtorizzazzjoni tagħha, jiġu trasferiti lil xi persuna oħra li tkun awtorizzata kif meħtieġ taħt dan l-Att:

Iżda dan is-subartikolu m'għandux japplika għat-tħassir ta' awtorizzazzjoni skont il-paragrafu (f) tas-subartikolu (1):

Iżda wkoll kull persuna li l-awtorizzazzjoni tagħha ġiet imħassra skont il-paragrafu (f) tas-subartikolu (1), għandha tiżgura li s-servizzi li kienet qegħda tipprovdi lil kumpanniji jew entitajiet legali oħra skont l-awtorizzazzjoni tagħha, jiġu trasferiti lil xi persuna oħra li tkun debitament awtorizzata jew li ma tkunx tinħtieġ l-awtorizzazzjoni skont dan l-Att, jew inkella jiġu terminati skont il-liġi applikabbli, qabel ma l-Awtorità tilqa' t-talba għat-tħassir tal-awtorizzazzjoni.".

Emenda tal-artikolu 7 tal-Att prinċipali.

8. L-artikolu 7 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fin-nota marġinali tiegħu, minflok il-kelma

"reġistrazzjoni.", għandha tidħol il-kelma "awtorizzazzjoni.";

(b) fis-subartikolu (1) tiegħu:

(i) fil-paragrafu (a) tiegħu, minflok il-kliem "r-reġistrazzjoni", għandhom jidħlu l-kliem "l-awtorizzazzjoni";

(ii) fil-paragrafu (b) tiegħu, minflok il-kelma "reġistrazzjoni" kull fejn tidher, għandha tidħol il-kelma "awtorizzazzjoni"; u

(iii) minflok il-kliem "lill-persuna reġistrata", għandhom jidħlu l-kliem "lill-persuna awtorizzata"; u

(ċ) fis-subartikolu (3) tiegħu, minflok il-kliem "lill-persuna reġistrata", għandhom jidħlu l-kliem "lill-persuna awtorizzata".

Żjieda tal-artikolu 7A mal-Att prinċipali.

9. Minnufih wara l-artikolu 7 tal-Att prinċipali, kif emendat, għandu jiżdied dan l-artikolu ġdid li ġej:

"Dmirijiet tal-awdituri.

7A. (1) L-awditur ta' persuna awtorizzata għandu d-dmir li jirrapporta minnufih lill-Awtorità kull fatt jew deċiżjoni li tali awditur isir jaf bihom fil-kapaċità tiegħu bħala awditur ta' tali persuna awtorizzata li:

(a) x'aktarx iwasslu għal kwalifika serja jew rifjut tar-rapport tal-awditur dwar il-kontijiet ta' tali persuna awtorizzata; jew

(b) jikkostitwixxu jew x'aktarx jikkostitwixxu ksur materjali tar-rekwiżiti legali jew regolatorji li japplikaw għal persuni awtorizzati taħt dan l-Att; jew

(ċ) ifixklu serjament il-kapaċità tal-persuna awtorizzata li tkompli bħala negozju attiv; jew

(d) jirrelataw ma' kull ħaġ'oħra li tista' tiġi preskritta:

Iżda l-kwistjonijiet imsemmija f'dan il-paragrafu jistgħu jinkludu ħwejjeġ li jkollhom x'jaqsmu ma' kwalunkwe persuna għajr il-persuna awtorizzata, inkluża persuna li jkollha rabtiet mill-qrib ma' tali persuna awtorizzata.

(2) L-ebda dmir, inkluż id-dmir tas-segretezza professjonali, li għalih l-awditur tal-persuna awtorizzata jista' jkun soġġett, m'għandu jitqies li jkun ġie miksur meta huwa jikkomunika in *bona fede* mal-Awtorità, sew jekk bi tweġiba għal xi talba li hija tagħmillu sew jekk le, xi informazzjoni jew opinjoni fuq xi ħaġa li l-awditur ikun sar jaf biha fil-kapaċità tiegħu bħala awditur ta' dik il-persuna awtorizzata u li tista' tkun rilevanti għall-Awtorità taħt id-dispożizzjonijiet ta' dan l-Att jew kwalunkwe regolamenti jew regoli maħruġa taħtu jew li tkun meħtieġa li tiġi komunikata skont dan l-artikolu.".

Emenda tal-artikolu 8 tal-Att prinċipali.

10. Fis-subartikolu (2) tal-artikolu 8 tal-Att prinċipali, minflok il-kliem "lill-provdituri ta' servizz lil kumpanniji.", għandhom jidħlu l-kliem "lill-provdituri ta' servizz lil kumpanniji u oħrajn kif jista' jiġi speċifikat fihom.".

Emenda tal-artikolu 9 tal-Att prinċipali.

