

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

3rd August, 2007

ACT No. XX of 2007

AN ACT to amend various financial services laws.

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:-

1. The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2007. Short title.

PART I

2. (1) This Part amends and shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as “the principal Act”. Malta Financial Services Authority Act. Cap.330

(2) The provisions of this Part shall come into force on the date of publication of this Act.

3. In the definition “financial services” in article 2 of the principal Act, for the words “be placed by the Minister under the supervisory and regulatory authority of the Authority;”, there shall be substituted the words “be placed under the supervisory and regulatory competence of the Authority by the Minister or by any other law;”. Amendment of article 2 of the principal Act.

Amendment of
article 4 of the
principal Act.

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

(a) in paragraph (c) of sub-article (1) thereof, for the words “and guidelines to”, there shall be substituted the words “and guidance to”; and

(b) in sub-article (4) thereof, for the words “international commitments.” there shall be substituted the words “international commitments including its obligations under the Treaty within the meaning of the European Union Act.”.

Amendment of
article 16 of the
principal Act.

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

(a) for sub-article (2) thereof, there shall be substituted the following: -

“(2) The Authority may:

(a) issue Rules regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions and such Rules may:

(i) provide for the returns, statements and notices to be made or given for any purposes in regard to which the Authority exercises supervisory or regulatory functions under this or any other Act, and the form and contents thereof; and

(ii) prescribe the information that such persons are to submit to the Authority;

(b) issue an order in writing requiring a holder of a licence or other authorisation, and, or any official thereof, to do or to refrain from doing any act, including such prohibitions, restrictions and conditions as may be specified in the notice; and any such order may be issued in respect of specific cases or classes of cases; any holder of the licence or other authorisation and, or the official to whom the notice is addressed shall obey, comply with and give effect to any such order within the time and manner stated in the order.”;

(b) sub-article (3) thereof shall be amended as follows:

(i) for the words “or any directives or guidelines” there shall be substituted the words “or any orders or Rules”;

(ii) for the words “in writing impose” , there shall be substituted the words “in writing and without recourse to a court hearing impose”; and

(iii) for the words “penalty and the provisions of article 6(9) and (11) of the Investment Services Act shall apply *mutatis mutandis*.”, there shall be substituted the words “penalty which may not exceed forty thousand liri.”;

(c) sub-articles (4) and (5) thereof shall be re-numbered as sub-article (5) and (6);

(d) immediately after sub-article (3) thereof there shall be inserted the following new sub-article (4):

“(4) Where a notice as referred to in sub-article (3) of this article has not been appealed, or where such notice has been appealed, within fifteen days of the determination by the Tribunal of such appeal, the administrative penalty as contained in the notice or as reduced or increased by the decision of the Tribunal shall be due to the competent authority. Upon the service of a copy of the notice of the decision, as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall 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.”; and(e) sub-article (6) as re-numbered shall be amended as follows:

(i) for the words “of the provisions of sub-article (4), the following rules”, there shall be substituted the words “of sub-article (5), the following provisions”; and

(ii) in paragraphs (a) and (b), for the words “in sub-article (4)” there shall be substituted the words “in sub-article (5)”.

6. In sub-article (1) of article 17 of the principal Act, for the words “who had divulged the information.”, there shall be substituted the words “who had divulged the information. For the purposes of this sub-article, “employees” and “officials” shall include former employees and officials.”.

Amendment of article 17 of the principal Act.

7. Immediately after article 17 of the principal Act there shall be inserted the following new articles:

Addition of new articles 17A and 17B to the principal Act.

Attachment
orders.

17A. (1) Where, upon information received from the Authority, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as “the suspect”) is guilty of a breach of this Act or of any other Act, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as an “attachment order”) –

(a) attaching in the hands of such persons (hereinafter referred to as “the garnishees”) as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and

(c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(2) Before making an attachment order, the Criminal Court may require hearing the Attorney General in chambers and shall not make such order unless it concurs with the Attorney General that there is reasonable cause as provided in sub-article (1).

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(3) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order.

(4) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(5) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in sub-article (4), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regard to the breach of this Act is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from Malta and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in sub-article (4).

(6) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.”;

Freezing of funds.

17B. (1) (a) Where a person (hereinafter referred to as “the person charged or accused”) has been charged with a criminal offence, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a “freezing order”) –

(i) attaching in the hands of third parties all moneys and other movable property due or pertaining to the person charged or accused; and

(ii) prohibiting the person charged or accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the Criminal Court shall in such order determine what moneys may be paid to or received by the person charged or accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the person charged or accused, to allow him and his family a decent living in the amount, where the means permit, of six thousand liri every year:

Provided further that the Criminal Court may also –

(i) authorise the payment of debts which are due by the person charged or accused to bona fide creditors and which were contracted before such order was made; and

(ii) on good grounds authorise the person charged or accused to transfer movable or immovable property.

(b) Any addressee shall promptly comply with any written order issued by the Criminal Court in accordance with the provisions of this article with regards to such funds and assets.

(2) A freezing order shall –

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(b) remain in force until the final determination of the administrative or criminal proceedings against the person charged, as the case may be.

(3) The Criminal Court may for particular circumstances vary such freezing order, and the provisions of the foregoing sub-articles shall apply to such order as so varied.

(4) To the extent possible, a freezing order shall contain the name and surname of the person charged, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and the number of his identity card or other identification document, if any.

(5) Where any money is or becomes due to the person charged from any person while such order is in force, such money shall, unless otherwise directed in the freezing order, be deposited in a bank to the credit of the person charged.

(6) When such freezing order ceases to be in force as provided in sub-article (2)(b), the Registrar of the Court shall cause

a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

(7) The Authority shall liaise with the Attorney General on matters arising under this article and article 17A and may exchange information, subject to the obligation of professional secrecy.”.

(8) Any person who acts in contravention of a court order mentioned in sub-article (1) shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

8. Immediately after sub-article (3) of article 20 of the principal Act there shall be inserted the following new sub-articles: Amendment of article 20 of the principal Act.

“(4) In furtherance of his functions under this article, the Consumer Complaints Manager shall, whenever the circumstances of a complaint so warrant, encourage the parties to the dispute, to reach an out-of-court settlement of the consumer dispute.

(5) The Consumer Complaints Manager shall, to the extent possible, assist and cooperate with bodies responsible for out-of-court settlement of consumer disputes in Malta and in other Member States and EEA States in the resolution of local and cross-border consumer disputes concerning financial services.”.

9. Articles 20A, 20B and 20C of the principal Act shall be re-numbered as articles 20B, 20C and 20D respectively. Re-numbering of articles 20A, 20B and 20C.

10. Immediately after article 20 of the principal Act, there shall be inserted the following new article 20A: Addition of new article 20A.

“Power to make regulations.

20A. The Minister, acting on the advice of the competent authority, may make regulations to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time,

including any implementing measures that have been or may be issued thereunder;”.

Amendment of
article 21 of the
principal Act.

11. Article 21 of the principal Act shall be amended as follows:

(a) sub-article (8) thereof shall be re-numbered as sub-article (13);

(b) sub-article (10) thereof shall be re-numbered as sub-article (11);

(c) sub-article (11) thereof shall be re-numbered as sub-article (8);

(d) in sub-article (8) thereof as re-numbered, for the words “An appeal to” there shall be substituted the words “An appeal within the terms of sub-article (9) of this article to”;

(e) sub-article (12) thereof shall be re-numbered as sub-article (10);

(f) immediately after sub-article (11) as re-numbered, there shall be inserted the following new sub-article (12):

“(12) (a) All evidence must be relevant to the matter in issue between the parties.

(b) In all cases the Tribunal shall require the best evidence that the party may be able to produce.

(c) The Tribunal shall disallow any evidence which it considers to be irrelevant or superfluous, or which it does not consider to be the best which the party can produce.”;

(g) sub-article (13) thereof shall be re-numbered as sub-article (15);

(h) in sub-article (14) thereof, immediately after the words “to the Court of Appeal.” there shall be added the words “An appeal shall be made by not later than twenty days from the date of the decision of the Tribunal.”;

(i) in sub-article (15) as re-numbered for the words “the procedure for” there shall be substituted the words “the procedure and fees for”; and

(j) sub-articles (15), (16) and (17) thereof shall be re-numbered as sub-articles (16), (17) and (18) respectively.

PART II

12. (1) This Part amends and shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Financial Markets Act, Cap. 345.

(2) The provisions of this Part shall come into force on the 1st November, 2007.

13. For the long title to the Act there shall be substituted the following: Amendment of the long title to the Act.

“To provide for the authorisation of regulated markets, central securities depositories and for the orderly trading in transferable securities and to provide for matters ancillary or incidental thereto or connected therewith.”.

14. In the “Arrangement of Act”, for the words “Recognised Investment Exchanges”, there shall be substituted the words “Regulated Markets”, and for the words “Recognised Investment Exchange” and, or “Recognised Investment Exchanges”, wherever they appear in the principal Act, there shall be substituted the words “Regulated Market” and, or “Regulated Markets”, as the case may be, and for the words “Malta Stock Exchange”, there shall be substituted the words “central securities depository”. Amendment of “Arrangement of Act”, and of the principal Act.

15. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) article 2 thereof shall be re-numbered as sub-article (1) thereof;

(b) in sub-article (1) as re-numbered:

(i) the definition “Borża” shall be deleted;

(ii) for the definition “bye-laws”, there shall be substituted the following:

““bye-laws” means the bye-laws made in terms of article 4C;”;

(iii) in the definition “Central Bank”, for the words “Bank of Malta,” there shall be substituted the words “Bank of Malta as defined by the Central Bank of Malta Act;”;

(iv) for the definition “central securities depository” there shall be substituted the following;

“ “central securities depository” means a person authorised in terms of Part IV of this Act to provide one or more of the functions stipulated in article 26;”;

(v) immediately after the definition “central securities depository”, there shall be inserted the following new definition:

“ “the Community” means the European Community established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice, and as amended by accession agreements and as may be further amended from time to time;”;

(vi) the definition “Chairman” shall be deleted;

(vii) the definition “corporate body” shall be deleted;

(viii) the definition “Council” shall be deleted;

(ix) the definition “Exchange” shall be deleted;

(x) immediately after the definition “competent authority”, there shall be inserted the following new definitions:

“ “designated financial instruments” refers to the instruments regulated by the provisions of article 28;

“the Directive” means 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, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“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;

“European regulatory authority” means the body or bodies designated by a Member State or EEA State in accordance with Article 48 of the Directive to carry out each of the duties provided for under the different provisions of the Directive;”;

(xi) for the definition “financial instruments”, there shall be substituted the following:

“ “financial instruments” shall have the same meaning assigned to the term “instruments” in the Second Schedule to the Investment Services Act;”;

(xii) immediately after the definition “financial instruments”, there shall be inserted the following new definition:

“ “Financial Market Rules” refers to Rules issued by the competent authority under various articles of this Act”;

(xiii) the definition “financial year” shall be deleted;

(xiv) the definition “insider dealing” shall be deleted;

(xv) in the definition “Listing Authority”, the words “, provided that until such time as the Minister makes such appointment any reference to the Listing Authority shall be interpreted as a reference to the Council” shall be deleted;

(xvi) immediately after the definition “market abuse”, there shall be inserted the following new definition:

“ “Market operator” means a person who manages and, or operates the business of a regulated market. The market operator may be the regulated market itself;”;

(xvii) immediately after the definition “members” there shall be inserted the following new definition:

“ “Member State” means a Member State of the European Communities;”;

(xviii) immediately after the definition “Minister”, there shall be inserted the following new definition:

“ “multilateral system” includes all those markets that are composed of a set of bye-laws and a trading platform as well as those that only function on the basis of a set of bye-laws but excludes bilateral systems where a person enters into every trade on own account and not as a riskless counterparty interposed between buyer and seller;”;

(xix) the definition “official list” shall be deleted;

(xx) the definition “orderly” shall be deleted;

(xxi) immediately after the new definition “multilateral system” there shall be inserted the following new definition:

“ “overseas regulatory authority” means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;”;

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(xxii) immediately after the definition “recognised list”, there shall be inserted the following new definition:

“ “regulated market” means a multilateral system operated by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system within the meaning of the Directive. For the purposes of this definition, “buying and selling interests” includes orders, quotes and indications of interest;”;

(xxiii) the definition “securities” shall be deleted;

(xxiv) the definition “statute” shall be deleted;

(xxv) the definition “stockbroker” shall be deleted;

(xxvi) immediately after the definition “related company”, there shall be inserted the following new definition:

“ “Takeover Bids Directive” means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”;

(xxvii) in the definition “trading”, for the words “financial instruments; and”, there shall be substituted the words “financial instruments;”;

(xxviii) immediately after the definition “trading”, there shall be inserted the following new definitions:

“ “transferable securities” has the same meaning as that given to the term in the Schedule to the Investment Services Act;”;

“ “Transparency Directive” means 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 on a regulated market and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”;

(xxix) in the definition of “tribunal”, the proviso shall be deleted and for the words “Act.”, there shall be substituted the words “Act.”;

(c) immediately at the end of the definition “tribunal”, there shall be inserted the following new sub-article (2):

“(2) The objective of this Act is, in part, to transpose and implement the provisions of the Directive, and

consequently this Act and any regulations adopted thereunder shall be interpreted and applied accordingly.”.

Amendment of
article 3 of the
principal Act.

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

(a) in paragraph (a) thereof, for the words “by an investment exchange if it is to qualify as a recognised investment exchange and in respect of which the competent authority may make an order hereinafter in this Act referred to a “recognition order” under this part of the Act”, there shall be substituted the words “by a market if it is to qualify as a regulated market in respect of which an authorisation may be issued by the competent authority”;

(b) in paragraph (b) thereof, for the words “including reporting requirements”, there shall be substituted the words “including reporting and transparency requirements”;

(c) in paragraph (c) thereof, for the words “a recognition order or”, there shall be substituted the words “an authorisation or”;

(d) for paragraph (d) thereof there shall be substituted the following:

“(d) requirements for the regulation and supervision of market operators and, or regulated markets;”;

(e) in paragraph (e) thereof, for the words “complaints about”, there shall be substituted the words “complaints about market operators and, or”;

(f) in paragraph (f) thereof, for the words “the rules of a recognized investment exchange by persons subject to such rules;”, there shall be substituted the words “the bye-laws of regulated markets by persons subject to such bye-laws;”;

(g) for paragraph (g) thereof there shall be substituted the following:

“(g) arrangements for the scrutiny of practices of market operators and, or bye-laws and practices of regulated markets and for preventing restrictive practices in terms of the Competition Act and any regulations made thereunder;”;
and

(h) in paragraph (i) thereof, for the words “for a recognition order under”, there shall be substituted the words “for an authorisation under”.

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

(a) in paragraph (a) of sub-article (1) thereof, for the words “of an investment exchange in or from within Malta unless such person is in possession of a recognition order”, there shall be substituted the words “of a regulated market in or from within Malta unless such person is in possession of an authorisation”;

(b) in paragraph (b) of sub-article (1) thereof, for the words “for a recognition order under this Part of the Act declaring it to be a recognised”, there shall be substituted the words “for an authorisation under this Part of the Act declaring it to be an authorised”;

(c) immediately after paragraph (b) of sub-article (1) thereof, there shall be inserted the following new paragraphs (c) and (d):

“(c) A regulated market shall only be authorised where the competent authority is satisfied that both the market operator and the systems of the regulated market comply with the applicable requirements laid down in this Act and any regulation or Financial Market Rules made thereunder.

(d) Where a regulated market is a legal person and is managed or operated by a market operator other than the regulated market itself, the competent authority shall establish by means of Financial Market Rules how the different obligations imposed on the market operator under the Directive are to be allocated between the regulated market and the market operator.”;

(d) for sub-article (2) thereof, there shall be substituted the following new sub-article:

“(2) (a) The market operator of the regulated market shall provide all information, necessary to enable the competent authority to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the Act or any regulations or Financial Market Rules made thereunder.

