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Amendments on the Right to Appeal Process

Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (the 'BRRD') has set up National Resolution Authorities and as its scope, provides for exhaustive arrangements to address banks in a crisis. Amongst other provisions, Article 85 of the BRRD provides a remedy to any person who feels aggrieved by a decision related to the taking of a crisis management measure, by providing such person with the right to appeal against that decision. This is in line with Article 47 of the Charter of Fundamental Rights of the European Union which allows for the right to an effective remedy and to a fair trial. In this respect, Act No. LXII of 2020 (the 'Amending Act') has amended Article 21 of the Malta Financial Services Authority Act, Cap. 330 of the Laws of Malta (the 'MFSA Act') in order to further clarify, under domestic law, the right to appeal as prescribed in Article 85 of the BRRD.

These new amendments have extended the jurisdiction of the Financial Services Tribunal (the 'FST') to determine appeals made by any person that feels aggrieved by a decision of the Resolution Committee (the 'RC'). In this respect, the new sub-article (9A) to Article 21 of the MFSA Act provides that the FST can determine whether the RC has, in its decision, wrongly applied the provisions of the MFSA Act or any subsidiary legislation issued thereunder or whether the decision of the RC constitutes an abuse of discretion or is manifestly unfair. The amendments introduced by the Amending Act also cover the powers of the FST. In this respect, paragraph (a) of sub-article (13) of Article 21 now empowers the FST to, amongst other matters, annul a decision of the RC. Lastly, the Amending Act sought to clarify that an appeal from a decision of the RC to take a crisis management measure shall not automatically suspend the execution of such a decision. Thus, the second proviso to Article 21(17) of the MFSA Act provides that a decision of the RC can only be suspended if the aggrieved person successfully proves that such suspension would be in the public interest.