11. L-artikolu 9 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (1) tiegħu għandu jidħol dan li ġej:

"(1) Meta persuna tikser jew tonqos milli tħares xi dispożizzjoni ta' dan l-Att jew ta' kull regolamenti jew regoli maħruġa taħtu, xi kondizzjoni imposta fl-awtorizzazzjoni maħruġa mill-Awtorità, xi direttiva maħruġa mill-Awtorità, jew tonqos milli tikkoopera mal-Awtorità f'xi investigazzjoni, l-Awtorità tista', b'avviż bil-miktub u mingħajr il-ħtieġa ta' smigħ fil-qorti, timponi fuq dik il-persuna penali amministrattiva li ma tkunx iżjed minn ħamsin elf euro (€50,000) għal kull ksur jew nuqqas ta' konformità, kif jista' jkun il-każ.";

(b) il-proviso għas-subartikolu (2) għandu jitħassar;

(ċ) fis-subartikolu (4) tiegħu, minflok il-kliem "tad-dispożizzjoni tal-Att jew tar-regoli, u l-penali", għandhom jidħlu l-kliem "tad-dispożizzjoni ta' dan l-Att jew ta' kull regolamenti jew regoli maħruġa taħtu, u l-penali amministrattiva".

Emenda tal-artikolu 10 tal-Att prinċipali.

12. Is-subartikolu (1) tal-artikolu 10 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem "jeħtieġu reġistrazzjoni", għandhom jidħlu l-kliem "jeħtieġu awtorizzazzjoni"; u

(b) fil-paragrafu (a) tiegħu, minflok il-kliem "kull attività bħal dawk kif hawn aktar qabel imsemmija;", għandhom

jidħlu l-kliem "kull attività bħal dawk kif hawn aktar qabel imsemmija, inkluża s-setgħa li teħtieġ rekords tat-telefonija eżistenti u tat-traffiku ta' data eżistenti dwar dawk l-attivitajiet;".

Emenda tal-artikolu 11 tal-Att prinċipali.

13. Is-subartikolu (2) tal-artikolu 11 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (b) tiegħu, minflok il-kliem "li jkollha l-funzjonijiet ta' provditur ta' servizz lil kumpanniji", għandhom jidħlu l-kliem "li jkollha l-funzjonijiet fir-rigward ta' provditur ta' servizz lil kumpanniji"; u

(b) fil-paragrafu (ċ) tiegħu, minflok il-kelma "reġistrat.", għandha tidħol il-kelma "awtorizzat.".

Emenda tal-artikolu 14 tal-Att prinċipali.

14. Is-subartikolu (1) tal-artikolu 14 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tiegħu, minflok il-kliem "reġistrazzjoni jew superviżjoni u dwar kull ħlas ieħor", għandhom jidħlu l-kliem "awtorizzazzjoni jew superviżjoni u dwar kull dritt u ħlas ieħor";

(b) minnufih wara l-paragrafu (e) tiegħu, għandhom jiżdiedu dawn il-paragrafi ġodda li ġejjin:

"(eA) jipprovdi dwar metodi u mekkaniżmi ta' superviżjoni alternattivi ta' provdituri ta' servizz lil kumpanniji, sakemm dan ikun permess mil-liġi;

(eB) jipprovdi dwar kollaborazzjoni, kooperazzjoni u kondiviżjoni ta' informazzjoni msaħħin, bejn l-Awtorità u awtoritajiet u aġenziji oħra u kull korp ieħor li l-Ministru jista' jidhirlu li jkunu adatti, fir-rigward tar-regolamentazzjoni u s-superviżjoni ta' provdituri ta' servizz lil kumpanniji;

(eĊ) jemenda d-dispożizzjonijiet tal-Iskeda li tinsab ma' dan l-Att;".

Emenda tal-artikolu 15 tal-Att prinċipali.

15. L-artikolu 15 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "reġistrazzjoni, kondizzjoni, obbligu", għandhom jidħlu l-kliem "kondizzjoni ta' awtorizzazzjoni, xi obbligu";

(b) fis-subartikolu (5) tiegħu, minflok il-kelma "reġistrat", għandha tidħol il-kelma "awtorizzat";

(ċ) is-subartikolu (8) tiegħu għandu jiġi mħassar.

Emenda tal-artikolu 16 tal-Att prinċipali.

16. Is-subartikolu (2) tal-artikolu 16 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (a) tiegħu:

(i) minflok il-kelma "reġistrat" għandha tidħol il-kelma "awtorizzat";

(ii) minflok il-kliem "tar-reġistrazzjoni tiegħu", għandhom jidħlu l-kliem "tal-awtorizzazzjoni tiegħu"; u

(b) fil-paragrafu (ċ) tiegħu, minflok il-kliem "reġistrazzjoni jew tħassir ta' reġistrazzjoni", għandhom jidħlu l-kliem "awtorizzazzjoni jew tħassir ta' awtorizzazzjoni".

Emenda tal-artikolu 17 tal-Att prinċipali.