(b) An application shall be made in such a manner as the competent authority may establish by Financial Market Rules and shall be accompanied by:

(i) a programme of operations setting out *inter alia* the types of business envisaged;

(ii) a full description of the organisational structure and the proposed bye-laws or similar arrangements of the applicant;

(iii) detailed information as required by the competent authority on the:

(a) persons who effectively direct the business and the operations of the regulated market;

(b) those persons who own the regulated market; and

(c) the market operator; and

(iv) any other information required by the competent authority.”;

(e) sub-articles (3) to (11) shall be re-numbered as sub-articles (4) to (12) respectively;

(f) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(3) The market operator shall notify the competent authority immediately of any changes or corrections to the information provided in terms of sub-article (2) of this article:

Provided that in the case of changes to the persons who effectively direct the business and the operations of the regulated market the prior authorisation of the competent authority shall be requested:

Provided further that where there are objective and demonstrable grounds for believing that the appointment or election of an officer poses or may pose a material threat to the sound and prudent management and operation of the regulated market, the competent authority shall refuse to approve such appointment or election.”;

(g) in sub-article (4) thereof as re-numbered, for the words “The competent authority may issue directives setting out —”, there shall be substituted the words “For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue and publish Financial Market Rules which shall be binding on regulated markets and others as may be specified therein. Such Financial Market Rules may lay down additional requirements and conditions in relation to activities of regulated markets, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the competent authority may consider appropriate including —”;

(h) in sub-article (6) thereof as re-numbered, for the words “Different directives may be issued by the competent authority under sub-article (3)” there shall be substituted the words “Different Financial Market Rules may be issued by the competent authority under sub-article (4)”;

(i) in sub-article (8) thereof as re-numbered, for the words “and subject to any directives issued under article 4(3) make or refuse to make a recognition order.”, there shall be substituted the words “and subject to any Financial Market Rules issued under sub-article (4) make or refuse to issue an authorisation. Where the competent authority issues an authorisation, the market operator shall be responsible for ensuring that the provisions of the Act, regulations and Financial Market Rules made thereunder and any implementing measures issued by the European Commission in terms of the powers conferred to it by the Directive, which are applicable to regulated markets, are complied with.”;

(j) in sub-article (9) thereof as re-numbered, for the words “A recognition order”, there shall be substituted the words “An authorisation”;

(k) in sub-articles (10) and (11) thereof as re-numbered, for the words “for a recognition order” wherever they occur, there shall be substituted the words “for an authorisation”; and

(l) in sub-article (12) thereof as re-numbered, for the words “A recognition order”, there shall be substituted the words “An authorisation”.

18. Immediately after article 4 of the principal Act there shall be inserted the following new articles 4A, 4B and 4C:

Addition of new articles 4A, 4B and 4C to the principal Act.

“Applicable law when Malta is the home Member State.

4A. Without prejudice to any relevant provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28th January 2003 on insider dealing and market manipulation, the public law within the meaning of the Directive governing the trading conducted under the systems of the regulated market shall be that of Malta when Malta is the home Member State.

Significant influence over the management of a regulated market.

4B. (1) Persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market must be fit and proper.

(2) No person shall acquire a direct or indirect holding in a regulated market and, or the market operator which represents ten (10) per cent or more of the share capital issued by such body or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the regulated market (“qualifying shareholding”) or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the regulated market reaches or exceeds twenty (20) per cent, thirty three (33) per cent or fifty (50) per cent unless the competent authority has been notified of that intention by such person or by the relevant regulated market and the competent authority has approved the acquisition of or increase in such qualifying shareholding.

(3) The competent authority shall refuse to approve any changes to controlling interests as proposed by the regulated market and, or the market operator in terms of sub-article (2) of this article where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the said regulated market.

(4) The market operator of a regulated market shall:

(a) provide the competent authority with, and make public, information regarding the ownership of the regulated market and, or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;

(b) inform the competent authority of and make public, any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.

Regulated
market bye-
laws and
arrangements.

4C. (1) Regulated markets shall be obliged to:

(i) have clear and transparent bye-laws regarding the admission of financial instruments to trading which shall ensure that any financial instruments admitted to trading on the regulated market are capable of being traded in a fair, orderly and efficient manner and, that transferable securities are freely negotiable:

Provided that in the case of derivatives such requirements shall also ensure that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions;

(ii) have effective arrangements to verify that issuers of transferable securities that are admitted to trading comply with their obligations under European Community Law in respect of initial, ongoing or *ad hoc* disclosure obligations;

(iii) establish arrangements which facilitate its members or participants in obtaining access to information which has been made public under European Community law;

(iv) establish the necessary arrangements to review regularly the compliance with admission requirements of the financial instruments which are admitted to trading.

(2) A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of Directive 2003/71/EC of the European Parliament and of the Council of 4 November, 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, and

amending Directive 2001/34/EC and any implementing measures that have been or may be issued thereunder.

(3) The issuer shall be informed by the regulated market of the fact that its transferable securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph (ii) of sub-article (1) of this article directly to any regulated market which has admitted the issuer's transferable securities to trading without its consent.

(4) In complying with the provisions of this article regulated markets shall also comply with the applicable provisions of Commission Regulation (EC) no 1287/2006 of 10th August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive on pre and post trade transparency and admission to trading as may be amended from time to time.”.

Amendment of article 5 of the principal Act.

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

(a) in the marginal note thereof, for the word “Directives.”, there shall be substituted the words “Financial Market Rules.”;

(b) in sub-article (1) thereof, for the words “may issue directives”, there shall be substituted the words “may issue Financial Market Rules”;

(c) for sub-article (2) thereof, there shall be substituted the following:

“(2) Any Financial Market Rules issued by the competent authority may require information to be given in a specified form and to be verified in a specified manner and any information so required shall be provided promptly.”; and

(d) sub-article (3) thereof shall be deleted.

Amendment of article 6 of the principal Act.

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

(a) in the marginal note thereof, for the words “modification of directives.”, there shall be substituted the words “modification of Financial Market Rules.”;

(b) sub-article (1) thereof shall be amended as follows:

(i) for the words “any of the directives”, there shall be substituted the words “any of the Financial Market Rules”, and for the words “specified in the directive”, there shall be substituted the words “specified in the Financial Market Rule”;

(ii) in paragraph (a) thereof, for the words “the directives”, wherever they appear, there shall be substituted the words “the Financial Market Rules”;

(iii) in paragraph (b) thereof, for the words “the directive”, there shall be substituted the words “the Financial Market Rule”, and for the words “such directives”, there shall be substituted the words “such Financial Market Rules”; and

(c) in sub-article (2) thereof, for the words “A directive issued”, there shall be substituted the words “A Financial Market Rule issued”.

21. Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “for recognition”, there shall be substituted the words “for authorisation”;

(ii) in sub-paragraph (ii) of paragraph (b) thereof, for the words “or any other requirement whatsoever.”, there shall be substituted the words “or any other requirement whatsoever.”;

(b) immediately after sub-paragraph (ii) of paragraph (b) of sub-article (1) thereof, there shall be inserted the following new sub-paragraph (iii):

“(iii) requiring the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive.”.

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

(a) in the marginal note thereof, for the words “of recognition order.”, there shall be substituted the words “of an authorisation.”;

(b) in sub-article (1) thereof, for the words “A recognition order”, there shall be substituted the words “An authorisation”;

(c) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “for recognition”, there shall be substituted the words “for authorisation”;

(ii) in paragraph (b) thereof, for the words “under this Act,” there shall be substituted the words “ under this Act, or”;

(iii) immediately after paragraph (b) thereof, there shall be inserted the following new paragraphs (c), (d) and (e):

“(c) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has not operated for the preceding six months, or

(d) has obtained the authorisation by making false statements or by any other irregular means; or

(e) no longer meets the conditions under which authorisation was granted.”;

(iv) in the paragraph immediately following the new paragraph (e) thereof, for the words “the recognition order”, wherever these appear, there shall be substituted the words “the authorisation”;

(d) in sub-article (3) thereof, for the words “revoking a recognition order”, there shall be substituted the words “revoking an authorisation”;

(e) sub-article (4) thereof shall be deleted;

(f) sub-article (5) thereof shall be renumbered as sub-article (4).

23. Article 10 of the principal Act shall be amended as follows: Amendment of article 10 of the principal Act.

(a) the words “rules or bye-laws” wherever they appear, shall be substituted the words “bye-laws”;

(b) in paragraph (c) thereof, for the words “on the exchange”, there shall be substituted the words “on the regulated market”.

24. Immediately after Article 10 of the principal Act there shall be inserted the following new article 10A: Addition of new article 10A to the principal Act.

“Clearing and settlement of transactions.” 10A (1) Regulated markets shall offer all their members or participants the right to designate the systems for the clearing and settlement of transactions in financial instruments undertaken on that regulated market subject to:

(a) such links and arrangements between the designated clearing and settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question; and

(b) agreement by the competent authority responsible for the supervision of the regulated market that technical conditions for the clearing and settlement of transactions concluded on the regulated market through a clearing and settlement system other than that designated by the regulated market are such as to allow smooth and orderly functioning of financial markets.

(2) Regulated markets shall not be prohibited from entering into appropriate arrangements with a central counterparty or clearing house and a clearing and settlement system of another Member State or EEA State with a view to providing for the clearing and, or settlement of some or all trades concluded by market participants under their systems:

Provided that the competent authority may prohibit a regulated market from entering into such arrangements where it considers this is necessary to maintain the orderly functioning of that regulated market.”.

25. Article 11 of the principal Act shall be amended as follows: Amendment of article 11 of the principal Act.

(a) in paragraph (a) thereof, for the words “to the official lists and to any other recognised list”, there shall be substituted the words “to any recognised list”;

(b) for paragraph (b) thereof there shall be substituted the following:

“(b) to make Listing Rules for the better implementation and purposes of this Part of this Act;”;

(c) in paragraph (c) thereof, immediately after the words “remain listed”, there shall be inserted the following new words “and to monitor the timely disclosure of information by issuers or any other person subject to the Listing Rules with the objective of ensuring effective and equal access to the public in Malta and in all Member States or EEA States where the transferable securities are traded;”;

(d) for paragraph (d) thereof there shall be substituted the following new paragraphs (d) and (e):

“(d) to act as the central competent administrative authority responsible for carrying out the obligations provided for in the Transparency Directive and for ensuring that the provisions adopted pursuant to this Directive are applied and to issue rules in furtherance of its responsibility under any provisions of the said Directive which rules shall be binding on issuers, shareholders and any other person as may be indicated in the said rules;

(e) to act as the authority competent to supervise bids for the purpose of the Listing Rules made or introduced pursuant to the Takeover Bids Directive.”.

Amendment of article 12 of the principal Act.

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

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “trading on the Official List or on any other recognised list unless the Listing Authority shall have first authorised the admissibility of such financial instruments to listing in accordance with any rules made under article 13.”, there shall be substituted the words “trading on any recognised list unless the Listing Authority shall have first authorised the admissibility of such

financial instruments to listing in accordance with any Listing Rules made under article 13.”;

(ii) in paragraph (b) thereof, for the words “to listing on the official list or on any other recognised list.”, there shall be substituted the words “to listing on any recognised list.”;

(b) sub-article (2) thereof shall be amended as follows:

(i) for the words “The Exchange and every recognised investment exchange may admit to listing and trading to the official list or, as the case may be, to the recognised list concerned”, there shall be substituted the words “Every regulated market may admit to listing and trading to the recognised list concerned”;

(ii) in paragraph (b) thereof, for the words “to the official list or to any other recognised list”, there shall be substituted the words “to any recognised list”;

(iii) in the proviso to paragraph (b) thereof, the words “the Exchange and” shall be deleted.

27. Article 13 of the principal Act shall be amended as follows: Amendment of article 13 of the principal Act.

(a) in the marginal note thereof, for the words “Listing rules” there shall be substituted the words “Listing Rules”;

(b) for the words “listing rules” wherever they appear in the said provision and in the Act there shall be substituted the words “Listing Rules”;

(c) in paragraph (a) thereof, for the words “to the official list or to any other recognised list”, there shall be substituted the words “to any recognised list”;

(d) in paragraph (d) thereof, for the words “in any listing particulars, prospectus” there shall be substituted the words “in any prospectus”;

(e) in paragraph (e) thereof, for the words “of any listing particulars, prospectus” there shall be substituted the words “of any prospectus”;

(f) in paragraph (f) thereof, for the words “the rules the publication” there shall be substituted the words “the Listing Rules”

the publication”, and for the words “on the official list or on any recognised list”, there shall be substituted the words “on any recognised list”;

(g) in paragraph (g) thereof, for the words “the Listing Authority, the Exchange and other recognised investment exchanges”, there shall be substituted the words “the Listing Authority and regulated markets”;

(h) paragraph (i) thereof shall be renumbered as paragraph (j); and

(i) immediately after paragraph (h) thereof, there shall be inserted the following new paragraph (i):

“(i) transposing, implementing and giving effect to the provisions, requirements, obligations, commitments and measures of the European parliament and of the Council issued in relation to the regulation of admissibility to listing of financial instruments on regulated markets and, or the regulation of issuers or any other person subject to the Listing Rules, arising out of membership of, affiliation to or relationship with international or regional organisations or groupings of countries or out of any treaty, convention or other international agreement whether bilateral, regional or multilateral, to which Malta is a party;”.

Amendment of article 14 of the principal Act.

28. In sub-article (2) of article 14 of the principal Act for the words “such rules of procedure as set out”, there shall be substituted the words “such procedure as is set out”.

Amendment of article 15 of the principal Act.

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

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

(b) sub-articles (3) and (4) thereof shall be respectively renumbered as sub-articles (2) and (3); and

(c) in paragraph (a) of sub-article (2) as re-numbered, and wherever it appears in the Act for the words “listing rule” there shall be substituted the word “Listing Rule”.

Amendment of article 16 of the principal Act.

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

(a) for sub-article (1) thereof, there shall be substituted the following:

“(1) The Listing Authority shall notify the applicant of its decision regarding the approval of the prospectus within ten working days of the submission of the draft prospectus.”;

(b) for sub-article (2) thereof, there shall be substituted the following:

“(2) The time limit referred to in sub-article (1) shall be extended to twenty working days if the offer involves transferable securities issued by an issuer which does not have any transferable securities admitted to trading on a regulated market and who has not previously offered transferable securities to the public.”;

(c) sub-articles (3), (4), (5), (6) and (7) thereof shall be respectively renumbered as sub-articles (5), (6), (7), (8) and (9); and

(d) immediately after sub-article (2) thereof, there shall be inserted the following new sub-articles (3) and (4):

“(3) (a) If the Listing Authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in sub-articles (1) and (2) shall apply only from the date on which such information is provided by the applicant.

(b) In the case referred to in sub-article (1) the Listing Authority should notify the applicant if the documents are incomplete within ten working days of the submission of the application.

(4) If the Listing Authority fails to give a decision on the prospectus within the time limits mentioned in sub-articles (1) and (2), this shall not be deemed to constitute approval of the prospectus.”; and

(e) in sub-article (6) as re-numbered, for the words “with sub-article (5)”, there shall be substituted the words “with sub-article (7)”.

31. Sub-article (1) of article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

(a) in paragraph (a) thereof, for the words “at the request of the Exchange or another” there shall be substituted the words “at the request of a”;

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

“(b) Without prejudice to the right of the Listing Authority under paragraph (a) of this article to demand suspension or removal of an instrument from trading, the market operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the bye-laws of the regulated market unless such a step would be likely to cause significant damage to the investors’ interests or the orderly functioning of the market. The market operator of a regulated market that suspends or removes from trading a financial instrument shall make public this decision and communicate the relevant information to the Listing Authority. The Listing Authority shall inform the European regulatory authorities of the other Member States or EEA States of this decision.”;

(c) immediately after paragraph (b) thereof, there shall be inserted the following new paragraph (c):

“(c) When the Listing Authority demands the suspension or removal of a financial instrument from trading on one or more regulated markets, it shall immediately make public its decision and inform the European regulatory authorities of the other Member States or EEA States.”.

Amendment of article 18 of the principal Act.

32. Article 18 of the principal Act shall be amended as follows:

(a) in paragraph (b) of sub-article (3) thereof, for the words “the interest of the Exchange or of any” there shall be substituted the words “the interest of a”;

(b) in sub-article (7) thereof, for the words “to the official list or such other recognised list”, there shall be substituted the words “to any recognised list”.

Amendment of article 19 of the principal Act.

33. Article 19 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words “Penalty or censure in”, there shall be substituted the words “Penalty in”;

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

(i) in paragraph (a) thereof, for the words “instruments, or” there shall be substituted the words “instruments,”;

(ii) in paragraph (b) thereof, for the words “to listing;” there shall be substituted the words “to listing, or”;

(iii) immediately after paragraph (b) thereof, there shall be inserted the following new paragraph (c):

“(c) any other person subject to the Listing Rules;”;

(iv) for the words “not exceeding twenty thousand liri.”, there shall be substituted the words “not exceeding forty thousand liri.”;

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

(d) sub-articles (3), (4), (5) and (6) thereof shall be re-numbered as sub-article (2),(3), (4) and (5) respectively;

(e) in sub-article (5) thereof as re-numbered, for the words “of sub-article (5)” there shall be substituted the words “of sub-article (4)”.