17. L-artikolu 17 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kelma "reġistrazzjoni", għandha tidħol il-kelma "awtorizzazzjoni"; u

(b) fil-paragrafu (b) tiegħu, minflok il-kliem "l-Att dwar *Trusts* u *Trustees*, u kull regolament magħmul taħthom", għandhom jidħlu l-kliem "l-Att dwar *Trusts* u *Trustees*, l-Att dwar is-*Securitisation*, l-Att dwar Pensjonijiet tal-Irtirar, l-Att dwar l-Attiv Finanzjarju Virtwali, u kull regolamenti magħmulin taħthom;".

Kap. 331.

Kap. 484.
Kap. 514.
Kap. 590

Żjieda tal-artikolu 19 mal-Att prinċipali.

18. Minnufih wara l-artikolu 18 tal-Att prinċipali, għandu jiżdied dan l-artikolu ġdid li ġej:

"Dispożizzjonijiet tranżitorji oħra u klawżola ta' riżerva. Abbozz Nru 162 tal-2020.

19. (1) Persuni li, fl-ewwel data tad-dħul fis-seħħ tal-emendi għad-dispożizzjonijiet ta' dan l-Att imdaħħla bis-saħħa tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, ikunu qegħdin joffru xi servizzi ta' provditur ta' servizz lil kumpanniji fis-sens ta' dan l-Att, u li, sa dik id-data, ma kinux meħtieġa li jkunu reġistrati skont dan l-Att, jistgħu biss ikomplu joffru s-servizzi ta' provditur ta' servizz lil kumpanniji wara tmien xhur minn dik id-data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji jekk:

(a) ikunu applikaw għal awtorizzazzjoni skont l-artikolu 4, fi żmien xahrejn mill-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji u jkunu ġew awtorizzati mill-Awtorità bħala provditur ta' servizz lil kumpanniji taħt il-livell limitu fi żmien tmien xhur minn dik id-data tad-dħul fis-seħħ; jew

Abbozz Nru 162 ysl-2020.

(b) ikunu applikaw għal awtorizzazzjoni skont l-artikolu 4 fi żmien xahrejn mill-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, u jkunu ġew provviżorjament awtorizzati mill-Awtorità bħala provditur ta' servizz lil kumpanniji 'il fuq mil-livell limitu jew ta' Klassi Ċ fi żmien tmien xhur minn dik id-data tad-dħul fis-seħħ, kif soġġett għal kwalunkwe informazzjoni addizzjonali li tista' tkun meħtieġa mill-Awtorità u l-ħlas ta' kull dritt addizzjonali li jista' jiġi preskritt f'regoli jew regolamenti rilevanti maħruġa taħt l-Att:

Abbozz Nru 162 tal-2020.

Iżda, minkejja d-dispożizzjonijiet tal-artikolu 5(4), l-Awtorità għandha tavża lil tali persuni awtorizzati provviżorjament skont il-paragrafu (b), bid-deċiżjoni tagħha jekk tagħtix jew tirrifjutax milli tagħti awtorizzazzjoni, fi żmien tnax-il xahar minn meta tkun ingħatat tali awtorizzazzjoni provviżorja:

Iżda wkoll il-persuni msemmija fil-paragrafu (b) għandhom *mutatis mutandis* jikkonformaw ruħhom u jimxu skont id-dispożizzjonijiet ta' dan l-Att matul il-perjodu msemmi ta' tnax-il xahar jew sa dik id-data meta l-applikazzjoni tagħhom tiġi approvata jew miċħuda mill-Awtorità, liema minnhom tiġi l-ewwel, u matul dak il-perjodu kull referenza fl-Att għal 'provditur ta' servizz lil kumpanniji' jew 'persuna awtorizzata' għandha titqies li tinkludi referenza għal persuna li tkun ġiet awtorizzata provviżorjament taħt dan is-subartikolu:

(2) Kull nuqqas li jitħares xi wieħed mir-rekwiżiti msemmija fis-subartikolu (1)(b), jew li tiġi provduta kwalunkwe informazzjoni addizzjonali mitluba mill-Awtorità fiż-żmien stipulat mill-Awtorità, jew kull irtirar jew abbandun tal-applikazzjoni fi kwalunkwe waqt matul l-imsemmi perjodu ta' tnax-il xahar, jew id-deċiżjoni tal-Awtorità li tirrifjuta jew tagħti awtorizzazzjoni skont l-artikolu 5, jew jekk l-applikant jipprovdi informazzjoni jew jagħmel xi dikjarazzjoni li jkun jaf li mhix eżatta, tkun falza jew qarrieqa dwar kwalunkwe aspett materjali, jew b'mod negliġenti jipprovdi informazzjoni jew jagħmel dikjarazzjoni li ma tkunx eżatta, tkun falza jew qarrieqa dwar kwalunkwe aspett materjali, għandhom awtomatikament jirrendu kull tali awtorizzazzjoni provviżorja nulla u mingħajr effett:

Iżda l-għoti ta' awtorizzazzjoni provviżorja hija konċessjoni u privileġġ temporanji, u l-ebda detentur tagħha m'għandu jitqies li jkun kiseb xi drittijiet vestiti fiha jew taħtha.