34. Article 20 of the principal Act shall be amended as follows: Amendment of article 20 of the principal Act.

(a) in the marginal note thereto, for the words “Notice of penalty or censure.” there shall be substituted the words “Notice of penalty.”;

(b) sub-article (3) and (5) thereof shall be deleted;

(c) sub-article (4) and (6) thereof shall be re-numbered as sub-articles (3) and (4) respectively.

35. Article 22 of the principal Act shall be amended as follows: Amendment of article 22 of the principal Act.

(a) for the words “(c) to the Exchange or to such other recognised investment exchange in relation to any financial instruments listed on the Exchange or on the other recognised investment exchange concerned”, there shall be substituted the words “(c) to regulated markets in relation to any financial instruments listed on the regulated markets concerned”;

(b) for paragraph (a) thereof, there shall be substituted the following:

“(a) if the Listing Authority delegates any of its powers to impose an administrative penalty under article 19(1) and (2) to the regulated markets concerned, article 19(3) and article 20 shall apply *mutatis mutandis* to the regulated markets concerned”;

(c) the proviso to paragraph (b) thereof shall be amended as follows:

(i) for the words “under article 19(1), (2) and (3) as aforesaid neither the Listing Authority nor the Exchange or other recognised investment exchange concerned”, there shall be substituted the words “under article 19(1) and (2) as aforesaid neither the Listing Authority nor the regulated markets concerned”; and

(ii) for the words “Authority or the Exchange or recognised investment exchange concerned as the case may be,”, there shall be substituted the words “Authority or the regulated markets concerned,”.

Substitution of Part IV of the principal Act.

36. For Part IV of the principal Act there shall be substituted the following:

“PART IV

CENTRAL SECURITIES DEPOSITORY

Authorisation requirement.

24. (1) No person shall operate a central securities depository or shall provide, or hold itself out to be or provide, the service of a central securities depository in or from Malta unless such person is in possession of a written authorisation issued by the competent authority under this Part.

(2) Any body corporate or unincorporate may apply in writing to the competent authority for an authorisation under this Part, authorizing it to act as a central securities depository for the purposes of this Act.

(3) Authorisation to act as a central securities depository may be granted only where the competent authority is satisfied that the applicant complies and will be in a position to comply with the applicable requirements laid down in this Act and regulations and Financial Market Rules issued hereunder.

Cap. 204.

Determination
of an
application.

(4) Nothing in this Act or in any regulation made hereunder shall be construed as enabling or empowering a central securities depository to perform a function or activity which requires an approval or authorisation in terms of the Central Bank of Malta Act or any other law.

25. (1) In determining an application the competent authority shall have regard to such information and other factors as it may consider relevant or material to the application.

(2) The competent authority may, upon receipt of an application duly made in accordance with this Part grant or refuse to grant an authorisation. Where the competent authority issues an authorisation, the central securities depository shall be responsible for ensuring that the provisions of the Act, regulations made thereunder and Financial Market Rules issued by the competent authority, which are applicable to central securities depositories are complied with.

(3) An authorisation shall state the date on which it shall take effect.

(4) Where the competent authority refuses an application for an authorisation it shall give the applicant a notice to that effect stating the reasons for the refusal.

(5) If the competent authority refuses an application for an authorisation the applicant shall have a right of appeal to the Tribunal in accordance with Part VI of this Act.

(6) An authorisation may, in accordance with such regulations as may be prescribed, be varied, suspended or revoked by the competent authority.

(7) An authorisation issued to a central securities depository under this article shall identify the financial instruments, designated or otherwise, which the central securities depository would be authorised to provide services to and shall further identify the functions it is authorised to carry out.

Functions of a
central
securities
depository.

26. Without prejudice to any other power or function conferred on it by law or regulation, the functions of a central securities depository may include the following:

- (a) provision of custody or depository facilities in respect of financial instruments;
- (b) maintenance of registers of members and holders of financial instruments and recording of transactions and holdings in financial instruments;
- (c) provision, management and administration of a securities clearing and settlement system in respect of financial instruments, including the provision of access and interoperable links between such a system and other securities clearing and settlement systems, central securities depositories, central counterparties and clearing houses, and other services ancillary to the above;
- (d) authentication of register of members or holders of designated financial instruments or of any extract thereof; and
- (e) such other ancillary or consequential functions related to the above including any preparatory and other related corporate administrative services in relation to issues of financial instruments which are listed or to be listed, as may be established by Financial Market Rules:

Provided that no central securities depository may be authorised to carry out solely ancillary or consequential functions.

Revocation
of an
authorisation.

27. (1) An authorisation may be revoked by an order issued in writing by the competent authority at the request, or with the consent, of the central securities depository or otherwise as provided in this Act.

(2) An authorisation may be revoked by an order issued in writing without the consent of a central securities depository, if it appears to the competent authority that the central securities depository:

- (a) is failing, or has failed, to satisfy the requirements for authorisation under this Act,

regulations or Financial Market Rules made hereunder; or

(b) is failing or has failed, to comply with any other obligation imposed on it by or under this Act, regulations or Financial Market Rules made hereunder; or

(c) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months; or

(d) has obtained the authorisation by making false statements or by any other irregular means; or

(e) no longer meets the conditions under which authorisation was granted.

(3) An order under sub-articles (1) and (2) revoking an authorisation hereinafter referred to as a “revocation order” shall specify the date on which it is to take effect.

(4) A revocation order may contain such transitional provisions and other terms and conditions as the competent authority may consider necessary or expedient.

(5) If a revocation order is issued, a central securities depository shall have a right of appeal to the Tribunal in accordance with Part VI.

Special rules
for
designated
financial
instruments.

28. (1) Notwithstanding the provision of any other law, the title to and rights in respect of designated financial instruments, the register of which is maintained in a central securities depository, may be created and, or transferred by an entry on the register maintained in a central securities depository and no instrument in writing shall be required for this purpose.

(2) Notwithstanding the provisions of any other law, the title to and rights in respect of designated financial instruments, the register of which is maintained in a central securities depository, may be held or evidenced in a dematerialised or uncertificated form.

Cap. 16

(3) The provisions of article 1966 (3) and (4) of the Civil Code shall not apply in respect of designated financial instruments and the privilege referred to in Title XXI of Part II of Book Second of the said Code shall arise where the pledge has been duly registered with a central securities depository.

(4) The authentic record of members and holders of financial instruments and of transactions and holdings of a designated financial instrument may be held, maintained and evidenced by a central securities depository duly authorised in terms of this Part.

(5) The register and documents kept by a central securities depository in respect of designated financial instruments shall, at a reasonable cost, be open for inspection by any person as may be prescribed by regulations which shall establish which records and registers held by a central securities depository will be open to public inspection and under what conditions.

Application of other articles.

29. The provisions of articles 4B, 6, 7, and 9 of Part II of this Act shall apply *mutatis mutandis* to central securities depositories authorised under this Part.

Powers of the Minister to make regulations.

30. (1) The Minister, acting on the advice of the competent authority, may make regulations setting out:

(a) the requirements and conditions which must be satisfied by a person if it is to provide the services of a central securities depository in respect of which the competent authority may issue an 'authorisation' under this Act;

(b) the requirements which a central securities depository must continue to satisfy if it is to remain authorised, including the amount of fees to be payable to the competent authority;

(c) the circumstances and the manner in which an authorisation or the requirements and conditions to which it is subject may be varied, suspended or revoked;

(d) requirements for the authorisation, operation, functions, regulation and supervision of a central securities depository;

(e) requirements for the creation, holding or evidencing of title to and rights in respect of Financial Instruments in a dematerialised or uncertificated form;

(f) arrangements for the investigation of complaints and or grievances about central securities depositories and remedies in respect thereof;

(g) arrangements for the ascertainment of compliance by central securities depositories and the scrutiny of rules and requirements of central securities depositories;

(h) exemptions from the requirement for an authorisation which may be subject to such variations, additions, adaptations and modifications as may be prescribed and which may be subject to such conditions or other requirements, including other forms of authorisation and notification procedures;

(i) the categories or classes of financial instruments which, for the purpose of the Act, qualify as designated financial instruments;

(j) prescribing anything that is incidental to or connected with any of the above matters.

(2) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different categories or classes of financial instruments and for different circumstances or purposes.

Financial
Market Rules

31. The competent authority may from time to time issue Financial Market Rules which shall be binding on central securities depositories authorised under this Part and on others as may be specified, and such Rules may be issued in respect of any matter raised in this Part, including Rules for the better regulation of and for securing compliance by central securities depositories and their officials with the requirements and obligations arising under this Act or regulations made thereunder.”.

37. Article 32 of the principal Act shall be amended as follows: Amendment of article 32 of the principal Act.

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

(i) in paragraph (i) thereof, for the words “any recognised investment exchange”, there shall be substituted the words “any regulated market or central securities depository”;

(ii) in paragraph (iii) thereof, for the words “a recognised investment exchange or any other person who is or was involved in the operations of a recognised investment exchange”, there shall be substituted the words “a regulated market or central securities depository, or any other person who is or was involved in the operations of a regulated market or central securities depository”;

(iii) immediately after paragraph (iv) thereof, there shall be added the following new paragraphs (v) and (vi):

“(v) any auditor of a regulated market who appears to be in possession of relevant information;

(vi) any other person who appears to be in possession of relevant information;”;

(iv) in paragraph (a) thereof, for the words “as it may require;”, there shall be added the words “as it may require, including the power to require existing telephone and existing data traffic records;”;

(b) sub-articles (4) to (8) thereof shall be deleted.

Amendment of
article 33 of the
principal Act.Cap.
281.

38. Article 33 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words “article 32(1)(i) to (iv) there shall be substituted the words “article 32(1)(i) to (vi);

(b) in paragraph (b) of sub-article (2) thereof, for the words “competent authority by article 32, including the power to apply to the Court of Appeal in the circumstances described in sub-article (4) of that article, and any”, there shall be substituted the words “competent authority by article 32, and any”;

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

(d) immediately after sub-article (3) thereof there shall be added the following new sub-article (4):

“(4) For the purposes of this article inspectors may include an advocate, a person authorised to carry on the profession of accountant or auditor in terms of the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function.”.

Cap.281.

39. Immediately after article 34 of the principal Act there shall be inserted the following new article:

Addition of new article 34A to the principal Act.

34A. Any decision taken under this Act by the competent authority in terms of any provisions which transpose the Directive, including any regulations, Financial Market Rules or administrative provisions made thereunder for the said transposition, shall state the grounds on which such a decision has been based.”.

40. Article 35 of the principal Act shall be amended as follows:

Amendment of article 35 of the principal Act.

(a) for the words “any rules or bye-laws”, there shall be substituted the words “any bye-laws”; and

(b) for the words “the rules and bye-laws”, there shall be substituted the words “the bye-laws”.

41. Article 36 of the principal Act shall be amended as follows:

Amendment of article 36 of the principal Act.

(a) for the marginal note thereof, there shall be substituted the following “Report on market abuse.”; and

(b) the words “the Exchange or” shall be deleted.

42. Article 37 of the principal Act shall be amended as follows:

Amendment of article 37 of the principal Act.

(a) in the marginal note thereof, for the words “Co-operation with overseas regulatory authority.”, there shall be substituted the words “Co-operation with European regulatory authorities.”;

(b) sub-article (1) thereof shall be renumbered as sub-article (11);

(c) sub-article (2) thereof shall be deleted and there shall be inserted the following new sub-articles as follows:

“(1) The competent authority shall act as the contact point in terms of and for the purposes of sub-article (1) of article 56 of the Directive.

(2) The competent authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties under the Directive. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory or supervisory function. In terms of the Directive, the competent authority may use its powers for the purposes of cooperation even in cases where the conduct under investigation does not constitute an infringement of any provisions of this Act, regulations or Financial Market Rules issued thereunder.

(3) Upon receipt of a request from European regulatory authorities designated as contact points within the individual Member States or EEA States under sub-article (1) of Article 56 of the Directive, the competent authority shall immediately take the necessary measures in order to gather the information required for the carrying out of their duties pursuant to the Directive. If the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.

(4) At the time of communicating information to the European regulatory authorities, whether designated as contact points or not, the competent authority may stipulate that the information must not be disclosed without its express agreement, in which case such information may be exchanged solely for the purposes for which the competent authority had given its agreement.

(5) Where a European regulatory authority exchanging information with the competent authority stipulates at the time of communication of the information that such information must not be disclosed without its express agreement, such information may be used by the competent authority solely for the purposes for which the European regulatory authority would have given its agreement.

(6) Information received by the competent authority from contact points in the other Member States or EEA States may be transmitted to other bodies or natural or legal persons, provided that:

(a) the express agreement of the contact points which disclosed the information is obtained; and

(b) the information is used solely for the purposes for which the contact points gave their agreement:

Provided further that in duly justified circumstances the competent authority can transmit information to other bodies or natural or legal persons without satisfying the conditions in paragraphs (a) and (b) of this sub-article, in which case the competent authority shall immediately inform the contact point that sent the information.

(7) Where the competent authority receives confidential information from contact points in the other Member States or EEA States or from overseas regulatory authorities under articles 37C of this Act, or when other bodies or natural or legal persons receive confidential information from the competent authority, they may only use such confidential information in the course of their duties, in particular:

(a) to monitor the proper functioning of trading venues within the meaning of the Directive;

(b) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(c) in appeals under article 42 of this Act; or

(d) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act. Cap. 330.

(8) Without prejudice to the powers of the competent authority under this Act or any other law, where the competent authority has good reason to suspect that acts contrary to the provisions of the Directive are being or have been carried out on the territory of another Member State or EEA State by entities not subject to its supervision, it shall notify this in as specific a manner as possible to the contact point in the other Member State or EEA State.

(9) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to a European regulatory authority or to

any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(10) Where a European regulatory authority suspects that acts carried out by entities not subject to its supervision and which are contrary to the provisions of the Directive are being or have been carried out in Malta and notifies the competent authority to this effect, the competent authority shall take appropriate action. The competent authority shall inform the notifying European regulatory authority of the outcome of any such action and, to the extent possible, of significant interim developments:

Provided that any such action taken by the competent authority shall be without prejudice to the powers and functions of the European regulatory authority that has forwarded the information.”;

(d) sub-article (11) as re-numbered shall be amended as follows:

(i) for the words “an overseas regulatory authority” there shall be substituted the words “a European regulatory authority”;

(ii) paragraph (c) thereof shall be re-numbered as paragraph (e);

(iii) immediately after paragraph (b) thereof there shall be inserted the following new paragraphs:

“(c) the powers to issue directives under article 5;

(d) the powers of entry under article 34;”;

(iv) in paragraph (e) thereof, as re-numbered, for the words “overseas regulatory authority” there shall be substituted the words “European regulatory authority”.

43. Immediately after article 37 of the principal Act there shall be inserted the following new articles:

“Co-operation in supervisory functions, on-site verifications or investigations.

37A. (1) The competent authority may request the co-operation of a European regulatory authority in supervisory functions or for on-site verifications or investigations, and a European regulatory authority may likewise request the co-operation of the competent authority in the performance of its supervisory functions or in verifications or investigations.

(2) In the exercise of such co-operation between the competent authority and European regulatory authorities the provisions of article 17A of the Investment Services Act shall apply *mutatis mutandis*.

Refusal to cooperate.

37B. The competent authority may refuse to act on a request for co-operation in carrying out supervisory functions, on-site verifications or investigations in terms of article 37A or to exchange information with European regulatory authorities designated as contact points under article 56(1) of the Directive, in the circumstances laid down in Article 17B of the Investment Services Act.

Co-operation with overseas regulatory authorities.

37C. (1) Co-operation agreements with overseas regulatory authorities or other authorities, bodies and natural or legal persons in a country that is not a Member State or EEA State may be entered into only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under article 38 of this Act. Such exchange of information must be intended for the performance of the functions of those overseas regulatory authorities or other authorities, bodies and natural or legal persons:

Provided that the transfer of personal data to countries that are not Member States or EEA States shall be in accordance with the provisions of Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) In the conclusion of co-operation agreements providing for the exchange of information with overseas regulatory authorities, other authorities or with bodies and natural or legal persons in countries that are not Member States or EEA States, the provisions of sub-article (2) of article 17D of the Investment Services Act shall apply *mutatis mutandis*.