(3) Il-kriterji li bihom persuna għandha titqies bħala provditur ta' servizz lil kumpanniji 'l fuq mil-livell limitu jew taħt il-livell limitu għandhom jiġu provduti f'regoli li jinħarġu taħt dan l-Att.

(4) Bla ħsara għas-sottomissjoni kompluta tal-applikazzjoni lill-Awtorità skont is-subartikolu (1), u qabel ma dik il-persuna tiġi awtorizzata skont is-subartikolu 1(a) jew qabel ma dik il-persuna tkun awtorizzata provviżorjament skont is-subartikolu (1)(b), skont il-każ, l-Awtorità għandha tgħaddi biex tikklassifika lil tali persuni f'xi waħda mill-Klassijiet għal provdituri ta' servizzi lil kumpanniji stabbiliti fl-Iskeda li tinsab ma' dan l-Att u f'xi wieħed mil-livelli limiti msemmija fis-subartikolu (3), u din għandha tavża lil dik il-persuna bil-miktub dwar l-eżitu ta' dik il-klassifikazzjoni u ta' dik l-allokazzjoni ta' livelli limiti.

Abbozz Nru 162 tal-2020.

(5) Kull persuna li, fl-ewwel data tal-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, tkun diġà ġiet reġistrata bħala provditur ta' servizz lil kumpannija taħt dan l-Att għandha titqies bħala persuna awtorizzata għall-finijiet ta' dan l-Att. Minkejja dan, persuna bħal dik għandha tkun soġġetta għall-proċess ta' klassifikazzjoni tal-Awtorità kif stabbilit fis-subartikolu (4), mingħajr il-ħtieġa madankollu li dik il-persuna tissottometti applikazzjoni lill-Awtorità.

Abbozz Nru 162 tal-2020.

(6) Kull applikant li seta' kien diġà ippreżenta applikazzjoni għal reġistrazzjoni quddiem l-Awtorità qabel l-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji u li l-Awtorità tkun għadha, sa dik id-data, ma ddeċidietx dwar l-applikazzjoni tiegħu skont l-artikolu 5, għandu javża lill-Awtorità, bil-miktub, jekk dak l-applikant ikunx għadu bi ħsiebu jibqa' għaddej bl-applikazzjoni jew jekk dak l-applikant ikunx jixtieq jirtira l-applikazzjoni tiegħu.

Abbozz Nru 162 tal-2020.

Iżda, meta l-applikant ma javżax lill-Awtorità f'dan is-sens, fi żmien tliet xhur mill-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, l-Awtorità għandha tqis li tali applikazzjoni tkun ġiet irtirata.

Abbozz Nru 162 tal-2020.

(7) Kull persuna li, fl-ewwel data tad-dħul fis-seħħ tal-Att tal-2020 li jemenda l-Att dwar Provdituri ta' Servizz lil Kumpanniji, tkun diġà avżat lill-Awtorità skont l-artikolu 3(5) qabel dak id-dħul fis-seħħ ta' dak l-Att, għandha tkun soġġetta għall-proċess ta' klassifikazzjoni tal-Awtorità stipulat fis-subartikolu (4), mingħajr il-ħtieġa, madankollu, li dik il-persuna tissottometti applikazzjoni lill-Awtorità.

(8) L-Awtorità tista', fid-diskrezzjoni unika tagħha, tagħti direzzjoni dwar il-mod u l-intervalli li fihom għandhom jaslu għand l-Awtorità applikazzjonijiet minn persuni differenti, fiż-żmien imsemmi fis-subartikolu (1) aktar 'il fuq.".

Żjieda tal-Iskeda mal-Att prinċipali.

19. Minnufih wara l-artikolu 19 tal-Att prinċipali, għandha tiżdied din l-Iskeda ġdida li ġejja:

C 4638

"**SKEDA**

Klassi A CSP	Provditur ta' servizz lil kumpanniji li jkun awtorizzat li jipprovdi, bħala n-negozju tiegħu, dawn is-servizzi li ġejjin lil terzi: (i) il-formazzjoni ta' kumpanniji jew ta' entitajiet ġuridiċi oħra; u, jew (ii) jipprovdi uffiċċju reġistrat, korrispondenza kummerċjali jew indirizz amministrattiv u servizzi relatati oħra għal kumpannija, soċjetà jew kull entità ġuridika oħra.
Klassi B CSP	Provditur ta' servizz lil kumpanniji li jkun awtorizzat li jipprovdi, bħala n-negozju tiegħu, is-servizz lil terzi li jaġixxu bħala, jew li jkunu qed jirranġaw għal xi persuna oħra biex taġixxi bħala direttur jew segretarju ta' kumpannija, soċju f'soċjetà jew li jkollha xi pożizzjoni bħal dik fir-rigward ta' entitajiet ġuridiċi oħra.
Klassi Ċ CSP	Provditur ta' servizz lil kumpanniji li jkun awtorizzat li jipprovdi, bħala n-negozju tiegħu, is-servizzi kollha li joffri provditur ta' servizz lil kumpanniji, speċifikati taħt l-artikolu 2(1) fit-tifsira "provdituri ta' servizz lil kumpanniji".".