(3) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to an overseas regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(4) Without prejudice to the foregoing provisions of this article, at the request of, or for the purposes of assisting an overseas regulatory authority, the competent authority may exercise the powers listed in sub-article (11) of article 37 of the Investment Services Act, and for the purposes of this sub-article the words “European regulatory authority” shall be read as “overseas regulatory authority.”.

Substitution of article 38 of the principal Act.

44. For article 38 of the principal Act there shall be substituted the following:

“(1) Regulated markets, central securities depositories, the Listing Authority, the competent authority, their respective members, officers, employees or agents, as well as auditors, inspectors and experts, as the case may be, engaged in terms and for the purposes of any of the provisions of this Act –

(a) shall deal with all documents and other information relating to the relevant regulated market or to dealings therewith or therein, or otherwise obtained for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder and not yet officially divulged, as confidential and protected by the duty of professional secrecy, and shall not disclose the same to any other person;

(b) are prohibited from using such documents and information and all other matters which are confidential and protected by the duty of professional secrecy and which come to their knowledge by virtue of their position, in order to secure any advantage for themselves or for any third parties whether such third parties are connected or not with the financial instruments market.

(2) Article 26 of the Investment Services Act shall apply *mutatis mutandis* to regulated markets, the Listing Authority, the competent authority, their respective members, officers, employees

or agents, as well as auditors, inspectors and experts engaged for the purposes of any of the provisions of this Act, bound by the obligation of confidentiality in terms of sub-article (1) of this article.

(3) Any person who acts in contravention of this article shall, without prejudice to the provisions of the Prevention of Financial Markets Abuse Act, be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) of five thousand liri or to a term of imprisonment not exceeding two years or to both such fine and imprisonment. Cap. 476.

(4) Any person other than those mentioned in sub-articles (1) and (2) who acquires any documents or any other information to which the said sub-articles relate and who uses such documents or information, with intent to secure advantage either for himself or any other person, shall, without prejudice to the Prevention of Financial Markets Abuse Act, be guilty of an offence against this Act and shall on conviction be liable to the same penalty established for an offence against the provisions of this article.”. Cap. 476.

45. Article 39 of the principal Act shall be amended as follows: Amendment of article 39 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “or the rules or bye-laws of a recognised investment exchange or will contravene or fail to comply with any obligation, requirement, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the rules or bye-laws of a recognised investment exchange;”, there shall be substituted the words “or the bye-laws of a regulated market or will contravene or fail to comply with any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the bye-laws of a regulated market;”;

(ii) in paragraph (b) thereof, for the words “requirement, directive, or order”, there shall be substituted the words “requirement, directive, Financial Market Rule, Listing Rule or order”;

(b) in paragraph (a) of sub-article (2) thereof for the words “the rules of a recognised investment exchange or any obligation, requirement, directive, or order made or given under any of the provisions of this Act or under the rules or bye-laws of a recognised

investment exchange;”, there shall be substituted the words “the bye-laws of a regulated market or any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act or under the bye-laws of a regulated market;”;

(c) in paragraph (a) of sub-article (3) thereof, for the words “the rules or bye-laws of a recognised investment exchange or any obligation, requirement, directive, or order made or given under any of the provisions of this Act, the regulations made thereunder or the rules or bye-laws of a recognised investment exchange;”, there shall be substituted the words “the bye-laws of a regulated market or any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the bye-laws of a regulated market”;

Addition of new article 39A to the principal Act.

46. Immediately after article 39 of the principal Act there shall be inserted the following new article:

“Administrative penalties.

39A. (1) Where any person contravenes or fails to comply with any provision of this Act, other than Part III thereof, including failure to cooperate in an investigation, or of any regulations, Financial Market Rules made thereunder adopted in the implementation of the Directive, the competent authority may by notice in writing and without recourse to a court hearing impose on any such person or persons, as the case may be, an administrative penalty which may not exceed forty thousand liri.

(2) The competent authority may disclose to the public any penalty imposed under the immediately preceding sub-article:

Provided that the competent authority shall withhold such publication where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(3) Persons upon whom notice is served under sub-article (1) of this article shall have a right of appeal to the Tribunal in accordance with article 43 of this Act.

(4) Where a notice as referred to in sub-article (1) of this article has not been appealed, or where such notice has been appealed, within fifteen days of the determination

by the Tribunal of such appeal, the administrative penalty as contained in the notice or as reduced or increased by the decision of the Tribunal shall be due to the competent authority. Upon the service of a copy of the notice of the decision as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall 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.”.

47. Article 40 of the principal Act shall be amended as follows: Amendment of article 40 of the principal Act.

(a) in sub-article (1) thereof, for the words “order, directive, rule or regulation”, there shall be substituted the words “order, directive, Financial Market Rule, Listing Rule or regulation”;

(b) for sub-article (2) thereof there shall be substituted the following:

“(2) Any person who knowingly or recklessly gives the competent authority, any person appointed by it under article 32(1)(c) or any inspector appointed under article 33, information which is false or misleading shall be guilty of an offence.”;

(c) for sub-article (3) thereof there shall be substituted the following:

“(3) Any person who removes, destroys, conceals or fraudulently alters any book, document or other paper, including information stored in electronic format, which is or is likely to be relevant to a request for information or documentation or an inspection or an investigation in terms of this Act, shall be guilty of an offence.”; and

(d) in sub-article (4) thereof, for the words “who intentionally obstructs”, there shall be substituted the words “who obstructs”.

48. Immediately after article 41 of the principal Act there shall be inserted the following new article 41A: Addition of new article 41A.

“Issue of public statement.

41A. If it appears to the competent authority or the Listing Authority that a person has contravened any of the provisions of this Act or of any regulations made under this Act or has contravened or failed to comply with any condition,

obligation, requirement, Financial Market Rules, Listing Rules or directives made or given under any of the provisions of this Act, the competent authority or the Listing Authority, as the case may be, may publish a statement to that effect.”;

Amendment of article 42 of the principal Act.

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

(a) in sub-article (1) thereof, for the words “articles 4(10), 16(7), 17(3), 18(6), 20(6) and 33(5)” there shall be substituted the words “articles 4(11), 16(9), 17(3), 18(6), 20(4), 25(5), 27(5), 33(6) and 39A”; and

(b) in sub-article (2) thereof, the words “from a decision of the Council of the Malta Stock Exchange under paragraphs 5(1), 6(1) and 6(2) of the Statute as well as” shall be deleted.

Amendment of article 43 of the principal Act.

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

(a) sub-article (1) thereof shall be amended as follows:

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

“(a) that the competent authority, the Listing Authority or the regulated market concerned, as the case may be, has wrongly applied any of the provisions of this Act, of the regulations made thereunder, or of the bye-laws of the regulated market concerned; or”

(ii) in paragraph (b) thereof, for the words “Listing Authority, the Exchange or the recognised investment exchange concerned,” there shall be substituted the words “Listing Authority or the regulated market concerned.”;

(b) in sub-article (2) thereof, for the words “from:

(a) a decision to discontinue the listing of any financial instruments as is mentioned in article 18(5); and

(b) a decision to publish a statement of censure under article 20:

Provided that a decision on any of the matters as is referred to in paragraphs (a) and (b) shall become operative”;

there shall be substituted the words “from a decision to discontinue the listing of any financial instruments as is mentioned in article 18 (5) in which case the decision shall become operative”.

51. For article 44 of the principal Act there shall be substituted the following: Substitution of article 44 of the principal Act.

“Applicability of article 21 of the Malta Financial Services Authority Act. Cap. 330.

44. Subject to article 43 of this Act, the provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article.”.

52. For article 45 of the principal Act there shall be substituted the following: Substitution of article 45 of the principal Act.

“Trading outside regulated markets.

45. (1) Quoted financial instruments may be traded outside the regulated market on which they are listed.

(2) The Minister may make regulations to establish conditions and procedures under which quoted financial instruments may be traded outside the regulated markets on which such quoted financial instruments are listed and other than by means of facilities provided by any such regulated markets.”.

53. In article 47 of the principal Act, for the words “with the Exchange”, there shall be substituted the words “with a regulated market”. Amendment of article 47 of the principal Act.

54. Article 49 of the principal Act shall be amended as follows: – Amendment of Article 49 of the principal Act.

(a) the said article 49 shall be re-numbered as sub-article (1) of article 49;

(b) sub-article (1) as re-numbered shall be amended as follows:

(i) in paragraph (a) thereof, for the words “of recognised investment exchanges” there shall be substituted the words “of regulated markets and central securities depositories”;

(ii) in paragraph (c) thereof, the words “other than the Exchange,” shall be deleted;

(iii) in paragraph (d) thereof, for the words “to which Malta is a party.”, there shall be substituted the words “to which Malta is a party;”;

(iv) immediately after paragraph (d) thereof, there shall be inserted the following new paragraph (e):

“(e) to transpose, implement and give effect to the provisions and requirements of the Directive, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.”;

(c) immediately after sub-article (1) as re-numbered, there shall be inserted the following new sub-articles:

“(2) Regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may also be so specified.

(3) Where regulations have been issued in terms of this article, the competent authority may issue Financial Market Rules within the meaning of article 4 of this Act for the better carrying out and to better implement the provisions of the regulations.”.

Amendment of article 50 of the principal Act.

55. For article 50 of the principal Act, there shall be substituted the following:

“50. Notwithstanding anything contained in the Duty on Documents and Transfers Act, or in any Act replacing that Act, no duty shall be payable in accordance with that Act in respect of any transfer of any financial instruments of a quoted company, or the transfer of any financial instruments of the Government or any body corporate established by law, where such transfer is made either on a regulated market or outside the regulated market on which they are listed in terms of article 45.”.

Amendment of article 51 of the principal Act.

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

(a) in sub-article (1) thereof, for the words “under article 33(4)”, there shall be substituted the words “under article 33(5)”; and

(b) in sub-article (2) thereof, for the words “under article 33(4)”, there shall be substituted the words “under article 33(5)”.

57. In article 52 of the principal Act, for the words “or any rules or regulations made thereunder” there shall be substituted the words “or any regulations or Financial Market Rules or Listing Rules made thereunder”.

Amendment of article 52 of the principal Act.

58. Immediately after article 52 of the principal Act, there shall be inserted the following new article 53:

Addition of new article 53 to the principal Act.

“Objective. **53.** The purpose of this Act is to regulate regulated markets, central securities depositories, and to provide for orderly trading in transferable securities and for matters ancillary or incidental thereto or connected therewith, and to implement the relevant provisions of the Directive which shall be interpreted and applied accordingly.”.

59. The Schedule to the principal Act shall be repealed.

Repeal of Schedule to the principal Act.

PART III

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

Amendment of the Investment Services Act, Cap. 370.

(2) The provisions of this Part shall come into force on the 1st November, 2007.

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

Amendment of article 2 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the definition “collective investment scheme licence” there shall be added the following new definition:

“ “the Community” means the European Community established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice, and as amended by accession agreements and as may be further amended from time to time;”;

(ii) in the definition “competent authority”, for the words “of article 2A;” there shall be substituted the words “of article 2A, which body shall also carry out the duties as competent authority for all purposes of the Directive;”;

(iii) immediately after the definition “competent authority” there shall be added the following new definitions:

“ “Directive” means 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, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

(iv) immediately after the definition “ “document” or “documentation” 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 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;”;

“ “European regulatory authority” means the body or bodies designated by a Member”State or EEA State in accordance with Article 48 of the Directive to carry out each of the duties provided for under the different provisions of the Directive;”;

(v) immediately after the definition “investment services licence” there shall be added the following new definition:

“ “Investment Services Rules” refers to Rules issued by the competent authority under various articles of this Act;”;

(vi) immediately after the definition “Malta’s international commitments” there shall be added the following new definition:

“ “Member State” means a Member State of the European Communities;”;

(vii) for the definition “overseas regulatory authority” there shall be substituted the following:

“ “overseas regulatory authority” means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;”;

(viii) in the definition “prescribed” for the words “prescribed by rules or regulations” there shall be substituted the words “prescribed by regulations”;

(ix) in the definition “recognised investment exchange”, for the words “recognised investment exchange”, there shall be substituted the words “regulated market”;

(b) immediately after sub-article (2) thereof there shall be inserted the following new sub-article (3):

“(3) The objective of this Act is, in part, to transpose and implement the provisions of the Directive, and consequently this Act and any regulations adopted thereunder shall be interpreted and applied accordingly.”.

62. Article 6 of the principal Act shall be amended as follows: Amendment of article 6 of the principal Act.

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

(i) paragraph (a) shall be re-numbered as paragraph (a)(i);

(ii) in paragraph (a)(i) as re-numbered, for the words “observe any rules and regulations made under this Act” there shall be substituted the words “observe any Investment Services Rules and regulations made under this Act”;

(iii) immediately after paragraph (a)(i) as re-numbered, there shall be inserted the following new paragraph (a)(ii):

“(ii) grant an investment services licence:

(a) if the applicant is a body corporate, unless it has both its head office and registered office in Malta;

(b) if the applicant is a body corporate with no registered office under its national law, unless it has its head office in Malta; or

(c) if the applicant is not a body corporate unless the applicant's head office is in Malta; ”;

(iv) paragraph (b) thereof shall be amended as follows:

(a) for the words “with any rules and regulations made under this Act” there shall be substituted the words “with any Investment Services Rules and regulations made under this Act”;

(b) for the words “with the scheme.”, there shall be substituted the words “with the scheme;”;

(v) immediately after paragraph (b) there shall be inserted the following new paragraph (c):

“(c) grant a licence to an applicant unless the relevant European regulatory authorities have been consulted in the instances referred to in article 17C of this Act.”;

(b) in paragraph (b) of sub-article (2) thereof and wherever else it appears in the principal Act, for the word “guidelines”, there shall be substituted the words “Investment Services Rules”;

(c) for sub-article (9) thereof there shall be substituted the following new sub-article:

“(9) The competent authority shall establish a register of all holders of an investment services licence. This register, which shall be publicly available, shall also indicate the services in relation to which each investment services licence was issued and shall be updated on a regular basis.”;

and

(d) sub-articles (10) and (11) thereof shall be deleted.

63. Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.

(a) in paragraph (b) of sub-article (2) thereof, for the words “of any rules or regulations made thereunder,”, there shall be substituted the words “of any Investment Services Rules or regulations made thereunder,”; and

(b) in paragraph (b) of sub-article (3) thereof, for the words “of any rules or regulations made thereunder,”, there shall be substituted the words “of any Investment Services Rules or regulations made thereunder,”.

64. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words “may make rules or regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such rules or regulations,”, there shall be substituted the words “may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations,”;

(ii) in paragraph (b) thereof, for the words “and to regulate the management companies of such schemes; and to make provisions on capital adequacy requirements”, there shall be substituted the words “and to regulate the management companies of such schemes;”;

(iii) in paragraph (f) thereof, for the words “to prescribe rules governing the disclosure”, there shall be substituted the words “to prescribe regulations governing the disclosure”;

(iv) in paragraph (h) thereof, for the words “or any rules or regulations made under this article”, there shall be substituted the words “or any regulations made under this article”;

(v) in paragraph (j) thereof, for the words “applicable to a licence holder;”, there shall be substituted the words “applicable to a licence holder, as amended from time to time, and including any implementing measures issued thereunder;”;

(vi) paragraphs (k) and (l) thereof shall be re-numbered as paragraphs (n) and (o);

(vii) immediately after paragraph (j) thereof, there shall be inserted the following new paragraphs:

“(k) transpose, implement and give effect to the provisions and requirements of the Directive;

(l) establish financial resources requirements for licence holders and to transpose, implement and give effect to the provisions of 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 (recast), as may be amended from time to time, and including any implementing measures issued thereunder;

(m) provide for reporting and other requirements and conditions which a person operating a multilateral trading facility must satisfy, on a continuing and ongoing basis and to establish the circumstances and the manner in which requirements and conditions may be varied, suspended or revoked, and to transpose the requirements of the Directive thereon;”;

(b) sub-article (2)(A) thereof shall be amended as follows:

(i) for the words “Rules or regulations made”, there shall be substituted the words “Regulations made”; and

(ii) in paragraph (a) thereof, for the words “under the rules or regulations”, there shall be substituted the words “under the regulations”;

(c) in sub-article (2)(B) thereof, for the words “Rules or regulations made” there shall be substituted the words “Regulations made”;

(d) sub-article (3) thereof shall be amended as follows:

(i) for the words “Rules or regulations made”, there shall be substituted the words “Regulations made”; and

(ii) for the words “of the rules or regulations as”, there shall be substituted the words “of the regulations as”;

(e) sub-articles (4) and (5) thereof shall be re-numbered as sub-article (5) and (6) respectively;

(f) immediately after sub-article (3) thereof, there shall be inserted the following new sub-article (4):

“(4) Where regulations have been issued in terms of this article, the competent authority may issue Investment Services Rules within the meaning of article 6 of this Act for the better carrying out and to better implement the provisions of the regulations.”; and

(g) in sub-article (5) thereof, as re-numbered, for the words “rules or regulations made” there shall be substituted the words “Regulations made”.

65. In paragraph (a) of sub-article (1) of article 13 of the principal Act, for the words “as it may require”, there shall be substituted the words “as it may require, including the power to require existing telephone and existing data traffic records,”. Amendment of article 13 of the principal Act.

66. Immediately after sub-article (3) of article 14 of the principal Act there shall be inserted the following new sub-article (4): Amendment of article 14 of the principal Act.

“(4) For the purposes of this article inspectors may include an advocate, a person authorised to carry on the profession of accountant or auditor in terms of the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function.”. Cap. 281.

67. Sub-article (2) of Article 15 of the principal Act shall be amended as follows: Amendment of article 15 of the principal Act.

(a) in paragraph (e) thereof, for the words “such other person.”, there shall be substituted the words “such other person;”; and

(b) immediately after paragraph (e) there shall be inserted the following new sub-paragraphs (f) and (g):

“(f) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive;

(g) require the removal of a financial instrument from trading, on trading arrangements within the meaning of the

Directive, other than on regulated markets in terms of the Financial Markets Act”.

Adds new article 16A and 16B to the principal Act.

68. Immediately after article 16 there shall be inserted the following new articles:

“Administra-
tive penalties
and other
measures.

16A. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or the manager, secretary, director or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence, and, or where the competent authority is satisfied that a person’s conduct amounts to a breach of any of the provisions of this Act, regulations or Investment Services Rules issued thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without recourse to a court hearing impose on the licence holder, manager, secretary, director, and, or any other person as the case may be, an administrative penalty which may not exceed forty thousand liri.

(2) Investment Services Rules may provide for the imposition of administrative penalties or other measures that may be imposed by the competent authority on licence holders or others, as may be specified, whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the Rules.

(3) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) Upon the conclusion of any appeal proceedings in terms of article 19 of this Act, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or Investment Services Rules issued

thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Obligation to state grounds for decisions.

16B. Any decision taken under this Act by the competent authority in terms of any provisions which transpose the Directive, including any regulations, Investment Services Rules, or administrative provisions made thereunder for the said transposition, shall state the grounds on which such a decision has been based.”.

69. The sub-title “CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITY” immediately preceding article 17 shall be substituted by the new sub-title “CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES AND OTHER BODIES”

Amendment of sub-title preceding article 17 of the principal Act.

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

Amendment of article 17 of the principal Act.

(a) sub-article (1) thereof shall be re-numbered as sub-article (11);

(b) sub-article (2) thereof shall be deleted and there shall be inserted the following new sub-articles as follows:

“(1) The competent authority shall act as the contact point in terms of and for the purposes of sub-article (1) of article 56 of the Directive.

(2) The competent authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties under the Directive. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory or supervisory function. In terms of the Directive, the competent authority may use its powers for the purposes of cooperation even in cases where the conduct under investigation does not constitute an infringement of any provisions of this Act, regulations or Investment Services Rules issued thereunder.

(3) Upon receipt of a request from European regulatory authorities designated as contact points within the individual Member States or EEA States under sub-article (1) of Article

56 of the Directive, the competent authority shall immediately take the necessary measures in order to gather the information required for the carrying out of its duties pursuant to the Directive. If the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.

(4) At the time of communicating information to the European regulatory authorities, whether designated as contact points or not, the competent authority may stipulate that the information must not be disclosed without its express agreement, in which case such information may be exchanged solely for the purposes for which the competent authority had given its agreement.

(5) Where a European regulatory authority exchanging information with the competent authority stipulates at the time of communication of the information that such information must not be disclosed without its express agreement, such information may be used by the competent authority solely for the purposes for which the European regulatory authority would have given its agreement.

(6) Information received by the competent authority from contact points in the other Member States or EEA States may be transmitted to other bodies or natural or legal persons, provided that:

(a) the express agreement of the contact points which disclosed the information is obtained; and

(b) the information is used solely for the purposes for which the contact points gave their agreement:

Provided that in duly justified circumstances the competent authority can transmit information to other bodies or natural or legal persons without satisfying the conditions in paragraphs (a) and (b) of this sub-article, in which case the competent authority shall immediately inform the contact point that sent the information.

(7) Where the competent authority receives confidential information from contact points in the other Member States or EEA States or from overseas regulatory authorities or auditors under articles 17D and 18 of this Act, or when other bodies or natural or legal persons receive confidential information from the competent authority, they

may only use such confidential information in the course of their duties, in particular:

(a) to check that the conditions governing the taking-up of the business of investment services licence holders are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the financial resources requirements;

(b) to monitor the proper functioning of trading venues within the meaning of the Directive;

(c) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(d) in appeals under article 19 of this Act; or

(e) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act.

(8) Without prejudice to the powers of the competent authority under this Act or any other law, where the competent authority has good reason to suspect that acts contrary to the provisions of the Directive are being or have been carried out on the territory of another Member State or EEA State by entities not subject to its supervision, it shall notify this in as specific a manner as possible to the contact point in the other Member State or EEA State.

(9) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to a European regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(10) Where a European regulatory authority suspects that acts carried out by entities not subject to its supervision and which are contrary to the provisions of the Directive are being or have been carried out in Malta and notifies the

competent authority to this effect, the competent authority shall take appropriate action. The competent authority shall inform the notifying European regulatory authority of the outcome of any such action and, to the extent possible, of significant interim developments:

Provided that any such action taken by the competent authority shall be without prejudice to the powers and functions of the European regulatory authority that has forwarded the information.”;

(c) sub-article (11) as re-numbered shall be amended as follows:

(i) for the words “The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:”, there shall be substituted the words “Without prejudice to the foregoing provisions of this article, the competent authority may exercise the following powers at the request of or for the purpose of assisting a European regulatory authority:”; and

(ii) in paragraph (g) thereof, for the words “overseas regulatory authority”, there shall be substituted the words “European regulatory authority”.

Addition of new articles 17A, 17B, and 17C to the principal Act.

71. Immediately after article 17 there shall be inserted the following new articles:

“Co-operation in supervisory functions, on-site verifications or investigations.

17A. (1) The competent authority may request the cooperation of a European regulatory authority in carrying out its supervisory functions or for an on-site verification or in an investigation:

Cap. 345.

Provided that in the case of a person holding a licence or other equivalent authorisation from a European Regulatory Authority and who is a remote member within the meaning of the Directive of a regulated market authorised in terms of the Financial Markets Act, the competent authority may communicate with such person directly, in which case the competent authority shall inform the contact point of the home Member State of such person accordingly.

(2) A European regulatory authority may request the cooperation of the competent authority in carrying out its supervisory functions or for an on-site verification or in an

investigation, in which case the competent authority shall, within the framework of its powers:

- (a) carry out the verifications or the investigation itself; or
- (b) allow the requesting authority to carry out the verification or investigation; or
- (c) allow inspectors or experts within the meaning of article 14 of this Act to carry out the verification or investigation.

Refusal to cooperate.

17B. The competent authority may refuse to act on a request for cooperation in carrying out an investigation, on-site verification or supervisory function under article 17A of this Act or to exchange information with European regulatory authorities designated as contact points under sub-article (1) of article 56 of the Directive only where:

- (a) such an investigation, on-site verification, supervisory function or exchange of information might adversely affect the sovereignty, security or public policy of Malta;
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of Malta; or
- (c) a final judgment has already been delivered in relation to such persons for the same actions in Malta:

In any case above-mentioned, the competent authority shall notify the requesting European regulatory authority accordingly, providing as much detailed information as possible for such refusal.

Inter-authority consultation prior to granting of a licence.

17C. (1) Prior to granting a licence to an applicant which is:

- (a) a subsidiary of a person holding an investment services licence or an equivalent authorisation or of a credit institution authorised in another Member State or EEA State; or

(b) a subsidiary of the parent undertaking of a person holding an investment services licence or an equivalent authorisation or of a credit institution authorised in another Member State or EEA State; or

(c) controlled by the same natural or legal persons which control a holder of an investment services licence or the holder of an equivalent authorisation or a credit institution authorised in another Member State or EEA State,

the competent authority shall consult with the relevant European regulatory authorities.

(2) Prior to granting a licence to an applicant which is:

(a) a subsidiary of a credit institution or insurance undertaking authorised in another Member State or EEA State; or

(b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in another Member State or EEA State; or

(c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in another Member State or EEA State,

the competent authority shall consult with the European regulatory authority responsible for the supervision of credit institutions or insurance undertakings.

(3) Consultation between the competent authority and the European regulatory authorities shall in particular take place when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. The competent authority shall exchange all information that is of relevance to the other European regulatory authorities involved regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business, both for the granting of a licence as well as for the ongoing assessment of compliance with operating conditions.”.

72. Immediately after article 17C there shall be inserted the following new sub-title “CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITIES AND OTHER BODIES”, and immediately thereafter there shall be added the following article: -

Addition of new sub-title to the principal Act.

“Co-operation with overseas regulatory authorities.

17D. (1) Co-operation agreements with overseas regulatory authorities or other authorities, bodies and natural or legal persons in countries that are not Member States or EEA States may be entered into only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under article 26 of this Act. Such exchange of information must be intended for the performance of the functions of those overseas regulatory authorities or other authorities, bodies and natural or legal persons:

Provided that the transfer of personal data to countries that are not Member States or EEA States shall be in accordance with the provisions of Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) The competent authority may conclude co-operation agreements providing for the exchange of information with overseas regulatory authorities, other authorities or with bodies and natural or legal persons in countries that are not Member States or EEA States responsible for:

(i) the supervision of credit institutions, other financial organisations, persons holding a licence, insurance undertakings and the supervision of financial markets;

(ii) the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;

(iii) carrying out statutory audits of the accounts of persons holding a licence or an equivalent authorisation and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which

administer compensation schemes, in the performance of their functions;

(iv) overseeing the bodies involved in the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;

(v) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, persons holding a licence or an equivalent authorisation, credit institutions and other financial institutions.

(3) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to an overseas regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(4) Without prejudice to the foregoing provisions of this article, at the request of, or for the purposes of assisting an overseas regulatory authority, the competent authority may exercise the powers listed in sub-article (11) of article 17, and for the purposes of this sub-article the words “European regulatory authority” shall be read as “overseas regulatory authority”.

Amendment of article 19 of the principal Act.

73. Article 19 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (c) thereof, for the words “under article 6(9)”, there shall be substituted the words “under article 16A.”;

(ii) in paragraph (f) thereof, for the words “article 11; or”, there shall be substituted the words “article 11.”;

(iii) paragraph (g) thereof shall be re-numbered as paragraph (h);

(iv) immediately after paragraph (f) thereof there shall be inserted the following new paragraph (g):

“(g) any punishment or penalty imposed under article 12(5); or”;

(b) for sub-articles (3) thereof there shall be substituted the following:

“(3) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article.”; and

(c) sub-article (4) thereof shall be deleted.

74. Sub-article (1) of article 21 of the principal Act shall be amended as follows: Amendment of article 21 of the principal Act.

(a) in paragraph (a) thereof, for the words “or of any rules and regulations” there shall be substituted the words “or of any Investment Services Rules and regulations”;

(b) in paragraph (a) thereof and wherever they appear in the said provision for the words “requirement, directive,” there shall be substituted the words “requirement, Investment Services Rules, directive,”.

75. Article 22 of the principal Act shall be amended as follows: Amendment of article 22 of the principal Act.

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

(i) for the words “as applied by article 17”, there shall be substituted the words “as applied by articles 17 and 17D”;

(ii) for the words “of any rules or regulations made”, there shall be substituted the words “of any regulations”;

(b) in sub-article (2) thereof, for the words “of any rules or regulations made”, there shall be substituted the words “of any regulations made”.

76. In article 23 of the principal Act, for the words “under article 12(4)”, there shall be substituted the words “under article 12(5)”. Amendment of article 23 of the principal Act.

77. Sub-article (1) of article 25 of the principal Act shall be amended as follows: Amendment of article 25 of the principal Act.

(a) for the words “a licence has contravened any of the provisions of this Act or of any rules and regulations”, there shall be substituted the words “a licence, or any other person, has contravened any of the provisions of this Act or of any regulations”; and

(b) for the words “directive or order” there shall be substituted the words “Investment Services Rules, directive or order”.

Amendment of article 26 of the principal Act.

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

(a) sub-article (1) shall be amended as follows:

(i) for the words “employees or agents” there shall be substituted the words “employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority”;

(ii) for the words “or of any rules or regulations made”, there shall be substituted the words “or of any Investment Services Rules or regulations made”;

(iii) in paragraph (c) thereof, for the words “an overseas regulatory authority”, there shall be substituted the words “a European regulatory authority or an overseas regulatory authority”;

(iv) in paragraph (g) thereof, for the words “or criminal nature.”, there shall be substituted the words “or criminal nature.”;

(v) immediately after paragraph (g) thereof, there shall be inserted the following two new provisos:

“Provided that this article shall not prevent the competent authority from exchanging or transmitting confidential information in accordance with the Directive and with other Directives of the European Community applicable to licence holders, credit institutions, pension funds, UCITS, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators:

Provided further that this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.”;

(b) for sub-article (2) thereof there shall be substituted the following:

“(2) Without prejudice to the cases covered by criminal law, any confidential information received by bodies or natural or legal persons within the meaning of Article 58 of the Directive shall only be used in the performance of their duties and for the exercise of their functions. In addition, such information is to be used specifically for the purpose for which such information was provided to them and, or in the context of administrative or judicial proceedings specifically related to the exercise of those functions:

Provided that where a body or person communicating information to the competent authority consents thereto, such information may be used by the competent authority for other purposes.”; and

(c) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(3) The provisions of this article and of articles 17 and 17D of this Act shall not preclude the competent authority from transmitting to the Central Bank of Malta, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their functions.”

79. In article 27 of the principal Act, for the words “any rules or regulations” wherever they appear in the said provision, there shall be substituted the words “any Investment Services Rules or regulations”. Amendment of article 27 of the principal Act.

80. In article 28 of the principal Act, for the words “or any rules or regulations made” there shall be substituted the words “or any Investment Services Rules or regulations made”. Amendment of article 28 of the principal Act.

81. Article 29 of the principal Act shall be deleted. Deletion of article 29 of the principal Act.

82. For the First Schedule of the principal Act, there shall be substituted the following: Amendment of the First Schedule to the principal Act.

“FIRST SCHEDULE

(Article 2)

Services

1. Reception and Transmission of Orders in relation to one or more instruments

The reception from a person of an order to buy, sell or subscribe for instruments and the transmission of that order to a third party for execution.

2. Execution of orders on behalf of other persons

Acting to conclude agreements to buy, sell or subscribe for one or more instruments on behalf of other persons.

3. Dealing on own account

Trading against proprietary capital resulting in conclusion of transactions in one or more instruments.

4. Management of Investments

Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more instruments or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more instruments.

Management of Investments may also constitute the selection or agreement to select, on a discretionary basis, instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within class III - linked long term of the Second Schedule to the Insurance Business Act.

Cap. 403.

5. Trustee, Custodian or Nominee Services

(a) Acting as trustee, custodian or nominee holder of an instrument, or of the assets represented by or otherwise connected with an instrument, where the person acting as trustee, custodian or nominee holder is so doing as part of his providing any investment service in paragraphs 1, 2, 3, 4 or 6 of this Schedule:

Provided that for the purposes of this sub-paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of

Cap. 331.

holding such assets be required to have a licence in terms of this subparagraph if such person does not provide an investment service and delegates all activities which are investment services in terms of this Act to a person who is licenced to provide such services; or

(b) Holding an instrument or the assets represented by or otherwise connected with an instrument as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any investment service in this Schedule or on behalf of a client of such person, and such nominee holding is carried out in relation to such investment service:

Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this Act.

(c) Acting as trustee or custodian in relation to a collective investment scheme.

6. Investment Advice

Giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more instruments.