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz huma sabiex jagħmel emendi għall-Att dwar il-Provdituri ta' Servizz lil Kumpanniji sabiex ikompli jsaħħaħ il-qafas regolatorju f'dan ir-rigward.

A BILL
entitled

AN ACT to amend the Company Service Providers Act, Cap. 529 and to provide for matters ancillary or incidental thereto.

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

Short title and commencement.

1. (1) The short title of this Act is the Company Service Providers (Amendment) Act, 2020 and this Act shall be read and construed as one with the Company Service Providers Act, hereinafter referred to as "the principal Act".

Cap. 529.

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

Amendment of article 1 of the principal Act.

2. Article 1 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words "Article 36 of Directive 2005/60/EC of the European Parliament and of the Council of 29 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing,", there shall be substituted the words "Article 47 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of

the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time,"; and

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

(i) for the words "Article 36 of Directive 2005/60/EC", there shall be substituted the words "Article 47 of Directive (EU) 2015/849, as amended from time to time"; and

(ii) for the word "registration", there shall be substituted the word "authorisation".

Amendment of article 2 of the principal Act.

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

(a) in the definition "approved jurisdiction", immediately after the words "or any other jurisdiction which" there shall be added the words ", in the opinion of the Authority,";

(b) immediately after the definition "approved jurisdiction", as amended, there shall be added the following new definition:

" "authorised person" means a person in relation to whom an authorisation to act as a company service provider has been issued by the Authority in terms of this Act;";

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

" "close links" means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of 20% or more of the voting rights or capital of a body corporate;

(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

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(c) to one and the same third person when:

(i) such person is a member of the authorised person's family, including, but not limited to, the authorised person's spouse or partner, the authorised person's child or step-child, the authorised person's parents and other dependants of the authorised person;

(ii) such person is acting in the capacity of a company service provider of any company, the beneficial owners of which include:

(a) the authorised person, the authorised person's dependants, including, but not limited to, the authorised person's spouse, children or step-children; or

(b) a body corporate with which one is associated in terms of (a) and (b) above;

(iii) such person is acting as business partner of the authorised person or of any person who, by virtue of sub-paragraphs (i) or (ii) above is connected with the authorised person;";

(d) in the definition "company service provider", the words "natural or legal" shall be deleted;

(e) immediately after the definition "company service provider" as amended, there shall be added the following new definitions:

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

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

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

" "person" means a natural or legal person in terms of law, and for the purposes of this Act the word 'legal person' shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not;"

(g) in the definition "prescribed", for the words "under this Act;", there shall be substituted the words "under this Act."; and

(h) the definition "registered person" shall be deleted.

Amendment of article 3 of the principal Act.

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

(a) in the marginal note thereto, for the word "registration", there shall be substituted the word "authorisation";

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

"(1) Any person operating in or from Malta who acts, or holds himself out as acting as a company service provider by way of its business, shall apply for authorisation with the Authority in terms of this Act.";

(c) immediately after sub-article (1) thereof, as substituted, there shall be added the following new sub-articles:

"(1a) Any person in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant, shall not be required to obtain authorisation from the Authority in terms of this Act:

Provided that, this sub-article shall cease to have effect and such persons shall henceforth no longer be considered to be exempt from the provisions of this Act, following the expiration of eight months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, saving the transitory provisions contained in article 19.

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(1b) Any person falling under article 19(1)(b) who, within the twelve month period referred to in the first proviso to the same sub-article, has not obtained

authorisation under this Act, shall immediately cease to provide the services of a company service provider.".

(d) sub-article (2) thereof shall be deleted;

(e) sub-article (3) thereof shall be deleted;

(f) in sub-article (4) thereof, for the word "registration", there shall be substituted the word "authorisation";

(g) in paragraph (a) of sub-article (5) thereof:

(i) for the words "Any person having a licence or registration to provide company service, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to registration under this Act,", there shall be substituted the words "Any person having a licence, registration or any other authorisation to provide company services, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to authorisation under this Act,";

(ii) for the words "forty-five", there shall be substituted the words "ninety"; and

(iii) immediately after the words "that it does not object thereto.", there shall be added the words "Such persons shall also be classified, at the discretion of the Authority, into one of the three classes laid out in the Schedule to this Act, which shall *mutatis mutandis* apply to such persons."; and

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

"(6) The Authority may, at its discretion and at any time, request any of the persons referred to in sub-articles (1a) and (5) to furnish any information or documentation related to such person's operations and activities as a company service provider, as it may deem necessary, and such person shall collaborate with the Authority and shall promptly collate and transmit without any undue delay such information and documentation as the Authority may request.".

5. Article 4 of the principal Act shall be amended as follows: Amendment of article 4 of the principal Act.

(a) in the marginal note thereto, for the word "registration", there shall be substituted the word

"authorisation";

(b) in the heading thereof, for the words "application for registration", there shall be substituted the words "application for authorisation";

(c) in paragraph (c) thereof, for the word "registration", there shall be substituted the word "authorisation"; and

(d) in paragraph (d) thereof, for the word "registration", there shall be substituted the word "authorisation".

Amendment of article 5 of the principal Act.

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

(a) in the marginal note thereto, for the words "grant a registration.", there shall be substituted the words "grant authorisation.";

(b) in sub-article (1) thereof:

(i) for the words "may register or refuse an application for registration made under this Act. Such registration", there shall be substituted the words "may grant or refuse to grant authorisation applied for under this Act. Such authorisation";

(ii) for the words "grant a registration", there shall be substituted the words "grant authorisation";

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

"(b) the applicant is operating in or from Malta;";

(iv) in paragraph (c) thereof:

(i) for the words "company or other type of legal entity", there shall be substituted the words "legal person";

(ii) in sub-paragraph (iii) thereof, for the words "the directors of the company", there shall be substituted the words "the directors, administrators or partners, as the case may be, of the legal person";

(iii) sub-paragraph (iv) thereof shall be substituted by the following:

"(iv) every person who directly or indirectly owns or controls 25% or more of the capital or voting rights in the legal person, or otherwise exercises control over the management of the legal person, is a fit and proper person;";

(iv) in sub-paragraph (v) thereof, for the word "company", there shall be substituted the words "legal person"; and

(v) in sub-paragraph (vi) thereof, for the word "company", there shall be substituted the words "legal person";

(c) in sub-article (2) thereof, for the word "a registration", there shall be substituted the word "authorisation";

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

"(2a) As part of the authorisation process, the applicant shall be classified at the discretion of the Authority into one of the three classes which determine the requirements of authorised persons in terms of the provisions of the Schedule to this Act.".

(e) in sub-article (3) thereof:

(i) for the words "In granting registration", there shall be substituted the words "In granting authorisation"; and

(ii) for the words "having granted registration", there shall be substituted the words "having granted authorisation";

(f) sub-article (4) thereof shall be amended as follows:

(i) for the word "registration", there shall be substituted the word "authorisation";

(ii) for the words "any rules made thereunder.", there shall be substituted the words "any regulations or rules made thereunder:

Provided that, the Authority may at any time request the applicant to provide it with any additional

information it may deem necessary to enable it to better consider the application, and from such time as the Authority makes such a request until such time that any such information is provided, the running of the six month time period mentioned in this sub-article shall be suspended:

Provided further that, where an applicant fails to provide any additional information which may be requested by the Authority within three months from the request being so made, the Authority shall deem such an application to have been withdrawn by the applicant.";

(g) in sub-article (6) thereof:

(i) for the words "registration has been granted in terms", there shall be substituted the words "authorisation has been granted in terms"; and

(ii) the words "and shall indicate the names of the persons to whom such registration has been granted, as well as their contact details,", shall be deleted; and

(h) in sub-article (7) thereof:

(i) for the words "a registered person", there shall be substituted the words "an authorised person"; and

(ii) for the words "constituting the company, or any change of its directors or members", there shall be substituted the words "constituting the legal person, or any change of its directors, administrators or members, as the case may be".

Amendment of article 6 of the principal Act.

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

(a) in the marginal note thereto, for the word "registration", there shall be substituted the words "an authorisation";

(b) in sub-article (1) thereof:

(i) for the words "a registration", there shall be substituted the words "an authorisation";

(ii) in paragraph (a) thereof, for the word "registered", there shall be substituted the word "authorised";

(iii) in paragraph (b) thereof:

- for the words "the registered person", there shall be substituted the words "the authorised person";

- for the words "Act or any rules", there shall be substituted the words "Act or any regulations or rules";

- for the words "such registered person or the registration is subject by virtue of this Act and any rules", there shall be substituted the words "such authorised person or the authorisation is subject by virtue of this Act and any regulations and rules"; and

- immediately after the words "issued thereunder", there shall be added the words ", including any breach in relation to the authorised person's governance and control framework;";

(iv) in paragraph (c) thereof, for the words "the registered person or someone acting on behalf of such registered person", there shall be substituted the words "the authorised person or someone acting on behalf of such authorised person";

(v) in paragraph (d) thereof, for the word "registered", there shall be substituted the word "authorised";

(vi) in paragraph (e) thereof, for the word "registration", there shall be substituted the word "authorisation";

(vii) paragraph (f) thereof shall be substituted by the following:

"(f) the authorised person has so requested;";

(viii) immediately after paragraph (f) thereof as substituted, there shall be added the following new sub-paragraph:

(fA) the authorised person is found liable, by the Financial Intelligence Analysis Unit, for a serious, repeated or systematic breach of the Prevention of Money Laundering Act and, or of any Cap. 373.

regulations issued thereunder; or

(ix) in paragraph (g) thereof:

- for the words "granting registration", there shall be substituted the words "granting authorisation"; and

- for the words "such registration.", there shall be substituted the words "such authorisation.";

(c) in sub-article (2) thereof, for the word "registration", there shall be substituted the word "authorisation"; and

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

"(3) Any person whose authorisation has been cancelled shall, within sixty days from the date of the cancellation of the authorisation, ensure that the services he had been providing to companies or other legal persons in terms of its authorisation are transferred to another person which is duly authorised in terms of this Act:

Provided that this sub-article shall not apply to the cancellation of an authorisation in terms of paragraph (f) of sub-article (1):

Provided further that any person whose authorisation has been cancelled in terms of paragraph (f) of sub-article (1) shall ensure that the services he had been providing to companies or other legal entities in terms of its authorisation are transferred to another person which is duly authorised or otherwise not required to be authorised in terms of this Act, or are otherwise terminated in terms of applicable law, prior to the Authority acceding to the request for cancelling the authorisation.".

Amendment of article 7 of the principal Act.

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

(a) in the marginal note thereto, for the word "registration.", there shall be substituted the word "authorisation.";

(b) in sub-article (1) thereof:

(i) in paragraph (a) thereof, for the word "registration", there shall be substituted the word "authorisation";

(ii) in paragraph (b) thereof, for the words "the registration" and "a registration", there shall be substituted the words "the authorisation" and "an authorisation" respectively; and

(iii) for the words "registered person", there shall be substituted the words "authorised person"; and

(c) in sub-article (3) thereof, for the words "registered person", there shall be substituted the words "authorised person".

Addition of article 7A to the principal Act.

9. Immediately after article 7 of the principal Act as amended, there shall be added the following new article:

"Duties of auditors.

7A. (1) An auditor of an authorised person shall have the duty to report immediately to the Authority any fact or decision of which such auditor becomes aware in his capacity as auditor of such authorised person which:

(a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such authorised person; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to authorised persons under this Act; or

(c) gravely impairs the authorised person's ability to continue as a going concern; or

(d) relates to any other matter which may be prescribed:

Provided that the matters mentioned in this paragraph may include matters related to any person other than the authorised person, including any person having close links with such authorised person.

(2) No duty, including the duty of professional secrecy, to which an auditor of the authorised person may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that authorised person and which may be relevant to the Authority under the provisions of this Act or any regulations or rules issued hereunder or is required to be communicated by virtue of this article.".

Amendment of article 8 of the principal Act.

10. In sub-article (2) of article 8 of the principal Act, for the words "company service providers.", there shall be substituted the words "company service providers and others as may be specified therein.".

Amendment of article 9 of the principal Act.

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

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

"(1) Where any person contravenes or fails to comply with any of the provisions of this Act or of any regulations or rules issued thereunder, with any of the conditions imposed in an authorisation issued by the Authority, with any directive issued by the Authority, or fails to cooperate with the Authority in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on any such person an administrative penalty which may not exceed fifty thousand euro (€50,000) for each infringement or failure to comply, as the case may be.";

(b) the proviso to sub-article (2) shall be deleted;

(c) in sub-article (4) thereof, for the words "the provision of this Act or the rules, and the penalty", there shall be substituted the words "the provisions of this Act or of any regulations or rules issued thereunder, and the administrative penalty".

Amendment of article 10 of the principal Act.

12. Sub-article (1) of article 10 of the principal Act shall be amended as follows:

(a) for the words "require registration", there shall be substituted the words "require authorisation"; and

(b) in paragraph (a) thereof, for the words "any such activities as aforesaid;", there shall be substituted the words "any such activities as aforesaid, including the power to require existing telephone and existing data traffic records with respect to any such activities;".

Amendment of article 11 of the principal Act.

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

(a) in paragraph (b) thereof, for the words "having functions of a company service provider", there shall be substituted the words "having functions in relation to a company service provider"; and

(b) in paragraph (c) thereof, for the word "registered", there shall be substituted the word "authorised".

Amendment of article 14 of the principal Act.

14. Sub-article (1) of article 14 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof, for the words "registration or supervisory fees and such other charges", there shall be substituted the words "authorisation or supervisory fees and such other fees and charges";

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

"(eA) provide for alternative methods and mechanisms of supervision of company service providers, in so far as this is permissible at law;

(eB) provide for enhanced collaboration, cooperation and information sharing, between the Authority and other authorities, agencies and any other body which the Minister may deem appropriate, with respect to the regulation and supervision of company service providers;

(eC) amend the provisions of the Schedule to this Act;".

Amendment of article 15 of the principal Act.

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

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

(b) in sub-article (5) thereof, for the word "registered", there shall be substituted the word "authorised";

(c) sub-article (8) thereof shall be deleted.

Amendment of article 16 of the principal Act.

16. Sub-article (2) of article 16 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof:

(i) for the words "a registered", there shall be substituted the words "an authorised"; and

(ii) for the words "its registration", there shall be substituted the words "its authorisation"; and

(b) in paragraph (c) thereof for the words "registration or cancellation of registration", there shall be substituted the words "authorisation or cancellation of authorisation".

Amendment of article 17 of the principal Act.

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

(a) in the heading thereof, for the word "registration", there shall be substituted the word "authorisation"; and

(b) in paragraph (b) thereof, for the words "the Trusts and Trustees Act, and any regulations made thereunder", there shall be substituted the words "the Trusts and Trustees Act, the Securitisation Act, the Retirement Pensions Act, the Virtual Financial Assets Act, and any regulations made thereunder;".

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Cap. 514.
Cap. 590.

Addition of Article 19 to the principal Act.

18. Immediately after article 18 of the principal Act, there shall be added the following new article:

"Further transitory provisions and savings clause. Bill No. 162 of 2020.

19. (1) Persons who, on the first date of the coming into force of the amendments to the provisions of this Act introduced by virtue of Company Service Providers (Amendment) Act, 2020, are offering any of the services of a company service provider within the meaning of this Act, and who, until such date, were not required to be registered in terms of this Act, may only continue to offer the services of a company service provider following eight months from such date of coming into force of Company Service Providers (Amendment) Act, 2020 if:

(a) they have applied for authorisation in terms of article 4, within two months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020 and have been authorised by the Authority as an under-threshold company services provider within eight months of such date of coming into force; or

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(b) they have applied for authorisation in terms of article 4 within two months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, and have been provisionally authorised by the Authority as an over-threshold or Class C company services provider within eight months of such date of coming into force, subject to the submission of any additional information as may be required by the Authority and the payment of any additional fee as may be prescribed in the relevant rules or regulations issued under the Act:

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Provided that, notwithstanding the provisions of article 5(4), the Authority shall notify any such person provisionally authorised in terms of paragraph (b), of its decision whether to grant or refuse authorisation, within twelve months of having granted such provisional authorisation:

Provided further that persons referred to in paragraph (b) shall *mutatis mutandis* comply with and adhere to the provisions of this Act during the said twelve month period or until such date as their application is approved or refused by the Authority, whichever is the earlier, and during such period any reference in the Act to a 'company service provider' or an 'authorised person' shall be deemed to include reference to a person who has been provisionally authorised under this sub-article:

(2) Any failure to meet any of the requirements mentioned in sub-article (1)(b), or to furnish any additional information requested by the Authority within the time stipulated by the Authority, or any withdrawal or abandonment of the application at any time during the said twelve month period, or the Authority's decision to refuse or grant an authorisation in terms of article 5, or if the applicant furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall automatically render any such provisional authorisation null and without effect:

Provided that the granting of a provisional authorisation is a temporary concession and privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder.

(3) The criteria by which a person shall be considered to be an over-threshold or under-threshold company services provider shall be provided for in rules issued under this Act.

(4) Subject to a complete application being submitted to the Authority in terms of sub-article (1), and before such person is authorised in terms of sub-article 1(a) or before such person is provisionally authorised in terms of sub-article (1)(b), as the case may be, the Authority shall proceed to classify such person into one of the Classes for company service providers set out in the Schedule to this Act and into one of the thresholds mentioned in sub-article (3), and shall notify such person in writing of the outcomes of such classification and of such allocation of thresholds.

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(5) Any person who, on the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, is already registered as a company service provider under this Act shall be considered to be an authorised person for the purposes of this Act. This notwithstanding, such person shall be subject to the Authority's classification process set out in sub-article (4), with no requirement, however, on such person to submit any application to the Authority.

(6) Any applicant who may have already submitted an application for registration with the Authority prior to the first date of the coming into force of Company Service Providers (Amendment) Act, 2020 and whose application had, by such date, not yet been determined by the Authority in terms of article 5, shall notify the Authority, in writing, whether such applicant intends continuing with the application or whether such applicant wishes to withdraw such application.

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Provided that, where an applicant does not so notify the Authority, within three months from the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, the Authority shall deem such an application to have been withdrawn.

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(7) Any person who, on the first date of the coming into force of Company Service Providers (Amendment) Act, 2020, had already notified the Authority in terms of Article 3(5) prior to such coming into force of the said Act shall be subject to the Authority's classification process set out in sub-article (4), with no requirement, however, on such person to submit any application to the Authority.

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(8) The Authority may, at its sole discretion, direct the manner and intervals within which applications from different persons are to be received by the Authority within the period referred to in sub-article (1) above.".

19. Immediately after article 19 of the principal Act, there shall be added the following new Schedule:

Addition of Schedule to the principal Act.

" **SCHEDULE**

Class A CSP	A company service provider authorised to provide, by way of its business, the following services to third parties: (i) formation of companies or other legal entities; and, or (ii) provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.
Class B CSP	A company service provider authorised to provide, by way of its business, the service to third parties of acting as, or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities.

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Class C CSP	A company service provider authorised to provide, by way of its business, all of the services of a company service provider specified under article 2(1) in the definition "company service provider.".

Objects and Reasons

The objects and reasons of this Bill are to effect amendments to the Company Services Providers Act in order to further strengthen the regulatory framework in relation thereto.

VERŻJONI ELETTRONIKA

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Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.80