For the purposes of this paragraph, a “personal recommendation” shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

(a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular instrument;

(b) to exercise or not to exercise any right conferred by a particular instrument to buy, sell, subscribe for, exchange, or redeem an instrument;

(c) to select one or more instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within the meaning of class III —‘linked long term’, of the Second Schedule to the Insurance Business Act.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

7. Underwriting of instruments and, or placing of instruments on a firm commitment basis

The underwriting or placing of instruments such that the person providing the service assumes the risk of bringing a new securities issue to the market by buying the issue from the issuer thereby guaranteeing the sale of a certain number of shares to investors

8. Placing of Instruments without a firm commitment basis

The marketing of newly-issued securities or of securities which are already in issue but not listed, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's securities'— without assuming the risk of guaranteeing the sale of a certain number of shares by buying the relative securities from the issuer.

9. Operation of a Multilateral Trading Facility

The operation of a multilateral system which brings together multiple third party buying and selling interests in instruments – in the system and in accordance with non-discretionary requirements— in a way that results in a contract.”.

83. For the Second Schedule of the principal Act, there shall be substituted the following:

Amendment of the
Second Schedule to
the principal
Act.

“SECOND SCHEDULE

(Article 2)

Instruments

1. Transferable Securities.

Those classes of securities which are negotiable on the capital market and include:

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depository receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

2. Money Market Instruments.

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

3. Units in collective investment schemes.

4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act and, or a Multilateral Trading Facility within the meaning of Schedule 1. Cap. 345.

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of this Schedule, and, which have the characteristics of other derivative instruments, having regard to whether, *inter alia*, they are cleared and settled throughout recognized clearing houses or are subject to regular margin calls.

8. Derivative instruments for the transfer of credit risk.

9. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for

property of any description or in an index or other factor designated for that purpose in the contract.

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative instruments, having regard to whether, *inter alia*, they are traded on a regulated market within the meaning of the Financial Markets Act or a Multilateral Trading Facility within the meaning of the First Schedule, are cleared and settled through recognized clearing houses or are subject to regular margin calls.

11. Certificates or other instruments which confer property rights in respect of any instrument falling within this Schedule.

12. Foreign exchange acquired or held for investment purposes.”.

PART IV

Amendment of the
Banking Act, Cap.
371.

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

(2) The provisions of this Part shall come into force on the date of publication of this Act.

Amendment of
article 2 of the
principal Act.

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

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

(i) immediately after the words “In this Act, unless the context otherwise requires -” there shall be inserted the following new definition:

“ “Advanced Measurement Approach” means an approach as defined in a Banking Rule on capital requirements;”;

(ii) for the definition “banking directive”, there shall be substituted the following new definition:

“ “Banking Rule” means a Rule issued by the competent authority under various articles of this Act;””,

and for the words “banking directive” and “banking directives”, wherever they appear in the Act, there shall be substituted the words “Banking Rule” and “Banking Rules”, as the case may be;

(iii) immediately after the definition “business of banking”, there shall be inserted the following new definition:

“ “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;”;

(iv) in the definition “company”, for the words “or a company registered or incorporated outside Malta”, there shall be substituted the words “or a company registered, licensed or holding an equivalent authorisation in another country outside Malta”, and for the word “registered or incorporated under the laws of Malta;”, there shall be substituted the words “registered or licensed under the laws of Malta;”;

(v) in the definition “competent authority”, for the words “in article 3(1);”, there shall be substituted the words “in article 3(1) of this Act;”;

(vi) immediately after the definition “deposit”, there shall be inserted the following new definition:

“ “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;”;

(vii) in the definition “director”, for the words “registered or incorporated outside Malta”, there shall be substituted the words “registered, licensed or holding an equivalent authorisation outside Malta”;

(viii) immediately after the definition “director”, there shall be inserted the following new definition:

““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;”;

(ix) for the definition “electronic money institutions directive”, there shall be substituted the following new definition:

““Electronic Money Rule” means a Rule issued by the competent authority under various articles of this Act;”,

and for the words “electronic money institutions directive” and “electronic money institutions directives”, wherever they appear in the Act, there shall be substituted the words “Electronic Money Rule”;

(x) immediately after the definition “holding company”, there shall be inserted the following new definition:

““initial capital” means ordinary share capital and reserves as defined in a Banking Rule on the application procedures and requirements for authorisation;”;

(xi) for the definition “large exposures directive”, there shall be substituted the following new definition:

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

and for the words “large exposures directive”, wherever they appear in the Act, there shall be substituted the words “Large Exposures Rule”;

(xii) immediately after the definition “licence”, there shall be inserted the following new definition:

““Malta’s international commitments” means Malta’s 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 agreement, however called, whether bilateral or multilateral, to which Malta is a party;”;

(xiii) immediately after the definition “manager”, there shall be inserted the following new definitions:

“ “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;”

(xiv) immediately after the definition “officer”, there shall be inserted the following new definitions:

“ “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;”;

(xv) in the definition “subsidiary”, for the words “by the Companies Act.”, there shall be substituted the words “by the Companies Act;”;

(xvi) immediately after the definition “subsidiary”, there shall be inserted the following new definition:

“ “third country” means a country that is not a Member State or an EEA state.”;

(b) in the first proviso of sub-article (2) thereof, for the words “acceptance of deposits of money for the purposes of this Act.”, there shall be substituted the words “acceptance of deposits of money for the purposes of this Act and any regulations or Banking Rules made thereunder;”;

(c) immediately after sub-article (5) thereof, there shall be inserted the following new sub-articles:

“ (6) 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.

(7) 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.”.

Amendment of article 3 of the principal Act.

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

(a) in sub-article (1) thereof, for the words “for the purposes of this Act to carry out the functions of the competent authority under this Act.”, there shall be substituted the words “for the purposes of this Act and any regulations or Banking Rules made thereunder to carry out the functions of the competent authority under this Act and any regulations or Banking Rules made thereunder.”; and

(b) for sub-article (2) thereof, there shall be substituted the following new sub-article (2):

“(2) (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 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and the requirements of 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.

(b) The Minister, acting on the advice of the competent authority, may in addition amend or revoke such regulations.”.

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

(a) in sub-article (1) thereof, for the words “functions prescribed by this Act and to ensure that credit institutions carrying on business in Malta comply with this Act, regulations and directives issued under this Act”, there shall be substituted the words “functions prescribed by this Act and any regulations, Banking Rules, or Electronic Money Rules made thereunder and to ensure that credit institutions carrying on business in Malta comply with this Act, and any regulations, directives, Banking Rules and Electronic Money Rules issued thereunder”;

(b) for sub-article (2) thereof, there shall be substituted the following new sub-article:

“(2) The competent authority may make, amend or revoke Banking Rules and Electronic Money Rules as may be required for carrying into effect any of the provisions of this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder.”,

(c) sub-articles (3) and (4) thereof shall be renumbered as sub-articles (4) and (5);

(d) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(3) Banking Rules shall be binding on licence holders and others as may be specified therein. Electronic Money Rules may provide that any provision contained in any Banking Rules, as may be specified, shall also apply to electronic money institutions.”.

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

- (a) sub-articles (2), (3), (4), (5) and (6) thereof shall be renumbered as sub-articles (3), (4), (5), (6) and (7) respectively;
- (b) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article (2):

“(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 their rights under European Community Law.”;

- (c) in sub-article (5) thereof, as re-numbered:

- (i) in paragraph (a) thereof, for the words “that does not exceed two million five hundred thousand Maltese liri;”, there shall be substituted the words “that does not exceed the amount of two million five hundred and seventy five thousand and eight hundred Maltese liri (six million Euro);”;

- (ii) in the proviso to paragraph (c) thereof, for the words “subject to a maximum storage amount of not more than sixty Maltese liri.”, there shall be substituted the words “subject to a maximum storage amount of not more than sixty four Maltese liri and forty cents (one hundred fifty Euro).”.

Amendment of article 7 of the principal Act.

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

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

- (i) for paragraph (a) thereof, there shall be substituted the following new paragraph (a):

- “(a) its initial capital amounts to not less than two million one hundred and forty six thousand and five hundred Maltese liri (five million Euro) or in the case of an electronic money institution, of four hundred and twenty nine thousand and three hundred Maltese liri (one million Euro):

- 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;”;

(ii) in paragraph (d) thereof, for the words “the provisions of this Act or any banking directive:”, there shall be substituted the words “the provisions of this Act and any regulations or Banking Rules made thereunder:”, and in the first proviso immediately following, for the words “if the applicant is a credit institution authorised in another country,”, there shall be substituted the words “if the applicant is a credit institution licensed or holding an equivalent authorisation in another country,”;

(b) sub-article (2) thereof shall be repealed;

(c) sub-articles (3) and (4) thereof shall be renumbered as sub-articles (2) and (3) respectively;

(d) immediately after sub-article (3) thereof, there shall be inserted the following new sub-article (4):

“(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.”;

(e) in sub-article (5) thereof, for the words “prescribed under sub-article (3),”, there shall be substituted the words “prescribed under sub-article (2) of this article,”;

(f) immediately after sub-article (7) thereof, there shall be inserted the following new sub-article (8):

“(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 and Electronic Money Rules made thereunder.”.

90. In sub-article (2) of article 7A of the principal Act, for the words “shall not exceed five Maltese liri”, there shall be substituted the words “shall not exceed the amount of four Maltese liri and thirty cents (ten Euro).”.

Amendment of
article 7A of the
principal Act.

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

(a) in sub-article (1) thereof, for the words “A company incorporated outside Malta”, there shall be substituted the words “A company licensed or holding an equivalent authorisation in another country outside Malta”;

(b) in sub-article (2) thereof, for the words “in sub-article (1) having”, there shall be substituted the words “in sub-article (1) of this article having”;

(c) in sub-article (4) thereof, for the words “pursuant to sub-article (3) unless it considers”, there shall be substituted the words “pursuant to sub-article (3) of this article unless it considers”;

(d) in sub-article (5) thereof, for the words “pursuant to sub-article (1) to provide”, there shall be substituted the words “pursuant to sub-article (1) of this article to provide”;

(e) for sub-article (7) thereof, there shall be substituted the following new sub-article:

“(7) The competent authority may by a Banking Rule provide that the provisions of articles 20 to 24 of this Act 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.”;

(f) in sub-article (9) thereof, for the words “in sub-article (1), order a company referred to in the said sub-article (1)”, there shall be substituted the words “in sub-article (1) of this article, order a company referred to in the said sub-article (1)”.

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

(a) in paragraph (e) of sub-article (1) thereof, for the words “a credit institution incorporated outside Malta”, there shall be substituted the words “a credit institution licensed or holding an equivalent authorisation in another country outside Malta”;

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

(i) in paragraph (a) thereof, for the words “notify under this Act; or”, there shall be substituted the words “notify under this Act or any regulations or Banking Rules or Electronic Money Rules made thereunder; or”;

(ii) in paragraph (c) thereof, for the words “provisions of this Act or with the conditions”, there shall be substituted the words “provisions of this Act or any regulations or Banking Rules or Electronic Money Rules made thereunder or with the conditions”;

(c) in sub-article (3) thereof, for the words “pursuant to sub-article (2) shall be such restrictions”, there shall be substituted the words “pursuant to sub-article (2) of this Act shall be such restrictions”, and for the words “the provisions of this Act and the conditions,”, there shall be substituted the words “the provisions of this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder and the conditions,”;

(d) in sub-article (6) thereof, for the words “A licence granted to a branch of a credit institution incorporated outside Malta may”, there shall be substituted the words “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”;

(e) in sub-article (7) thereof, for the words “a credit institution incorporated in Malta”, there shall be substituted the words “a credit institution licensed in Malta”, and after the words “carrying on the business of banking.”, there shall be added the new words “The competent authority shall notify the Commission of the European Union of any revocation of a licence.”.

93. Article 11 of the principal Act shall be amended as follows: Amendment of article 11 of the principal Act.

(a) in sub-article (1) thereof, for the words “A credit institution shall inform”, there shall be substituted the words “A credit institution licensed in Malta shall inform”;

(b) in sub-article (2) thereof, for the words “no credit institution incorporated in Malta”, there shall be substituted the words “no credit institution licensed in Malta”.

94. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) in sub-article (1) thereof, for the words “Subject to sub-articles (2) and (3), save with”, there shall be substituted the words “Subject to sub-articles (2) and (3) of this article, save with”;

(b) for sub-article (2) thereof, there shall be substituted the following new sub-article (2):

“(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.”.

Amendment of
article 13 of the
principal Act.

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

(a) in sub-article (2) thereof, for the words “a credit institution authorised in another country or is a natural or legal person controlling a credit institution authorised in another country, the competent authority shall, prior to granting consent or otherwise under the provisions of sub-article (1),”, there shall be substituted the words “a credit institution licensed or holding an equivalent authorisation in another country or is a natural or legal person controlling a credit institution licensed or holding an equivalent authorisation in another country, the competent authority shall, prior to granting consent or otherwise under the provisions of sub-article (1) of this article.”;

(b) in sub-article (3) thereof, for the words “Sub-article (1) shall apply”, there shall be substituted the words “Sub-article (1) of this article shall apply”;

(c) in sub-article (4) thereof, for the words “set out in sub-article (1).”, there shall be substituted the words “set out in sub-article (1) of this article.”;

(d) in paragraph (c) of sub-article (5) thereof, for the words “undergo any re-construction;”, there shall be substituted the words “undergo any re-construction; or”;

(e) in sub-article (6) thereof, for the words “set out in sub-article (5).”, there shall be substituted the words “set out in sub-article (5) of this article.”;

(f) in sub-article (7) thereof, for the words “the competent authority may issue”, there shall be substituted the words “the competent authority shall issue”; and

(g) in sub-article (9) thereof, for the words “sub-articles (1) and (5)”, there shall be substituted the words “sub-articles (1) and (5) of this article”, and for the words “imposed under this Act,” there shall be substituted the words “imposed under this Act or

any regulations or Banking Rules and Electronic Money Rules made thereunder.”.

96. In sub-article (4) of article 14 of the principal Act, for the words “make an order requiring such a person to cease to be a controller or”, there shall be substituted the words “make an order requiring such a person to cease to be a controller or director or”.

Amendment of article 14 of the principal Act.

97. Sub-article (1) of article 15 of the principal Act shall be amended as follows:

Amendment of article 15 of the principal Act.

(a) in the proviso to sub-paragraph (i) of paragraph (b) thereof, for the words “exceed the sum of ten thousand Maltese liri;”, there shall be substituted the words “exceed the sum of ten thousand Maltese liri (twenty three thousand two hundred and ninety Euro);”; and

(b) in sub-paragraph (v) of paragraph (d) thereof, for the words “own funds as established under article 17,” there shall be substituted the words “own funds for the calculation of the capital requirements under article 17 of this Act”.

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

Amendment of article 16A of the principal Act.

(a) for sub-article (1) thereof, there shall be substituted the following new sub-article (1):

“(1) Without prejudice to the minimum level of the capital requirements laid down in the Banking Rule issued in terms of article 17 (1) of the Act, 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) of the Act or such higher amount as may be required by the competent authority from time to time.”;

(b) sub-articles (2) and (3) thereof shall be re-numbered as sub-articles (3) and (4) respectively;

(c) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article (2):

“(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 Article 109 of the Directive 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.”;

(d) in sub-article (3) thereof, as re-numbered, for the words “established under sub-article (1), the competent authority shall”, there shall be substituted the words “established under sub-article (1) of this article, the competent authority shall”.

Amendment of article 17 of the principal Act.

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

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

(i) in paragraph (a) thereof, for the words “maintain a capital adequacy ratio to risk-weighted assets as defined”, there shall be substituted the words “maintain capital requirements to risk-weighted and notional risk-weighted assets as defined”;

(ii) in paragraph (b) thereof, for the words “notify the ratio to the competent authority”, there shall be substituted the words “notify the capital requirements to the competent authority”;

(iii) in paragraph (c) thereof, for the words “upon the ratio falling below”, there shall be substituted the words “upon the capital requirements falling below”, and for the words “measures to restore the ratio to the required level”, there shall be substituted the words “measures to restore the capital requirements to the required level”;

(b) for sub-article (2) thereof, there shall be substituted the following new sub-article:

“(2) Every credit institution, to the exclusion of an electronic money institution, shall maintain adequate provisions for bad and doubtful debts.”.

Amendment of article 17A of the principal Act.

100. In the English text of article 17A of the principal Act, for the words “The competent authority shall issue”, there shall be substituted the words “The competent authority may issue”.

101. Immediately after article 17A of the principal Act, there shall be inserted the following new articles:

Adds new articles 17B, 17C and 17D to the principal Act.

“Internal governance.

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 and administrative and accounting procedures.

(2) Such arrangements, processes and mechanisms referred to in sub-article (1) of this article, 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 or Electronic Money Rule.

Credit institutions’ internal capital adequacy assessment process.

17C. All credit institutions, to the exclusion of electronic money 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.

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 and Electronic Money Rules made thereunder and the technical criteria set out in Annex XI of the 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 sub-article (1) above shall be that of the requirements of

this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder.

(3) On the basis of such review and evaluation referred to in sub-article (1) above, 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 sub-article (1) above 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.”.

Amendment of article 18 of the principal Act.

102. In article 18 of the principal Act, for the words “The competent authority shall issue a banking directive”, there shall be substituted the words “The competent authority may issue a Banking Rule”.

Amendment of article 19 of the principal Act.

103. Article 19 of the principal Act shall be amended as follows:

(a) in paragraph (c) of sub-article (1) thereof, for the words “complying with the provisions of this Act;”, there shall be substituted the words “complying with the provisions of this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder;”;

(b) in sub-article (3) thereof, for the words “which is not incorporated in Malta.”, there shall be substituted the words “which is not licensed in Malta.”;

(c) in sub-article (4) thereof, for the words “under sub-article (1) shall be submitted in such form and at such periods as shall be prescribed by banking directive.”, there shall be substituted the words “under sub-article (1) of this article shall be submitted in such form and at such periods as may be prescribed by a Banking Rule.”;

(d) in sub-article (5) thereof, for the words “under sub-articles (1) and (2) shall be regarded”, there shall be substituted the words “under sub-articles (1) and (2) of this article shall be regarded”.

104. Immediately after article 19 of the principal Act there shall be inserted the following new article:

Adds new article 19A to the principal Act.

“Outsourcing
service
providers.

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 and, or Electronic Money Rule as the case may be, laying down the requirements for the recognition of the outsourcing service provider and the provision of such outsourced services.”.

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

Amendment of article 20 of the principal Act.

(a) in sub-article (1) thereof, for the words “its duties under this Act, and the competent authority”, there shall be substituted the words “its duties under this Act and any regulations or Banking Rules made thereunder, and the competent authority”;

(b) in sub-article (2) thereof, for the words “shall be by notice in writing”, there shall be substituted the words “shall be made by notice in writing”;

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

(i) in paragraph (a) thereof, for the words “under sub-article (1);”, there shall be substituted the words “under sub-article (1) of this article;”;

(ii) in paragraph (c) thereof, for the words “its functions under this Act.”, there shall be substituted the words “its functions under this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder.”;

(d) in sub-article (4) thereof, for the words “required under sub-article (3) (a) shall be a person”, there shall be substituted the words “required under sub-article (3) (a) of this article shall be a person”;

(e) in sub-article (5) thereof, for the words “by virtue of sub-article (3), any person”, there shall be substituted the words “by virtue of sub-article (3) of this article, any person”;

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

(i) for the words “depositors of a credit institution to do so, it may” there shall be substituted the words “depositors of a credit institution to do so, or if otherwise required to fulfil its supervisory responsibilities, it may”;

(ii) in paragraph (d) thereof, for the words “of that credit institution.”, there shall be substituted the words “of that credit institution; or”;

(iii) immediately after paragraph (d) thereof, there shall be inserted the following new paragraph (e):

“(e) an outsourcing service provider of that credit institution.”;

(g) in sub-article (9) thereof, for the words “powers conferred by sub-articles (1) and (3) in relation to”, there shall be substituted the words “powers conferred by sub-articles (1) and (3) of this article in relation to”; and

(h) in sub-article (11) thereof, for the words “reported on under sub-article (3) the costs”, there shall be substituted the words “reported under sub-article (3) of this article the costs”.

Amendment of
article 22 of the
principal Act.

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

(a) in sub-article (1) thereof, for the words “potential depositors of a credit institution, it may appoint” there shall be substituted the words “potential depositors of a credit institution, or if otherwise required to fulfil its supervisory responsibilities, it may appoint”;

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

(i) in paragraph (d) thereof, for the words “of that credit institution.”, there shall be substituted the words “of that credit institution; or”;

(ii) immediately after paragraph (d) thereof, there shall be inserted the following new paragraph (e):

“(e) an outsourcing service provider of that credit institution.”;

(c) in sub-article (3) thereof, for the words “conferred by sub-article (1) in relation to”, there shall be substituted the words “conferred by sub-article (1) of this article in relation to”;

(d) in sub-article (4) thereof, for the words “appointed under sub-article (1) decides to investigate the business of any person by virtue of sub-article (2) or sub-article (3) he shall”, there shall be substituted the words “appointed under sub-article (1) of this article decides to investigate the business of any person by virtue of sub-article (2) or sub-article (3) of this article he shall”;

(e) in sub-article (5) thereof:

(i) for the words “under this Act, or any person appointed to make a report in respect of that body under this Act and anyone”, there shall be substituted the words “under this Act and any regulations or Banking Rules and Electronic Money 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 and Electronic Money Rules made thereunder and anyone”;

(ii) in paragraph (a) thereof, for the words “appointed under sub-article (1),”, there shall be substituted the words “appointed under sub-article (1) of this article,”;

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

(i) in paragraph (b) thereof, for the words “appointed under sub-article (1)”, there shall be substituted the words “appointed under sub-article (1) of this article”;

(ii) in paragraph (c) thereof, for the words “by virtue of sub-article (2) or (3).”, there shall be substituted the words “by virtue of sub-articles (2) or (3) of this article.”.

107. In sub-article (1) of article 23 of the principal Act, for the words “under this Act,”, there shall be substituted the words “under this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder,”. Amendment of article 23 of the principal Act.

108. In paragraph (a) of article 24 of the principal Act, for the words “under article 20, article 22 or article 23; or”, there shall be Amendment of article 24 of the principal Act.

substituted the words “under article 20, article 22 or article 23 of this Act; or”.

Amendment of
article 25 of the
principal Act.

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

(a) sub-articles (3), (4) and (5) thereof shall be re-numbered as sub-articles (4), (5) and (6);

(b) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(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 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 sub-article:

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.”;

(c) in sub-article (4) thereof, as re-numbered, for the words “provisions of sub-article (2) only to the extent that the foreign authorities receiving the information”, there shall be substituted the words “provisions of sub-article (2) of this article only to the extent that the overseas regulatory authorities receiving the information”;

(d) in sub-article (5) thereof, as re-numbered, for the words “authorise other foreign competent authorities to carry out”, there shall be substituted the words “authorise overseas regulatory authorities to carry out”, and for the words “country of the competent authority making the inspection.”, there shall be substituted the words “country of the overseas regulatory authority making the inspection.”;

(e) for sub-article (6) thereof, as re-numbered, there shall be substituted the following new sub-article (6):

“(6) The competent authority shall further, upon a request in writing, disclose to the Central Bank, other bodies with a similar function in their capacity as monetary authorities and, where appropriate, 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 the competent authority shall alert as soon as possible the Central Bank of Malta with such information required for the discharge of the duties of the Central Bank under the Central Bank of Malta Act.”;

(f) sub-article (7) thereof, shall be re-numbered as sub-article (8); and

(g) immediately after sub-article (6) thereof, there shall be inserted the following new sub-article (7):

“(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 sub-article may not be disclosed by the competent authority without the express consent of the overseas regulatory authority which had disclosed it.”.

110. Immediately after article 25 of the principal Act there shall be inserted the following new articles:

Adds new articles 25A and 25B to the principal Act.

“Co-operation and sharing of information with respect to supervision on a consolidated basis.

25A. (1) The competent authority shall cooperate 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 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 of the financial soundness of a credit 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 136 (1) of the Directive 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 consult overseas regulatory authorities with regard to the following items, in so far as the decisions referred to in the preceding sub-article 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 136 (1) of the Directive 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) of this article, 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 Directive.

(7) 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 parent credit institutions and credit institutions

controlled by parent financial holding companies, it shall carry out the following functions:

(a) coordination of the gathering and dissemination of relevant or essential information in emergency situations as well as in going concern situations; and

(b) planning and coordination of supervisory activities in emergency situations as well as in going concern situations, including in relation to the activities in article 17D of this Act, in cooperation with the overseas regulatory authorities involved.

(8) 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 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.

(9) Where an emergency situation arises within a banking group which potentially jeopardises the stability of the financial system in any of the Member States or EEA States where entities of a group have been licensed and where the competent authority is responsible for the exercise of supervision on a consolidated basis, it shall alert as soon as possible, in addition to the provisions of article 25 of this Act, the Central Bank of Malta, other overseas central banks as well as the overseas regulatory authorities identified under the relevant provisions of the Banking Rule relating to supervision on a consolidated basis. Where possible, the competent authority shall use existing defined channels of communication.

(10) 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.

Verification
of
information
in specific
cases.

25B. (1) In specific cases 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 sub-article 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.”.

Amendment of
article 26 of the
principal Act.

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

(a) in paragraph (b) of sub-article (1) thereof, for the words “under article 20(3) (a) or article 22(1),” there shall be substituted the words “under article 20(3) (a) or article 22(1) of this Act,” and thereafter, for the words “competent authority under this Act,” there shall be substituted the words “competent authority under this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder.”;

(b) in sub-article (2) thereof, for the words “within article 31(9).”, there shall be substituted the words “within article 31(9) of this Act.”;

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

(i) for the words “under article 20(3) (a),” there shall be substituted the words “under article 20(3) (a) of this Act.”;

(ii) in the English text of paragraph (b) thereof, for the words “by virtue of article 20(7),” there shall be substituted the words “by virtue of article 20(7) of this Act.”;

(d) in sub-article (4) thereof:

(i) for the words “report under article 22(1),” there shall be substituted the words “report under article 22(1) of this Act.”;

(ii) in paragraph (b) thereof, for the words “by virtue of article 22(2),” there shall be substituted the words “by virtue of article 22(2) of this Act.”;

(e) in sub-article (5) thereof, for the words “mentioned in article 20(7) or mentioned in article 22(2).”, there shall be substituted the words “mentioned in article 20(7) or in article 22(2) of this Act.”;

(f) sub-article (6) thereof shall be deleted.

112. In article 28 of the principal Act, for the words “provided for in this Act -”, there shall be substituted the words “provided for in this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder -”. Amendment of article 28 of the principal Act.

113. Article 28A of the principal Act shall be amended as follows: Amendment of article 28A of the principal Act.

(a) for the words “arising under article 3, the Minister,”, there shall be substituted the words “arising under article 3 of this Act, the Minister,”;

(b) in the English text, for the words “schemes shall be exempt form the payment”, there shall be substituted the words “schemes shall be exempt from the payment”.

114. Article 29 of the principal Act shall be amended as follows: Amendment of article 29 of the principal Act.

(a) in sub-article (1) thereof, for the words “in article 9(2) apply,”, there shall be substituted the words “in article 9(2) of this Act apply,”, and for the words “provisions of article 9(2) -”, there shall be substituted the words “ provisions of article 9(2) of this Act -”;

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

(i) in paragraph (a) thereof, for the words “under sub-article (1) (b),”, there shall be substituted the words “under sub-article (1) (b) of this article,”;

(ii) in paragraph (b) thereof, for the words “under sub-article (1) (c),”, there shall be substituted the words “under sub-article (1) (c) of this article,”;

(iii) in paragraph (c) thereof, for the words “under sub-article (1) (d),”, there shall be substituted the words “under sub-article (1) (d) of this article,”;

(c) in sub-article (3) thereof, for the words “under sub-article (1) (c) or (d) -”, there shall be substituted the words “under sub-article (1) (c) and (d) of this article -”;

(d) in sub-article (4) thereof, for the words “under sub-article (1) (f),”, there shall be substituted the words “under sub-article (1) (f) of this article,”;

(e) in sub-article (7) thereof, for the words “under sub-article (1)”, there shall be substituted the words “under sub-article (1) of this article”;

(f) in sub-article (9) thereof, for the words “mentioned in sub-article (1),”, there shall be substituted the words “mentioned in sub-article (1) of this article,”.

Amendment of
article 29A of the
principal Act.

115. For article 29A of the principal Act, there shall be substituted the following new article 29A:

“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 re-organisation 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.”.

116. Article 29B of the principal Act shall be repealed.

Repeals article 29B of the principal Act.

117. Article 29C of the principal Act shall be amended as follows:

Amendment of article 29C of the principal Act

(a) the whole article shall be renumbered as article 29B; and

(b) for the words “regulations made under this Act”, there shall be substituted the words “regulations and Banking Rules made under this Act”.

118. In article 30 of the principal Act, for the words “as may be exceptionally authorised by the competent authority -”, there shall be substituted the words “as may be exceptionally licensed by the competent authority -”.

Amendment of article 30 of the principal Act.

119. Article 31 of the principal Act shall be amended as follows:

Amendment of article 31 of the principal Act.

(a) in sub-article (2) thereof, for the words “auditor under sub-article (1) or,”, there shall be substituted the words “auditor under sub-article (1) of this article or,”;

(b) in sub-article (9) thereof, for the words “authority under article 20 or article 22,”, there shall be substituted the words “authority under article 20 or article 22 of this Act,”, and for the words “which is not incorporated in Malta,”, there shall be substituted the words “which is not licensed in Malta,”; and

(c) in sub-article (10) thereof, for the words “not incorporated in Malta”, there shall be substituted the words “not licensed in Malta”.

120. In article 32 of the principal Act, for the words “revoked under article 9(2);”, there shall be replaced the words “revoked under article 9 (2) of this Act;”.

Amendment of article 32 of the principal Act.

121. Article 34 of the principal Act shall be amended as follows:

Amendment of article 34 of the principal Act.

(a) for sub-article (1) thereof, there shall be substituted the following new sub-article (1):

“(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

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(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.”;

(b) for sub-article (2) thereof, there shall be substituted the following new sub-article (2):

“(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 and Electronic Money Rules made thereunder except -

(a) when authorised to do so under any of the provisions of this Act and any regulations or Banking Rules and Electronic Money 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.”;

(c) for sub-article (4) thereof, there shall be substituted the following sub-article (4):

“(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.”;

(d) for sub-article (5) thereof, there shall be substituted the following new sub-article (5):

“(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 either carry out the issuing of electronic money or any of the activities referred to in the Schedule 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.”; and

(e) sub-article (6) shall be repealed.

Amendment of article 35 of the principal Act.

122. Article 35 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words “Sub-article (1) does not apply”, there shall be substituted the words “Sub-article (1) of this article does not apply”;

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

(i) in paragraph (e) thereof, for the words “made under this Act;”, there shall be substituted the words “made under this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder;”;

(ii) in paragraph (f) thereof, for the words “under this Act;”, there shall be substituted the words “under this Act and any regulations or Banking Rules and Electronic Money Rules made thereunder;”;

(c) in sub-article (4) thereof, for the words “offence under sub-articles (1) and (3);”, there shall be substituted the words “offence under sub-articles (1) and (3) of this article;”;

(d) in paragraph (b) of sub-article (5) thereof, for the words “provisions of this Act;”, there shall be substituted the words “provisions of this Act and any regulations made thereunder;”;

(e) in paragraph (b) of sub-article (6) thereof, for the words “shall not provide for a fine of less than one hundred liri or greater than five hundred thousand liri.”, there shall be substituted the words “shall not provide for a fine of less than one hundred Malta liri or its equivalent in Euro or greater than five hundred thousand Malta liri or its equivalent in Euro.”;

(f) in the proviso of sub-article (7) thereof, for the words “may not impose a financial penalty greater than fifty thousand liri.”, there shall be substituted the words “may not impose a financial penalty greater than fifty thousand Maltese liri or its equivalent in Euro.”; and

(g) in sub-article (8) thereof, for the words “against this Act or any regulations made thereunder,”, there shall be substituted the words “under this Act and any regulations made thereunder,”.

123. Article 35A of the principal Act shall be amended as follows: Amendment of article 35A of the principal Act.

(a) in sub-article (2) thereof, for the words “provisions of sub-article (3) shall apply.”, there shall be substituted the words “provisions of sub-article (3) of this article shall apply.”; and

(b) in sub-article (3) thereof, for the words “referred to in sub-article (1),”, there shall be substituted the words “referred to in sub-article (1) of this article,”.

124. Article 37 shall be repealed. Repeal of article 37 of the principal Act.

PART V

125. (1) This Part amends and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Insurance Business Act, Cap. 403.

(2) The provisions of this Part shall come into force on the date of publication of this Act.

126. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act

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

“ “insurance agent” means a person enrolled as such under the Insurance Intermediaries Act;”;

.Cap. 487.

(b) for the definition “insurance manager” there shall be substituted the following:

“ “insurance manager” means a person enrolled as such under the Insurance Intermediaries Act;”;

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(c) in the definition “Lloyd’s”, for the words “in the First Schedule” there shall be substituted the words “in article 48A”;

(d) for the definition “margin of solvency” and “Malta margin of solvency” there shall be substituted the following:

“ “ margin of solvency”, “Malta margin of solvency” and “EEA margin of solvency” shall be construed in accordance with article 14 of this Act;”.

Amendment of article 11 of the principal Act.

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

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

(i) in sub-paragraph (iii) of paragraph (d) therein, for the words “an authorised insurance agent”, there shall be substituted the words “an insurance agent”;

(ii) in sub-paragraph (iv) of paragraph (d) therein, for the words “an authorised insurance agent”, there shall be substituted the words “an insurance agent”;

(b) in paragraph (a) of sub-article (2) thereof, for the words “an authorised insurance manager”, there shall be substituted the words “an insurance manager”.

Amendment of article 14 of the principal Act.

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

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

(i) in paragraph (b) therein, for the words “a Malta margin of solvency,” there shall be substituted the words “a Malta margin of solvency, or”;

(ii) immediately after paragraph (b) therein , there shall be added the following new paragraph (c):

“(c) an EEA margin of solvency;”;

(b) in sub-article (4) thereof:

(i) in paragraph (b) therein, for the words “carried on by that company in Malta.” there shall be substituted the words “carried on by that company in Malta;”;

(ii) immediately after paragraph (b) therein, there shall be added the following new paragraph (c):

“(c) the EEA margin of solvency is the margin of solvency of an authorised company computed by reference to the assets and liabilities of the business

carried on by that company in all Member States and EEA States.”.

129. Paragraph (b) of sub-article (1) of article 20 of the principal Act shall be amended as follows:

Amendment of article 20 of the principal Act.

(a) for the words “in the English language;” there shall be substituted the words “in the English language.”;

(b) immediately after the words “in the English language.”, there shall be added the words “This requirement shall not apply in the case of a company which carries on business restricted to risks situated outside Malta or commitments where Malta is not the country of commitment;”.

130. Article 33 of the principal Act shall be amended as follows:

Amendment of article 33 of the principal Act.

(a) for sub-article (4) thereof, there shall be substituted the following:

“(4) The competent authority shall not approve a transfer on an application made under sub-article (1) unless it is satisfied that -

(a) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on general business of the class or classes or part classes to be transferred under the scheme;

(ii) the transferee is, or immediately after the approval will be, authorised under article 6 or article 23 of First Council Directive of 24 July 1973 on the co-ordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC) to carry on general business of the class or classes or part classes to be transferred under the scheme in a Member State or EEA State; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii) of this paragraph, the transferee has the authorisation required to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred, or will have it before the scheme takes effect; and

(b) (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;

(ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under Articles 16a, 25 or 26 of the First Council Directive of 24 July 1973 on the co-ordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC); or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred; and

(c) (i) if the transferee is a company authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(ii) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; and

(d) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State –

(i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and

(ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed;

(e) if the transferor is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta -

(i) the overseas regulatory authority in the country where the risk is situated has been notified of the proposed transfer; and

(ii) either the overseas regulatory authority has consented to the transfer or the overseas regulatory authority has not refused its consent to the transfer within the period of three months beginning with the date of the notification.”; and

(b) sub-article (6) thereof shall be deleted.

131. For sub-article (5) of article 35 of the principal Act, there shall be substituted the following:

Amendment of article 35 of the principal Act.

“(5) Subject to sub-article (6), the Tribunal shall not approve a transfer on an application filed before it under sub-article (1) unless it is satisfied that -

(a) (i) the transferee company is, or immediately after the approval will be, authorised under article 7 to carry on long term business of the class or classes to be transferred under the scheme;

(ii) the transferee company is, or immediately after the approval will be, authorised under article 4 or article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, to carry on long term business of the class or classes to be transferred under the scheme in a Member State or an EEA State; or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee has the authorisation required to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and

(b) the transferee company produces evidence that -

(i) (aa) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under this Act;

(bb) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under

article 28, 55 or 56 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance; or

(cc) if the transferee does not fall within sub-indent (aa) and (bb) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred;

(ii) (aa) if the transferee company is authorised under this Act, its financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(bb) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred;

(c) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State –

(i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and

(ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed.”.

Addition of new article 37 to the principal Act.

132. Immediately after article 36 of the principal Act there shall be added the following new article:

“Exemption under this Part.

37. (1) Subject to sub-article (2), this Part of the Act shall not apply to business of reinsurance.

(2) Where a company authorised under this Act carrying on business restricted to reinsurance (“the transferor”)

proposes to transfer all or part of its business, the competent authority shall not approve a transfer unless it is satisfied that:

(a) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on business of reinsurance;

(ii) the transferee is, or immediately after the approval will be, authorised under article 4 of 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 and Directives 98/78/EEC and 2002/83/EC, to carry on in a Member State or an EEA State, business of reinsurance to be transferred under the scheme; or

(iii) if the transferee does not fall within subparagraphs (i) and (ii) of this paragraph, the transferee has the authorisation required (if any) to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and

(b) (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;

(ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under articles 37 to 39 of 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 and Directives 98/78/EC and 2002/83/EC; or

(iii) if the transferee does not fall within subparagraphs (i) and (ii) of this paragraph, the transferee satisfies the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred.

(c) (i) if the transferee is a company authorised under this Act, the transferee's financial resources are,

consequential to the transfer, adequate to fulfil the other obligations required of it by or under this Act;

(ii) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil (if any) the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred.”.

Amendment of article 38 of the principal Act.

133. Sub-article (12) of article 38 of the principal Act shall be deleted.

Amendment of article 41 of the principal Act.

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

(a) in sub-article (3) thereof, for the words “attributable to its business of insurance in Malta” there shall be substituted the words “attributable to its business of insurance”;

(b) in the proviso to sub-article (3) thereof, for the words “attributable to its business of insurance in Malta” there shall be substituted the words “attributable to its business of insurance”.

Amendment of article 59 of the principal Act

135. In sub-article (2) of article 59 of the principal Act, for the words “employees or agents” there shall be substituted the words “employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority”.

Amendment of article 60 of the principal Act.

136. In sub-article (2) of article 60 of the principal Act, the word “authorised” shall be deleted.

Amendment of article 61 of the principal Act.

137. In article 61 of the principal Act, for the words “shall include an authorised insurance agent, an authorised insurance manager”, there shall be substituted the words “shall include an insurance agent, an insurance manager”.

Amendment of article 64 of the principal Act.

138. In paragraph (i) of sub-article (1) of article 64 of the principal Act, for the words “being penalties not exceeding five thousand liri” there shall be substituted the words “being penalties not exceeding forty thousand liri”.

Amendment of article 65 of the principal Act.

139. Article 65 of the principal Act shall be amended as follows:

(a) for the marginal note and chapter references thereto, there shall be substituted the words “Exemption under Duty on Documents and Transfers Act. Cap. 364.”;

(b) sub-article (1) thereof shall be deleted; and

(c) sub-article (2) thereof shall be renumbered as the whole article.

140. Article 67 of the principal Act shall be amended as follows: Amendment of article 67 of the principal Act.

(a) in sub-article (3) thereof, for the words “shall include an authorised insurance agent, an authorised insurance manager”, there shall be substituted the words “shall include an insurance agent, an insurance manager”.

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

(i) in the proviso to sub-article (6) thereof, for the words “during which the infringement continues;” there shall be substituted the words “during which the infringement continues.”;

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

“Provided further that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed forty thousand liri.”.

PART VI

141. (1) This Part amends and shall be read and construed as one with the Insurance Intermediaries Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Insurance Intermediaries Act, Cap. 487.

(2) The provisions of this Part shall come into force on the date of publication of this Act.

142. Paragraph (h) of sub-article (2) of article 3 of the principal Act shall be amended as follows: Amendment of article 3 of the principal Act

(a) in the proviso to paragraph (h) thereof, for the words “during which the infringement continues;” there shall be substituted the words “during which the infringement continues.”;

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

“Provided further that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed forty thousand liri;”.

Amendment of article 10 of the principal Act.

143. In indent (iii) of paragraph (a) of sub-article (1) of article 10, for the words “all qualifying shareholders, controllers and all persons who will effectively manage the affairs”, there shall be substituted the words “all qualifying shareholders, controllers, directors and all persons who will effectively manage the affairs”.

Amendment of article 11 of the principal Act.

144. In sub-article (4) of article 11 of the principal Act, for the words “may carry out insurance intermediaries activities or set up or acquire a subsidiary” there shall be substituted the words “may carry out insurance intermediaries activities, open a branch, office or other place of business, or set up or acquire a subsidiary”.

Amendment of article 12 of the principal Act.

145. In the proviso to paragraph (b) of sub-article (1) of article 12 of the principal Act, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

Amendment of article 15 of the principal Act.

146. For paragraph (a) of sub-article (1) of article 15 of the principal Act, there shall be substituted the following:

“(a) the intermediary does not commence to carry on the insurance intermediaries activities pursuant to the enrolment within twelve months of it being granted, or within such other period as may be specified in the enrolment; or”.

Amendment of article 16 of the principal Act.

147. For paragraph (h) of article 16 of the principal Act there shall be substituted the following:

“(h) the registered person does not hold a directorship in, or is no longer employed with, the enrolled company; or”.

Amendment of article 26 of the principal Act.

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

(a) the present provision shall be renumbered as sub-article (1) thereof; and

(b) immediately after sub-article (1) thereof, as renumbered, there shall be added the following new sub-article (2):

“(2) The application for ceasing shall be submitted to the competent authority not later than three months before the date on which the enrolled person intends to cease to carry on such activities.”.

149. In article 30 of the principal Act, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

Amendment of article 30 of the principal Act.

150. In the English text of sub-article (6) of article 37 of the principal Act, for the words “in the Tied Insurance Company Register” there shall be substituted the words “in the Tied Insurance Intermediaries Company Register”.

Amendment of article 37 of the principal Act.

151. For paragraph (b) of sub-article (2) of article 45 of the principal Act there shall be substituted the following:

Amendment of article 45 of the principal Act.

“(b) where so required within the terms of Malta’s international commitments or the obligations arising out of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, as amended from time to time, and includes any implementing measures that have been or may be used thereunder; or”.

152. For sub-articles (2) and (3) of article 46 of the principal Act there shall be substituted the following:

Amendment of article 46 of the principal Act.

“(2) Information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations made thereunder, or of any insurance intermediaries rule, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases –

(a) where the information is disclosed with a view to the institution of, or otherwise for the purposes of, criminal proceedings or of any proceedings by the competent authority before any court under this Act;

(b) where the information is disclosed with a view to enabling or assisting the competent authority in the

performance or discharge of any of its functions under this Act;

(c) where the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

(d) where a summary or collection of information is prepared or supplied in such a way as not to enable the identity of any person to whom the information relates to be ascertained;

(e) where the information is disclosed to an auditor where such disclosure would assist the auditor in the exercise of his functions under article 28;

(f) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in exercise of their respective functions in terms of law;

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(g) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities where such disclosure is required or requested for the pursuance of serious regulatory concerns or the detection, prevention or prosecution of criminal offences;

(h) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an insurance intermediary provided such information does not concern third parties involved in attempts to rescue such insurance intermediary, and to such overseas bodies responsible for the liquidation and bankruptcy of a person holding an authorisation or an equivalent licence from an overseas regulatory authority.

(3) Subject to the provisions of article 45, information obtained from an overseas regulatory authority may only be disclosed to another person, to another overseas regulatory authority or to any other third party with the prior approval of the authority which had provided the information.”

Amendment of article 48 of the principal Act.

153. In paragraph (c) of sub-article (1) of article 48 of the principal Act, for the words “under article 36” there shall be substituted the words “under article 37”.

154. The Third Column in the Schedule to the principal Act, shall be amended as follows: Amendment to the Schedule to the principal Act.

(a) in paragraph 2, in the definition “Insurance Agent”, for the words “appointed by an authorised company”, there shall be substituted the words, “appointed by a company authorised under the Insurance Business Act and, or by a European insurance undertaking”;

(b) in sub-paragraph (b) of paragraph 3, in the definition “Insurance Manager”, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

PART VII

MISCELLANEOUS PROVISIONS

155. (1) With effect from such date as the Minister may by order establish, hereinafter “the operative date”, the Malta Stock Exchange plc shall continue in the personality of the Malta Stock Exchange established under Part IV of the Financial Markets Act prior to the repeal of such Part by this Act; and subject to the exclusion of the property described in sub-article (3) hereof, the Malta Stock Exchange plc shall accordingly succeed to all its assets, rights, liabilities and obligations, including the recognition order issued to the Malta Stock Exchange in terms of Part II of the Financial Markets Act, which, unless specifically cancelled or repealed, shall remain in force until the operative date. Transitory provisions.

(2) With effect from the operative date:

(a) the competent authority shall issue in favour of the Malta Stock Exchange plc an authorisation in terms of Part II of the Financial Markets Act. Upon the issue of such authorisation, the recognition order referred to in sub-article (1) shall automatically lapse;

(b) the Malta Stock Exchange plc shall be deemed to have satisfied the requirements of Part IV of the Financial Markets Act and the competent authority shall issue an authorisation in its favour with effect from such date.

(3) All authorisations, decisions, licenses, warrants, approvals, notices and other acts or commitments made or taken by the Malta Stock Exchange, including any membership or admission to the official list and any other recognised list and any Council Notice or bye-laws, as well as agreements, contracts of employment and relative staff appointments and conditions, shall as from the operative date be deemed to have been made or taken and assumed by the Malta Stock Exchange plc, and shall, unless specifically cancelled or repealed, remain in force accordingly, with such modifications and adaptations as are strictly necessary to implement fully and correctly the succession and devolution of the business and the rights and obligations as aforesaid of the Malta Stock Exchange to and in favour of the Malta Stock Exchange plc in terms of this Part.

(4) The immovable property and rights relating thereto as described in the Schedule to this Part shall devolve to the Land Department or another entity whose shares are wholly owned by Government which shall within one month from the operative date cause a declaratory public deed to be published containing a detailed description of the allocation and the devolution in its favour of and of its succession to the immovable property and rights relating thereto which prior to the operative date were vested in the Malta Stock Exchange, subject to the provisions of this Part, and a note thereon shall be duly enrolled at the Public Registry and the Land Registry, as the case may be.

(5) The succession, as from the operative date, of the assets, rights, liabilities and obligations in favour of Malta Stock Exchange plc and the Land Department or another entity whose shares are wholly owned by Government, as the case may be, described in this Part, shall be valid and effective even as regards third parties by operation of law without the need for any other formality, other than the public deed and notes required under this article, and shall be exempt from the payment of income tax, duty on documents and other fiscal charges, notwithstanding any other provision of law.

(6) Unless the context otherwise requires, any reference in any law to the Malta Stock Exchange shall after the operative date be deemed to be a reference to the Malta Stock Exchange plc; and any reference to the Council, a member of the Council or any officer or employee of the Malta Stock Exchange shall after the operative date be deemed to be a reference to the Board of Directors, a director of the company and to officers or employees of the company, respectively.

SCHEDULE

(Article 155)

The immovable property devolving in favour of the MSE (Holdings) Limited consisting of offices and premises known as the “*Malta Stock Exchange*” or “*Borzata’ Malta*”, with all the buildings and improvements thereon, including all rights and appurtenances relating thereto, formerly known as the “*Post Office Central Mailing Room*”, formerly also known as the “*Barrakka Garrison Church*”, situated at Castille Place, Valletta, without an official number, together with its surrounding garden, measuring approximately one thousand one hundred and thirty square metres (1130 m²) and is bounded altogether on the North-East and the North-West by Castille Place and the South-East by the Upper Barrakka Gardens, as better described in the emphyteutical lease between the Malta Stock Exchange and the Commissioner of Lands acting on behalf of the Government of Malta, signed on the 11 December 2007 in the acts of Vincent Miceli, Notary Public in Malta at the Lands Department.

Passed by the House of Representatives at Sitting No.553 of 18th July, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives