

TABLE OF CONTENTS

PART I. PRELIMINARY

1. Short title and coming into force
2. Interpretation

PART II. REGISTRATION AND OPERATIONAL REQUIREMENTS

Registration

3. Prohibition against Unregistered Schemes and Unregistered Retirement Funds.
4. Requirement to Register Schemes and Retirement Funds
5. Application for Registration of a Scheme
6. Application for Registration of a Retirement Fund
7. Power of Authority to Refuse Registration of a Scheme
8. Power of Authority to Refuse Registration of a Retirement Fund
9. Payment of Periodic Fees
10. Changes in Information
11. Power of Authority to Cancel or Suspend Registration of a Scheme
12. Power of Authority to Cancel or Suspend Registration of a Retirement Fund
13. Notification of Proposed Refusal, Variation, Cancellation or Suspension of a Registration

Officers

14. Retirement Fund Directors
15. Appointment of Retirement Fund Administrator
16. Appointment of Retirement Scheme Administrator
17. Registration of Retirement Fund Administrators and Retirement Scheme Administrators
18. Duties of the Retirement Fund Administrator
19. Duties of the Retirement Scheme Administrator
20. Remuneration of the Retirement Fund Administrator or Retirement Scheme Administrator
21. Removal of the Retirement Fund Administrator or Retirement Scheme Administrator
22. Liability of the Retirement Fund Administrator or Retirement Scheme Administrator
23. Regulation of the Retirement Fund Administrator or Retirement Scheme Administrator
24. Registration of Asset Managers
25. Remuneration of Asset Manager
26. Removal of Asset Manager
27. Duties of Asset Manager
28. Liability of Asset Manager

A 1518

- 29. Auditors and Actuaries
- 30. Duty to report

Funding Requirements of Occupational Schemes

- 31. Technical Funding Requirement
- 32. Schedule of Payments of Occupational Schemes
- 33. Schedule of Payments of Occupational Defined Benefit Retirement Schemes
- 34. Payment of Contributions
- 35. Underprovision in an Occupational Benefit Retirement Scheme
- 36. Overprovision in an Occupational Benefit Retirement Scheme

Permitted Investment, Borrowing, Expenses, and Distributions

- 37. Scheme to invest in Retirement Fund
- 38. Permitted Investments of Retirement Fund and Borrowing Powers
- 39. Payment of Retirement Fund Expenses and Scheme Expenses
- 40. Distributions by a Defined Benefit Retirement Scheme
- 41. Compliance with Tax Requirements

Advertising and Disclosure

- 42. Advertisement of Schemes
- 43. Disclosure of Retirement Fund Information
- 44. Disclosure of Scheme Particulars
- 45. Annual Accounts of Occupational Schemes

Rights arising from Scheme

- 46. Scheme Document as Binding Agreement
- 47. Unenforceability of Unregistered Schemes
- 48. Transferability of Rights and Obligations
- 49. Assignment or Attachment of Retirement Fund Assets

PART III GENERAL PROVISIONS

- 50. Minister's Power
- 51. Powers of the Authority
- 52. Power of Authority to Obtain Information
- 53. Appointment of Inspectors
- 54. Appeals
- 55. Powers of the Court
- 56. Offences
- 57. Penalties
- 58. Criminal Proceedings

- 59. Public Statement as to Misconduct
- 60. Confidentiality
- 61. Exclusion of Liability
- 62. Notices
- 63. Application of Exchange Control Act
- 64. Minister's Power to Make Transitional Arrangements

Part IV Amendment of the Central Bank of Malta Act, Cap. 204

Part V Amendment of the Malta Financial Services Centre Act, Cap. 330

Part VI Amendment of the Malta Stock Exchange Act, Cap. 345

Part VII Amendment of the Investment Services Act, Cap. 370

Part VIII Amendment of the Banking Act, Cap. 371

Part IX Amendment of the Insider Dealing Act, Cap. 375

Part X Amendment of the Financial Institutions Act, Cap. 376

Part XI Amendment of the Professional Secrecy Act, Cap. 377

Part XII Amendment of Controlled Companies (Procedure for Liquidation) Act, Cap. 383

Part XIII Amendment of the Companies Act, Cap. 386

Part XIV Amendment of the Insurance Business Act, Cap. 403

Part XV Amendment of the Insurance Brokers and other Intermediaries Act, Cap. 404

Part XVI Miscellaneous Provisions

Schedule One

Schedule Two

I assent.

(L.S.)

GEORGE HYZLER
Acting President

10th September, 2002

ACT No. XVII of 2002

AN ACT to make provision regulating certain funds and to amend various financial laws and laws regulating financial institutions.

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:-

**PART I
PRELIMINARY**

Short title
and coming
into force.

1. (1) The title of this Act is the Special Funds (Regulation) Act, 2002.

(2) Parts I, II and III of this Act shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Interpretation.

2. (1) In this Part and in Parts II and III of this Act and in the Schedules thereto unless the context otherwise requires -

“Advertisement” means any form of advertising, whether verbal, in written or by electronic means and, without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or show cards, by means of

letters, circulars, prospectuses, catalogues, price lists or other documents, by the exhibition of pictures or photographic or cinematographic films, by way of sound, television or other broadcast, by the distribution of recordings or in any other manner, and references to the issue of an advertisement shall be construed accordingly;

“Affiliate” with respect to a person (hereinafter “the relevant person”) means:

(a) any person who owns directly or indirectly 25% or more of the total combined voting power or 25% or more of the total value of the stock or ownership interests of the relevant person (hereinafter referred to as “an Owner”);

(b) any person where the relevant person directly or indirectly owns 25% or more of the total combined voting power or 25% or more of the total value of stock or ownership interest of such person (hereinafter referred to as “the sub-person”);

(c) any two or more persons where an Owner directly or indirectly, in the case of each such person owns 25% or more of the total combined voting power or 25% or more of the total value of the stock or ownership interest of such person (each of such two or more persons, hereinafter referred to as “a Sister-person”);

(d) any person where a director, or officer of a relevant person, an Owner, a sub-person or a Sister-person owns 25% or more of the total combined voting power or 25% or more of the value of the stock or ownership interests of such person;

(e) any person that in the opinion of the Authority:-

(i) is under the *de facto* or effective control of a relevant person; or

(ii) exercises *de facto* or effective control of the relevant person;

“Ancillary Cash” means cash used in connection with a Registered Scheme to pay expenses, to pay Retirement Benefits, and to fulfil similar requirements of the Scheme;

"Asset Manager" means a person who provides discretionary or non-discretionary Investment Services to a Retirement Fund or Scheme;

Cap. 330.

"Authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act;

"Beneficiary" means an individual who is to receive current or future payments under the applicable Scheme or Overseas Retirement Plan; and, where relevant, the estate of such individual;

"Commissioner" means the Commissioner of Inland Revenue;

"Contributor" shall mean -

(a) the individual, in the case of a Retirement Scheme to which contributions are made solely or partly by the individual for the benefit of that same individual; and

(b) the employer, in the case of a Scheme to which contributions are made solely or partly by an employer for the benefit of employees; and for the purpose of this Act, a partnership shall be treated as the employer of each of its partners, and a company shall be treated as the employer of each of its officers and directors; and "employee" and "employment" shall be construed accordingly;

"Defined Benefit Scheme" means a Scheme other than a Defined Contribution Retirement Scheme which has as its primary purpose that of providing for the payment of fixed or determinable Retirement Benefits;

"Defined Contribution Retirement Scheme" means a Scheme which has as its primary purpose that of providing for the payment of Retirement Benefits, which are established by reference to the contributions paid into such scheme, the accumulation of profits, gains and other income, after the deduction of expenses and losses in relation thereto;

"Directive" means a directive issued by the Authority in accordance with subarticle (3) of article 51 of this Act;

Cap. 123.
Cap. 372.

"Income Tax Acts" means collectively the Income Tax Act and the Income Tax Management Act;

“Investment Service” means any service falling within Schedule Two to this Act, when provided in relation to an Instrument;

“Instrument” shall have the same meaning as assigned to it in the Investment Services Act; Cap. 370.

“Malta’s international commitments” shall have the same meaning as assigned to it in the Investment Services Act;

“Minister” means the Minister responsible for finance;

“Overseas Retirement Plan” means a bona fide scheme or arrangement, organized under the laws of a country outside of Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to Beneficiaries for the principal purpose of providing Retirement Benefits;

“Occupational Scheme” means a Scheme to which contributions are made solely or partly by an employer for the benefit of employees;

“Permanent Invalidity” means a medically-determined disability of a permanent nature, which as certified by a medical doctor approved by the Retirement Scheme Administrator, has rendered the employee incapable of meeting the requirements of the employment he had been performing at the onset of such disability;

“Prescribed” means prescribed by regulations or Directives made under this Act;

“Registration” in relation to a Scheme or Retirement Fund or to a Retirement Fund Administrator, Retirement Scheme Administrator or Asset Manager, or to a matter connected therewith or ancillary thereto, means a registration under this Act, and “register” and “registered” shall be construed accordingly;

“Retirement Benefit” means pension or other benefits that are payable to a Beneficiary after retirement, Permanent Invalidity or death;

“Retirement Fund” means a company established for the principal purpose of holding and investing the contributions made to one or more Schemes or to one or more Overseas Retirement Plans and shall be construed in accordance with subarticle (2) of article 4 of this Act;

"Retirement Fund Administrator" shall be construed in accordance with article 17 of this Act;

"Retirement Scheme Administrator" shall be construed in accordance with article 17 of this Act;

"Scheme" means a scheme or arrangement established by contract which governs the rights and responsibilities of the Retirement Scheme Administrator and Contributor thereto, and under which payments are made to Beneficiaries for the principal purpose of providing Retirement Benefits. A Scheme or arrangement shall not constitute a Scheme under this Act if it provides for:

(a) the payment of Retirement Benefits to five or fewer Beneficiaries; or

(b) solely the payment of proceeds from the surrender or maturity of a long term contract of insurance effected by an insurance company authorised under the Insurance Business Act; or

(c) the commencement of payment of Retirement Benefits to a Beneficiary on a date that is earlier than that on which such Beneficiary has attained the age of fifty, or later than that on which the Beneficiary attains the age of seventy, except in those cases where the scheme or arrangement provides that:

(i) the payment is made by reason of the permanent invalidity or death of a Beneficiary; or

(ii) the payment is made by means of a cash lump sum to the Beneficiary without the necessity of the Beneficiary's consent in such amount as the Authority may prescribe in the event that the Beneficiary is no longer employed by the Contributor of the scheme or arrangement:

Provided that a scheme or arrangement described in paragraphs (a) or (b) above may by written notice to the Authority elect to be considered a Scheme for purposes of this Act;

"Scheme Document" means the written contract evidencing a Registered Scheme;

"Tax" means the tax imposed by the Income Tax Acts;

"Technical Funding Requirement" has the meaning given by article 31 of this Act.

(2) In Parts I, II and III of this Act and in the Schedules thereto and in any regulations or Directives made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

PART II REGISTRATION AND OPERATIONAL REQUIREMENTS

3. (1) No person shall provide or hold himself as providing a Scheme situated in Malta unless such Scheme is a Registered Scheme which complies with the requirements of subarticle (1) of article 4 and article 5 of this Act.

Prohibition Against
Unregistered
Schemes
and
Unregistered
Retirement Funds.

(2) No person shall accept money or other consideration from a Contributor with respect to a Scheme situated in Malta unless such Scheme is a Registered Scheme which complies with the requirements of subarticle (1) of article 4 and article 5 of this Act.

(3) No person shall maintain or hold himself out as maintaining a Retirement Fund situated in Malta unless such fund is a Registered Fund which complies with the requirements of subarticle (2) of article 4 and article 6 of this Act.

(4) The Authority may by Directives under this article declare such schemes or other arrangements as may be referred to in the directives not to be a Scheme for the purposes of this Act, or declare that such funds as may be referred to in the directives not to be a Retirement Fund for the purposes of this Act.

(5) The Authority may by notice in writing to any person determine that:

(a) an activity falls within the meaning of articles 17, 18, 19 or 24 when provided in relation to a Retirement Fund or a Scheme; or

(b) a service falls within the Second Schedule to this Act;

or

(c) for the purposes of this Act, a scheme or other arrangement is a Scheme situated in Malta, or a fund is a Retirement Fund situated in Malta,

and subject to any appeal under article 54 of this Act, with respect to such person, the determination by the Authority, unless otherwise overruled by the Tribunal referred to in that article shall be conclusive for all purposes of this Act.

Requirement to
Register
Schemes and
Retirement Funds.

4. (1) A Scheme shall not be registered under the provisions of this Act unless the Scheme Document contains written terms and provisions which shall state:

(a) that the principal purpose of the Scheme is to provide Retirement Benefits;

(b) that all contributions to the Scheme shall be invested exclusively in one or more Retirement Funds, except for Ancillary Cash;

(c) that the Scheme is designed and operated for the exclusive benefit of the Beneficiaries specified in such Scheme;

(d) the specific means to be used to identify all current, and future Contributors of the Scheme together with their respective obligations;

(e) the specific means to be used to identify all current and future Beneficiaries of the Scheme together with the specific means to be used to determine the amount of their respective Retirement Benefits, and the timing of payment of such Retirement Benefits;

(f) the name, address and the telephone number and e-mail address, if available, of the initial Retirement Scheme Administrator appointed to carry out the administrative requirements of the Scheme;

(g) the rules or other criteria governing the valuation of assets and liabilities attributable to the Scheme and the timing of such valuations;

(h) the rules governing admissible costs and expenses payable out of the Scheme;

(i) the method of appointment, removal, and replacement of the Retirement Scheme Administrator and, where appropriate, the Asset Manager, auditor, or actuary of the Scheme;

(j) the rules governing the surrender, termination or, where appropriate, forfeiture of a Retirement Benefit;

(k) the applicable rules in the event of an inability or failure by a Contributor to fulfil its obligations;

(l) the rules governing amendments to the Scheme Document;

(m) the circumstances leading to the winding up of the Scheme, other than such circumstances established by law; and

(n) that, unless otherwise prescribed under this Act there exists no statutory provision for compensation in the case where a Scheme or Retirement Fund is unable to satisfy the liabilities attributed to it, and the Registration of the Scheme or Retirement Fund is not an endorsement by the Authority of the Scheme's or the Retirement Fund's financial performance.

(2) A Retirement Fund shall not be registered under this Act unless it satisfies the following requirements:

(a) the Retirement Fund is registered as an Investment Company with fixed share capital or an Investment Company with variable share capital under the Companies Act;

Cap. 386.

(b) the memorandum of association of the Retirement Fund states that its objectives are limited to -

(i) the receipt of contributions made by one or more Schemes, and, or by one or more Overseas Retirement Plans, and the investment of such contributions and all return on such contributions in Instruments or immovable property with the aim of maximising return on such contributions;

(ii) the payment of Retirement Benefits to the Beneficiaries of the Schemes or the Overseas Retirement Plans which have invested in such Retirement Fund; and

(iii) the carrying on of all matters or functions connected or ancillary to the objectives mentioned in subparagraphs (i) and (ii) hereof; and

(c) the name of the Retirement Fund is one which, in the opinion of the Authority, is not misleading; and

(d) the company's head office is, and is operated, in Malta.

(3) The assets of the Retirement Fund shall not be for the benefit of any investor in the Retirement Fund, but shall be used for the exclusive purpose of providing Retirement Benefits to the Beneficiaries of the Schemes or the Overseas Retirement Plans which have invested in such Retirement Fund, and of defraying the expenses as are allowable under this Act, of such Scheme, or the bona fide expenses of the Overseas Retirement Plan, as applicable.

(4) Unless otherwise provided in this Act, the provisions of the Companies Act shall apply to a Retirement Fund.

Application for
Registration
of a Scheme.

5. An application for Registration of a Scheme shall be made in the form and manner required by the Authority and shall -

(a) contain or be accompanied by a copy of the Scheme Document containing statements listed in subarticle (1) of article 4 of this Act;

(b) be accompanied by such fee or fees as may be prescribed;

(c) specify the nature of the Scheme;

(d) contain or be accompanied with such other information and particulars, as the Authority may require or as may be prescribed; and

(e) contain the address in Malta for service on the applicant of any notice or other documents required or authorized to be served on him by or under this Act or any other law.

Application for
Registration of a
Retirement Fund.

6. An application for Registration of a Retirement Fund shall be made in the form and manner required by the Authority and shall -

(a) contain or be accompanied by a copy of the memorandum and articles of association of the Retirement Fund which satisfy the requirements of subarticle (2) of article 4 of this Act;

(b) specify the name and address and the telephone number and e-mail addresses if available of the Retirement Fund, the

Directors and Retirement Fund Administrator of such Retirement Fund;

- (c) be accompanied by such fee or fees as may be prescribed;
- (d) contain or be accompanied with such other information and particulars, as the Authority may require or as may be prescribed;
- (e) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on it by or under this Act or any other law; and
- (f) contain a general description of the investment objectives, the risk and return characteristics of the Retirement Fund, as well as information relating to the type and diversification of assets anticipated within the investment portfolio of the Retirement Fund.

7. (1) The Authority may register or refuse to register a Scheme for which an application is made under this Act.

Power of Authority
to
Refuse Registration
of a Scheme.

(2) The Authority shall not register a Scheme unless it is satisfied that -

- (a) the Retirement Scheme Administrator is fit and proper to provide the Scheme concerned;
- (b) the Retirement Scheme Administrator will comply with and observe the provisions of this Act and any regulations or Directives prescribed thereunder; and
- (c) the proposed Scheme will comply with the provisions of this Act and any regulations or Directives prescribed thereunder.

(3) In registering a Scheme, the Authority may subject it to such conditions as it may deem appropriate, and having registered it, the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(4) When considering whether to register any Scheme under this Act, the Authority shall in particular have regard for -

- (a) the protection of investors and the general public;
- (b) the protection of the reputation of Malta taking into account Malta's international commitments;

(c) the promotion of competition and choice; and

(d) the reputation and suitability of the Retirement Scheme Administrator and any other parties connected with the Scheme.

(5) (a) Where close links exists between an applicant and any other person the Authority shall:

(i) only register a Scheme if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to register a Scheme if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The Authority may from time to time, by means of Directives under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(6) Where a Scheme or the Retirement Scheme Administrator, Asset Manager or other person responsible for the Scheme contravenes or falls to comply with any of the conditions imposed on the Scheme under this section, the Authority may by notice in writing and, without recourse to a court hearing impose on the Scheme, Retirement Scheme Administrator, Asset Manager to other person, as the case may be, an administrative penalty which may not exceed forty thousand liri.

Power of Authority
to
refuse registration
of a
Retirement Fund.

8. (1) The Authority may register or refuse to register a Retirement Fund for which an application is made under this Act.

(2) The Authority shall not register a Retirement Fund unless it is satisfied that -

(a) the promoters, the directors and the Retirement Fund Administrator are fit and proper persons to offer the Retirement Fund concerned;

(b) the directors and the Retirement Fund Administrator will comply with and observe the provisions of this Act and any regulations or directives prescribed thereunder; and

(c) the proposed Retirement Fund will comply with the provisions of this Act and any regulations or Directives made thereunder.

(3) In Registering a Retirement Fund, the Authority may subject it to such conditions as it may deem appropriate, and having registered it, the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(4) When considering whether to register any Retirement Fund under this Act, the Authority shall in particular have regard for -

- (a) the protection of investors and the general public;
- (b) the protection of the reputation of Malta taking into account Malta's international commitments;
- (c) the promotion of competition and choice; and
- (d) the reputation and suitability of any promoter, director, Retirement Fund Administrator and any other party connected with the Retirement Fund.

(5) (a) Where close links exist between an applicant and any other person the Authority shall:

(i) only register a Retirement Fund if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to register a Retirement Fund if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The Authority may from time to time, by means of Directives under this Act, define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(6) Where a Retirement Fund, or the Retirement Fund Administrative, its manager, secretary, director or other person responsible for the Retirement Fund contravenes or fails to comply with any of the conditions imposed on the Retirement Fund under this section,

the Authority may by notice in writing and without recourse to a court hearing impose on the Retirement Fund, its manager, secretary, director or other person, as the case may be, an administrative penalty which may not exceed forty thousand liri.

Payment of
Periodic Fees.

9. Every Scheme and Retirement Fund shall pay to the Authority such periodic and application fees, and within such time, as may from time to time be prescribed.

Changes in
Information.

10. A Retirement Scheme Administrator or a Retirement Fund Administrator, or any other person having responsibility for the day to day administration or management of a Scheme or Fund, shall provide the Authority with particulars of any changes in the information provided under this Act as soon as such person or its delegate becomes aware of such changes.

Power of Authority
to
cancel or suspend
registration
of a Scheme.

11. Without prejudice to any other provision of this Act and of any regulations or Directives made thereunder, the Authority may cancel or suspend the registration of a Scheme if:

(a) it considers that a Retirement Scheme Administrator is not a fit and proper person to carry out the functions required of it in connection with the Scheme; or

(b) it considers that the Scheme to which the registration refers does not comply with the provisions of this Act or of any regulations and, or, Directives made thereunder, or that there has been a contravention of any such provisions, or of an obligation or condition to which the Scheme or its registration are subject by or under this Act; or

(c) information has been furnished to the Authority by or on behalf of or in relation to the Scheme which is false, inaccurate or misleading.

Power of Authority
to
cancel or suspend
registration of a
Retirement Fund.

12. Without prejudice to any other provision of this Act and of any regulations or Directives made thereunder, the Authority may cancel or suspend the registration of a Retirement Fund if:

(a) it considers that a director or Retirement Fund Administrator is not a fit and proper person to carry out the functions required of it in connection with the Retirement Fund; or

(b) it considers that the Retirement Fund to which the registration refers does not comply with the provisions of this Act or of any regulations and, or, Directives made thereunder, or that there has been a contravention of any such provisions, or of an obligation or condition to which the Retirement Fund or its registration are subject by or under this Act; or

(c) information has been furnished to the Authority by or on behalf of or in relation to the Retirement Fund which is false, inaccurate or misleading.

13. (1) Where the Authority proposes -

(a) to vary any condition to which a registration is subject or to impose a condition thereon; or

(b) to refuse an application for registration or to cancel or to suspend a registration,

Notification of proposed refusal, variation, cancellation or suspension of a registration.

it shall give the Retirement Scheme Administrator or Retirement Fund Administrator notice in writing of its intention to do so, such notice setting out the reasons for its proposed action.

(2) Every notice given under subarticle (1) of this section shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

(3) The Authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under subarticle (1) of this article.

14. (1) Every company, which is formed as a Retirement Fund, shall have at least three directors.

Retirement Fund Directors.

(2) Subject to the provisions of this Act and to the applicable Scheme, it shall be the responsibility of the board of directors either directly or through an Asset Manager to invest all money and other assets received by the Retirement Fund in accordance with its memorandum of association.

15. (1) Every Retirement Fund shall have a Retirement Fund Administrator to carry out such duties assigned to such administrators under this Act or any other law.

(2) It shall be the duty of the directors of the Retirement Fund to appoint a Retirement Fund Administrator, and such directors shall have the power to remove the Retirement Fund Administrator at their discretion.

(3) Where the post of Retirement Fund Administrator becomes vacant, the directors of the Retirement Fund shall, within fourteen days from the date of vacancy, appoint another person to fill the post.

(4) Where the directors fail to fill such vacancy within the fourteen days provided above, the Authority may, on an application made by any one of the directors or by a Contributor or Beneficiary, appoint a person to fill such vacancy itself.

(5) During any period where there is no Retirement Fund Administrator, and during any period of incapacity of the Retirement Fund Administrator, any officer of the Retirement Fund authorized generally or specifically in that behalf by the directors shall carry out the functions of the Retirement Fund Administrator.

16. (1) Every Scheme shall have a Retirement Scheme Administrator to carry out such duties assigned to such administrator under this Act or any other law.

(2) It shall be the duty of the Contributors of the Scheme to appoint a Retirement Scheme Administrator, and such Contributors shall have the power to remove the Retirement Scheme Administrator at their discretion.

(3) Where the post of Retirement Scheme Administrator becomes vacant, the Contributors of the Scheme shall, within fourteen days from the date of vacancy, appoint another person to fill the post.

(4) Where the Contributors fail to fill such vacancy within the fourteen days provided above, then the Authority may, on an application made by any one of the Contributors or Beneficiaries, appoint a person to fill such vacancy itself.

(5) During any period where there is no Retirement Scheme Administrator, and during any period of incapacity of the Retirement Scheme Administrator any officer of the Scheme authorized generally or specifically in that behalf by the Contributors shall carry out the functions of the Retirement Scheme Administrator.

17. (1) No person shall provide a Retirement Fund or a Scheme with the administrative services described in articles 18 and 19, unless such person is registered under this Act to act as a Retirement Fund Administrator or a Retirement Scheme Administrator as the case may be.

(2) No person shall be registered as a Retirement Fund Administrator or Retirement Scheme Administrator under this Act unless -

(a) such person is a company operating in Malta which -

(i) has its head office in Malta, or

(ii) in the case of a company whose head office is outside Malta, is established in a country which in the opinion of the Authority is subject to an adequate level of regulatory supervision;

(b) in the case only of a Retirement Fund Administrator such person is in possession of an appropriate licence under the Investment Services Act or as may otherwise be prescribed.

(3) The application for registration of a Retirement Fund Administrator or of a Retirement Scheme Administrator shall be made in the form and manner as may be prescribed, and shall -

(a) specify the name, and address, and telephone number and e-mail address, if available, of the Retirement Fund Administrator or Retirement Scheme Administrator, as the case may be;

(b) be accompanied by such fees as may be prescribed;

(c) contain or be accompanied by such other information and particulars as the Authority may require or as may be prescribed;

(d) contain the address in Malta for service on the applicant of any notice or other document required or authorized to be served on it by or under this Act or any other law; and

(e) specify the nature of the applicant's business and relevant experience.

Cap. 370.

Duties of the
Retirement
Fund
Administrator.

(4) The Authority may provide for the automatic registration of Retirement Fund Administrators or Retirement Scheme Administrators that already are in possession of a valid investment services licence within the meaning of the Investment Services Act, or that are already registered under such other law as the Authority may specify.

(5) The registration of a Retirement Fund Administrator or of Retirement Scheme Administrator, may be made subject to such conditions as the Authority may deem appropriate, and after registration the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(6) Where a Retirement Fund Administrator or Retirement Scheme Administrator contravenes or fails to comply with any of the conditions imposed under this article, the Authority may without recourse to a court hearing impose an administrative penalty which may not exceed forty thousand liri.

18. (1) The Retirement Fund Administrator shall perform all duties in connection with the ordinary or day-to-day operations of the Retirement Fund, including but not limited to the following:

(a) receiving the assets of eligible investors, and maintaining or arranging custody of such assets;

(b) ensuring that the Retirement Fund receives all payments due to it in the proper amounts and in a timely manner;

(c) ensuring that all income and proceeds received by the Retirement Fund are applied in accordance with the Retirement Fund's memorandum and articles of association;

(d) ensuring that all disbursements are effected in accordance with the memorandum and articles of association;

(e) maintaining accurate records regarding the net asset value of the Retirement Fund in accordance with this Act, the memorandum and articles of association;

(f) maintaining accurate records regarding the Retirement Fund's investors;

(g) complying with all the Retirement Fund's statutory and other requirements including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;

- (h) complying with any requirements of the Income Tax Acts in order to qualify for tax-exemption or tax-approval;

- (i) ensuring that all instructions and decisions affecting the Retirement Fund conform with the law and the memorandum and articles of association; and

- (j) providing or arranging for all necessary accounting or other services.

(2) A Retirement Fund Administrator shall act in the best interests of the Retirement Fund and may not use the assets of the Retirement Fund for its own or other purposes.

(3) It shall be the duty of the Retirement Fund Administrator who has in any way, whether directly or indirectly an interest in any transaction or proposed transaction affecting the Retirement Fund, to immediately declare the nature of its interest to the Retirement Fund's board of directors.

19. (1) The Retirement Scheme Administrator shall perform all duties in connection with the ordinary or day-to-day operations of the Scheme, including but not limited to the following:

Duties of the
Retirement
Scheme
Administrator.

- (a) investing all contributions in the Retirement Fund in accordance with the terms of the Scheme Document;

- (b) ensuring that the Scheme receives all payments due to it by any contributor or Retirement Fund in the proper amounts and in a timely manner;

- (c) ensuring that all income and proceeds received by the Scheme are applied in accordance with the terms of the Scheme Document;

- (d) ensuring that all disbursements are effected in accordance with the Scheme Document;

- (e) maintaining accurate records regarding the net asset value of the Scheme in accordance with this Act and the Scheme Document;

- (f) ensuring that, with respect to a Defined Benefit Retirement Scheme, the Scheme satisfies the Technical Funding Requirement at each prescribed interval;

(g) ensuring that, with respect to a Defined Contribution Retirement Scheme, any assets of the Scheme in excess of the current liabilities, or that, with respect to a Defined Benefit Retirement Scheme, the liabilities that represent future payment obligations to Beneficiaries, shall not be distributed to a party other than to a Beneficiary of the Scheme, except in such manner as may be prescribed;

(h) ensuring that the interests in the shares of a Retirement Fund or Funds held for the benefit of an individual who is to receive payments under such Scheme, shall, upon the retirement, Permanent Invalidity, or death of such individual, be redeemed or otherwise liquidated by the Scheme from such Retirement Fund, and the value of such redemption shall be made available to the Beneficiary or as provided for in the Scheme Document;

(i) maintaining accurate records regarding the Scheme's contributors and beneficiaries;

(j) complying with all the Scheme's statutory and other requirements, including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;

(k) complying with any requirements of the Income Tax Acts to qualify for tax-exemption or tax-approval;

(l) seeking to ensure that all instructions and decisions affecting the Scheme are in conformity with the law and the Scheme Document; and

(m) arranging for all necessary accounting, actuarial or other services.

(2) A Retirement Scheme Administrator shall act in the best interests of the Scheme and may not use the assets of the Scheme for its own or other purposes.

(3) It shall be the duty of the Retirement Scheme Administrator who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Scheme, to immediately declare the nature of its interest to the contributors of the Scheme, or their appointed representative.

20. (1) The remuneration that is payable to the Retirement Fund Administrator or Retirement Scheme Administrator shall be set out in a written contract between such person and the Retirement Fund or Scheme, as applicable, and shall be approved by the board of directors of the Retirement Fund or a majority by value of contributions on the relevant date within the Scheme, of the Contributor of the Scheme, as the case may be, and be disclosed in the Retirement Fund or Scheme's annual report.

Remuneration of the Retirement Fund Administrator or Retirement Scheme Administrator.

(2) For the purpose of this article "remuneration" includes sums paid in respect of expenses.

(3) The provisions of this article shall apply in relation to benefits in kind as well as to payments in cash, and in relation to any benefit in kind, references to its amount are to be taken as references to its estimated money value. The nature of any such benefit shall also be disclosed.

21. (1) Subject to any requirements as may be prescribed, the board of directors of a Retirement Fund may at any time replace the Retirement Fund Administrator with a new Retirement Fund Administrator.

Removal of the Retirement Fund Administrator or Retirement Scheme Administrator.

(2) Subject to any requirements as may be prescribed, a majority by value of contributions to date within the Scheme of the contributor of the Scheme may at any time replace the Retirement Scheme Administrator with a new Retirement Scheme Administrator in accordance with the relevant Scheme Document.

(3) It shall be the duty of the Administrator being replaced to cooperate fully with the new Retirement Fund Administrator or Retirement Scheme Administrator, to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Retirement Fund and the Beneficiaries.

22. In the discharge of their responsibilities, and without prejudice to the liability for damages under any other law, the Retirement Fund Administrator and Retirement Scheme Administrator shall be liable for any loss or damage suffered as a result of fraud, wilful default or negligence on their part.

Liability of the Retirement Fund Administrator or Retirement Scheme Administrator.

23. (1) The Authority shall have the power to audit and investigate a Retirement Fund Administrator or Retirement Scheme Administrator or any other party providing services to a Retirement Fund.

Regulation of the Retirement Fund Administrator or Retirement Scheme Administrator.

(2) The Authority may at any time cancel or suspend the registration of the Retirement Fund Administrator or Retirement Scheme Administrator if -

(a) the Authority considers that such person is not fit and proper to carry out the function required of it in connection with the Retirement Fund or Scheme; as the case may be; or

(b) information has been furnished to the Authority by or on behalf of the Administrator which is false, inaccurate or misleading.

(3) The Authority shall, in the exercise of its powers under subarticle (2) of this article, have regard to all relevant matters and shall act in the best interests of the beneficiaries.

Registration of
Asset Managers.

24. (1) No person shall provide or hold itself as providing discretionary or non-discretionary investment management services constituting Investment Services to any Retirement Fund or Scheme unless such person is a registered Asset Manager in accordance with this Act.

(2) A person shall not be registered as an Asset Manager under the provisions of this Act unless it is a company -

(a) operating in Malta and in possession of an appropriate licence under the Investment Services Act or as may be prescribed, or

(b) in the case of a company operating outside Malta, which is established in a country where in the opinion of the Authority the company will be subject to an adequate level of regulatory supervision.

(3) The application for registration of an Asset Manager shall be made in the form and manner required by the Authority and shall -

(a) specify the name, and address and the telephone number and e-mail address, if available of the Asset Manager;

(b) be accompanied by such fees as may be prescribed;

(c) contain or be accompanied by such other information and particulars as the Authority may require or may be prescribed; and

(d) specify the nature of the applicant's business and relevant experience.

(4) The Authority may provide for the automatic registration of Asset Managers that already are in possession of a valid investment services licence under the Investment Services Act, or that are already registered under such other law as the Authority may specify. Cap. 370.

(5) An Asset Manager, may be registered by the Authority subject to such conditions as the Authority may deem appropriate, and after registration the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(6) Where an Asset Manager contravenes or fails to comply with any of the conditions imposed under this article, the Authority may without recourse to a court hearing impose an administrative penalty which may not exceed forty thousand liri.

25. (1) The remuneration that is payable to a Retirement Fund Asset Manager shall be set out in a written contract between the Retirement Fund and the Asset Manager, be approved by the board of directors, and be disclosed in the Retirement Fund's annual report. Remuneration of Asset Manager.

(2) The remuneration that is payable to a Scheme Asset Manager shall be set out in a written contract between the Retirement Scheme Administrator on behalf of a Scheme and the Asset Manager, and be disclosed in the Scheme's annual report.

(3) For the purpose of this article "remuneration" includes sums paid in respect of expenses.

(4) The provisions of this article shall apply in relation to benefits in kind as well as to payments in cash, and in relation to any benefit in kind, references to its amount are to be taken as references to its estimated money value. The nature of any such benefit shall also be disclosed.

26. (1) Subject to any requirements as may be prescribed, and to any terms and provisions as are established in the Scheme Document, the board of directors of a Retirement Fund or the majority by value of contributions to date within the Scheme of the contributors of a Retirement Scheme may replace the Asset Manager with a new Asset Manager at any time. Removal of Asset Manager.

(2) It shall be the duty of the Asset Manager being replaced to cooperate fully with the new Asset Manager, or where no new Asset Manager is appointed, with the Administrator, to ensure a proper, orderly and complete hand over of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Retirement Fund or Scheme, its shareholders, Contributors, and Beneficiaries.

Duties of Asset
Manager.

27. (1) An Asset Manager shall be responsible for all Investment Services which it has agreed to provide to the Retirement Fund or the Scheme appointing it.

(2) An Asset Manager shall act in the best interests of the Retirement Fund or Scheme appointing it and may not use the assets of the Retirement Fund or the Scheme, as the case may be, for its own or other purposes.

(3) It shall be the duty of the Asset Manager who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Retirement Fund or the Scheme, as the case may be, to immediately declare the nature of its interest to the board of directors of the Retirement Fund or the Scheme's contributors.

Liability of
Asset Manager.

28. In the discharge of its responsibilities, and without prejudice to any liability for damages under any other law, the Asset Manager shall be liable for any loss or damage arising out of fraud, wilful default or negligence on the part of the Asset Manager.

Auditors and
Actuaries.

29. (1) Every auditor or actuary of a Retirement Fund or Scheme shall have the duty to report immediately to the Authority any fact or decision of which it becomes aware in its capacity as auditor or as actuary of such Retirement Fund or Scheme which -

(a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's or actuary's report on such Retirement Fund or Scheme; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to a Retirement Fund or Scheme in or under this Act; or

(c) seriously impairs the Retirement Fund's or Scheme's ability to meet the current or future liabilities attributable to it; or

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

(2) An auditor or an actuary of a Scheme or a Retirement Fund shall report to the Authority any facts or decisions as specified in subarticle (1) hereof of any person having close links with such Scheme or Retirement Fund within the meaning in articles 7 and 8 of this Act, of which he becomes aware in his capacity as auditor or actuary of the Scheme or Retirement Fund or of the person having such close links.

(3) The matters which may be prescribed for the purpose of paragraph (d) of subarticle (1) of this article may include matters related to persons or entities other than a Retirement Fund or Scheme, including but not limited to the Administrator of a Retirement Fund or a Scheme, or to an Asset Manager.

(4) Every Defined Benefit Retirement Scheme, which is an Occupational Scheme, other than one falling within a class or description as may be prescribed, shall appoint an auditor and an actuary.

(5) Without prejudice to the provisions of the Companies Act, the Authority may by Directive - Cap. 386.

(a) prescribe the class of persons who may act as auditors or actuaries on behalf of a Retirement Fund or Scheme; or

(b) provide that the persons who may so act shall be -

(i) persons with professional qualifications or experience as may be prescribed; or

(ii) such other class or classes of persons as are approved by the Authority.

(6) Without prejudice to the provisions of the Companies Act, the Authority may by Directive make provision relating to -

(a) the appointment, resignation and removal of auditors and actuaries of Retirement Funds or Schemes;

(b) the duty of an Administrator of a Retirement Fund or of a Scheme to disclose information and to make documents available to the auditors or actuaries of a Retirement Fund or of a Scheme.

30. (1) If a Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or the Asset Manager, auditor or actuary of any Scheme or Retirement Fund knows, believes or otherwise suspects that - Duty to report.

(a) any duty relevant to the administration of the Scheme or Retirement Fund imposed by any law on any person acting in connection with the Scheme or Retirement Fund has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of its functions,

he must immediately give a written report of the matter to the Authority.

(2) A Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or the Asset Manager auditor or actuary of a Retirement Scheme or Retirement Fund shall not be regarded as having contravened his duties merely because he may have given any information or opinion contained in a written report under this article or under article 52 of this Act.

Cap. 12.

(3) Saving the provisions of article 642 (1) of the Criminal Code and of article 588 (1) of the Code of Organization and Civil Procedure, no duty, including any duty under the Professional Secrecy Act, to which any person is subject shall be regarded as contravened merely because of any information or opinion contained in a report made by such person under this article or under article 52 of this Act.

(4) Any person who fails to comply with subarticle (1) shall be guilty of an offence.

(5) If it appears to the Authority that a Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or the Asset Manager, auditor or actuary of a Scheme or Retirement Fund has failed to comply with subarticle (1), the Authority may by notice in writing, together with reasons for its decision, disqualify him from being the director, Retirement Fund Administrator or Retirement Scheme Administrator, or the Asset Manager, auditor or actuary of the Scheme or Retirement Fund specified in the notice.

(6) A notice under subsection (5) may specify the Scheme or Retirement Fund to which the failure relates, Schemes or Retirement Funds falling within any class or description of Schemes or Retirement Funds or all Schemes or Retirement Funds.

(7) The Authority may, on the application of any person disqualified under this article who satisfies the Authority that he will comply with those subarticles, by notice in writing revoke the disqualification; such a revocation shall not be retrospective.

(8) A Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or an Asset Manager, auditor or actuary of a Scheme or Retirement Fund who is disqualified under this article shall, while he is so disqualified, cease to be the Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or the Asset Manager, auditor or actuary of the Scheme or the Retirement Fund specified in the notice of disqualification.

(9) A person who, while he is disqualified under this article, purports to act as Retirement Fund director, Retirement Fund Administrator or Retirement Scheme Administrator, or as the Asset Manager, auditor or actuary of a Scheme or Retirement Fund specified in the notice of disqualification shall be guilty of an offence.

31. (1) Every Defined Benefit Retirement Scheme which is an Occupational Scheme, other than one falling within such class or description as may be prescribed shall be subject to a requirement (referred to in this Act as the "Technical Funding Requirement") that the value of the assets of the Scheme shall not be -

Technical
Funding
Requirement.

- (a) less than such amount; nor
- (b) more than such amount,

as may be prescribed.

(2) The Retirement Scheme Administrator shall obtain within such period as may be prescribed an actuarial valuation from the Scheme's actuary and afterwards obtain such a valuation at such intervals as may be prescribed.

(3) The Retirement Scheme Administrator shall on such occasions or dates as may be prescribed or within such periods or intervals as may be prescribed obtain a certificate prepared by the Scheme's actuary -

- (i) stating whether or not in his opinion the contributions payable towards the Scheme are adequate for the purpose of securing that the Technical Funding Requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, whether or not in his opinion it will be met by the end of that period, and

- (ii) indicating any relevant changes that have occurred since the last actuarial valuation was prepared.

(4) The Retirement Scheme Administrator shall obtain an actuarial valuation within the period stated in subarticle (2) in the event that:

(i) the actuary states in the certificate referred to in subarticle (3) that in his opinion the contributions payable towards the Retirement Scheme are not adequate for the purpose of securing that the Technical Funding Requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not then met, or that in his opinion it will not be met by the end of that period; or

(ii) in such circumstances as may be prescribed.

(5) Notwithstanding the provisions of subarticle (4) of this article the Retirement Scheme Administrator shall not be required to obtain an actuarial valuation if -

(a) in the opinion of the Scheme actuary, the value of the Scheme assets is not less than the amount prescribed for the purpose of subarticle (1) (a) hereof; and

(b) since the date on which the actuary signed the certificate referred to in that subarticle, the Schedule of Payments for the Scheme has been revised in accordance with subarticle (3) of article 33.

(6) If the Retirement Scheme Administrator obtains a valuation under subarticle (4) of this section, he shall do so -

(a) in the case of a valuation required by subparagraph (i) thereof, within the period of six months reckoned from the date of the actuarial certificate, and

(b) in any other case, within such period as may be prescribed.

(7) A valuation or certificate shall be prepared in such manner, give such information and contain such statements as may be prescribed.

Schedule of
Payments of
Occupational
Schemes.

32. The Retirement Scheme Administrator of every Occupational Scheme, other than one falling within such class or description as may be prescribed shall prepare, maintain and from time to time revise a schedule (hereinafter and in article 31 referred to as a Schedule of Payments), showing -

- (a) the rates of contributions payable towards the Scheme by or on behalf of the employer and, where applicable, by any other Contributors of the Scheme;
- (b) the dates on or before which such contributions are to be paid; and
- (c) such other matter as may be prescribed.

33. (1) This section applies to every Defined Benefit Retirement Scheme, which is an Occupational Scheme, other than one falling within such class or description as may be prescribed.

Schedule of
Payments
for Occupational
Defined Benefit
Retirement
Schemes.

(2) The Schedule of Payments shall be prepared before the end of such period as may be prescribed reckoned from the date of the first actuarial valuation for the Scheme, and shall thereafter be revised before the end of such period as may be prescribed reckoned from the date of the signing of each subsequent actuarial valuation.

(3) Where from time to time, such revisions are agreed by the Retirement Scheme Administrator and the employer, and where applicable, any other Contributor to the Scheme, and any such revision in the rates of contributions is certified by the actuary of the Scheme as meeting the requirements of this Act, or as may be prescribed or in the circumstances referred to in paragraph (b) of subarticle (4) hereof, the Schedule of Payments may be revised.

(4) The matters contained in the Schedule of Payments as revised shall be:

(a) matters previously agreed between the Retirement Scheme Administrator and the employer, and where applicable, any other contributor to the Scheme, or

(b) where no such agreement has been reached:

(i) the rates of contributions determined by the Retirement Scheme Administrator and the actuary of the Scheme and certified by the actuary of the scheme, being such rates as in their opinion are adequate for the purpose of securing that the Technical Funding Requirement will continue to be met throughout the prescribed period or where it appears to them that they are not then met, such as are adequate for them to be met by the end of that period; and

(ii) any other matters determined by the Retirement Scheme Administrator and the actuary of the Scheme.

(5) An agreement for the purposes of subarticle (4) (a) shall be made during such period as may be prescribed beginning with the signing of the last preceding actuarial valuation for the Scheme.

(6) The actuary shall not certify the Schedule of Payments -

(i) where it appears to him that the Technical Funding Requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and

(ii) in any other case unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.

(7) The Authority may extend, or further extend the period referred to in subarticle (2), and where it refuses to extend, or further extend such period it shall give written notice of the refusal together with a statement of reasons for the decisions.

Payment of
Contributions.

34. (1) Except in such circumstances, as may be prescribed the Retirement Scheme Administrator and actuary of every Occupational Scheme, other than one falling within such class or description as may be prescribed, shall, where any amounts payable by or on behalf of the contributor(s) of the Scheme in accordance with the Schedule of Payments have not been paid on or before the due date, give notice of that fact, within such period as may be prescribed to the Authority and to the beneficiaries.

(2) (a) Where the Retirement Scheme Administrator desires to sue for the recovery of a debt due from a contributor in respect of any contribution, he may make a declaration on oath before the registrar of the courts, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due.

(b) The declaration referred to in paragraph (a) shall be served upon the contributor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the contributor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded.

(c) The application filed in terms of paragraph (b) shall be served upon the Retirement Scheme Administrator who shall be entitled to file a reply within the period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(d) In the case of an urgent nature the court may, upon an application of the Retirement Scheme Administrator or the Contributor, shorten any time limits provided for in this subarticle by means of a decree served on the other parts.

(e) Any executive title obtained according to the previous paragraphs of this subarticle in the absence of any opposition on the part of the Contributor shall be rescinded if upon a request by writ of summons to be filed by the contributor within twenty days from the first service upon him of an executive warrant based on the said title or of any other judicial act wherein reference is made to the said title the court is satisfied that the contributor was unaware of the service of the declaration referred to in paragraph (a) during the period during which he could oppose the same and that the claim contained in the said declaration is unfounded on the merits.

(f) No opposition other than that specifically provided in paragraph (e) of this subarticle shall stay the issue or execution of any executive act obtained thereunder or the paying out of the proceeds of any warrant or sale by auction carried out in pursuance thereof.

(3) In the case of an Occupational Scheme, other than one falling within such class or description as may be prescribed, any amounts payable by the contributor in accordance with the Payment Schedule shall be paid on or before the due date. Any contributor who fails to effect such payment on or before the due date shall be guilty of an offence.

(4) Where in the case of a Defined Benefit Retirement Scheme, which is an Occupational Scheme other than one falling within such class or description as may be prescribed, it appears to the Retirement Scheme Administrator or the Scheme actuary, at the end of such period as may be prescribed that the Technical Funding Requirement is not met, such Retirement Scheme Administrator or such Scheme actuary, as the case may be, shall give written notice to the Authority of that fact together with such information as may be prescribed relating to the failure to meet that requirement.

Underprovision in
an
Occupational
Benefit Retirement
Scheme.

35. (1) This article applies to every Defined Benefit Retirement Scheme, which is an Occupational Scheme, other than one falling within such class or description as may be prescribed.

(2) Where an actuarial valuation shows that, on the effective date of the valuation, the value of the Scheme assets is less than the amount prescribed for the purposes of paragraph (a) of subarticle (1) of article 31 (the difference shown in the valuation hereinafter referred to as "the shortfall"), the employer, shall -

(i) by making an appropriate payment to the Retirement Scheme Administrator, or

(ii) by such other method as may be prescribed,

secure an increase in the value of the Scheme assets which, taken with any contributions paid, is not less than the shortfall.

(3) The required increase in that value must be secured -

(a) before the end of such period as may be prescribed reckoned from the date of the valuation, or

(b) if the actuarial valuation was obtained by reason of a statement in a certificate as is referred to in subarticle (3) of article 31, before the end of a prescribed period reckoned from the date of the certificate.

(4) Except in such circumstances as may be prescribed, if the employer referred to in subarticle (2) fails to secure the required increase in value before the end of the period applicable under subarticle (3), the Retirement Scheme Administrator shall within the period of thirty days reckoned from the end of that period, give written notice of that fact to the Authority and to the beneficiaries of the Scheme.

(5) Except in such circumstances as may be prescribed if the employer referred to in subarticle (2) fails to secure the required increase in value before the end of the period applicable under subarticle (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value made under subarticle (2) or otherwise by contributions made before the end of that period, shall be recoverable by the Retirement Scheme Administrator and the provisions of subarticle (2) of article 34 shall mutatis mutandis apply with regard to any such debt.

(6) The Authority may extend, or further extend the period referred to in subarticle (3), and where it refuses to extend or further extend the period it shall give written notice of the refusal together with a statement of reasons for its decision.

36. (1) This article applies to every Defined Benefit Retirement Scheme, which is an Occupational Scheme, other than one falling within such class or description as may be prescribed.

Overprovision in an Occupational Benefit Retirement Scheme.

(2) Where an actuarial valuation shows that, on the effective date of the valuation, the value of the Scheme assets is more than the amount prescribed for the purposes of paragraph (b) of subarticle (1) of article 31 (the difference shown in the valuation hereinafter referred to as "the excess"), the Authority may issue a Directive to the employer and the Retirement Scheme Administrator, to take such steps by such method as may be approved by the Authority to secure an appropriate reduction in the value of the Scheme assets.

(3) The required reduction in that value must be secured before the end of such period as may specified in the Directive.

(4) If the employer and Retirement Scheme Administrator fail to secure the required reduction in value before the end of the period applicable under subarticle (3), the Retirement Scheme Administrator shall within the period of thirty days reckoned from the end of that period, give written notice of that fact to the Authority and to the beneficiaries of the Scheme.

(5) The Authority may extend, or further extend the period referred to in subarticle (3), and where it refuses to extend, or further extend the period it shall give written notice of the refusal together with a statement of reasons for the decision.

37. A Scheme may only invest in one or more Retirement Funds which satisfy the requirements of this Act.

Scheme to invest in Retirement Fund.

38. (1) A Retirement Fund shall comply with such requirements as may be prescribed with regards to the investment, management and valuation of its assets and the extent to which a Retirement Fund may borrow money.

Permitted Investments of Retirement Fund and Borrowing Powers.

(2) A Retirement Fund shall comply with Directives made by the Authority for the purpose of ensuring that:

(a) no part, or not more than a specified proportion, of the Scheme's resources shall be invested in Instruments or immovable

property of such class or description as may be specified in the Directive;

(b) the whole or specified proportion of Instruments or immovable property of any specified class or description forming part of the Scheme's resources shall be realized before the end of such period as maybe specified in the Directive;

(c) the allocation of the Scheme's assets among various investments shall be diversified in such manner as may be prescribed; and

(d) the Retirement Fund shall derive in each fiscal year at least ninety per cent of its gross income from dividends, rent or interest payments with respect to Instruments or immovable property, or from gains from the sale or other disposition of such Instruments or immovable property, or from other income derived with respect to its business of investing in such Instruments or immovable property.

(3) Without prejudice to the generality of subarticle (1), a Retirement Fund shall comply with such restrictions as may be prescribed under this Act, with respect to the proportion of its resources that may at any time be invested in, or in any description of, Contributor-Related Investments, as defined in subarticle (4) of this article.

(4) For purposes of this article -

(a) "Contributor-Related Investments" means -

(i) saving any exemption under subarticle (1) of article 50 of this Act, any Instrument issued by the contributor or an affiliate of the contributor;

(ii) immovable property which is occupied or used by, or held under any title whatsoever by the contributor or an affiliate of the contributor;

(iii) loans to the contributor or to an affiliate of the contributor;

(b) any sums due and payable by a person to a Retirement Fund and remaining unpaid shall to the extent that they are so unpaid be regarded for the purposes of this article as a loan made to that person by the Retirement Fund.

39. Retirement Funds and Schemes shall comply with such requirements as may be prescribed with regard to the use of the Scheme's money or other assets -

Payment of Retirement Fund Expenses and Scheme Expenses.

(a) to defray administrative expenses;

(b) to pay any commission; or

(c) in any other way which does not result in the provision of Retirement Benefits for or in respect of beneficiaries.

40. (1) Subject to the following provisions, and to any regulations or Directives as made for the purpose of this article, a Defined Benefit Retirement Scheme shall make a distribution to beneficiaries in the amounts and at the times specified in the applicable Scheme Document.

Distributions by a Defined Benefit Retirement Scheme.

(2) To the extent as may be consistent with the applicable Scheme, a Defined Benefit Retirement Scheme may also satisfy its liability to a beneficiary under such Scheme if -

(a) it takes out an annuity contract or a policy of insurance or a number of such contracts or policies, with an insurance company carrying on long-term insurance business and authorized for this purpose in accordance with the Insurance Business Act (or, in the case of a beneficiary resident outside Malta, with a bona fide insurance company carrying on long-term insurance business outside Malta); and

Cap. 403.

(b) it transfers the benefit of such a policy or policies or such a contract or contracts to such beneficiary:

Provided that a policy of insurance or annuity contract shall only be appropriate for the purposes of this article if -

(a) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed;

(b) the amount secured by the policy may not be commuted except on conditions which satisfy the requirements of such Scheme; and

(c) it satisfies such other requirements as may be prescribed by any regulations or Directives for the purpose of this article.

Compliance with
Tax Requirements.

41. A Retirement Fund or Scheme shall comply with any requirements as are established from time to time by the Commissioner.

Advertisement
of Schemes.

42. (1) The Authority may make Directives relating to the form and content of advertisements and such other promotional activity as may be prescribed in connection with Schemes or Funds.

(2) All advertisements relating to a Scheme or Retirement Fund shall, unless otherwise prescribed, contain a statement that there exists no statutory provision for compensation in the case where a Scheme or Retirement Fund is unable to satisfy the liabilities attributable to it, and that the registration of the Scheme or Retirement Fund is not an endorsement by the Authority of the Scheme's or Retirement Fund's financial performance.

Disclosure of
Retirement
Scheme
Particulars.

43. (1) A Retirement Fund shall, not later than three months after the closing of its financial year, or at any other time as may be prescribed, send a copy of the documents listed in subarticle (2) of this article to each of the following persons –

(a) each Overseas Retirement Plan investing in such Retirement Fund;

(b) each Retirement Scheme Administrator of a Scheme investing in such Retirement Fund;

(c) the Authority and the Commissioner; and

(d) any other person as the Authority may prescribe.

(2) In relation to any Retirement Fund, the documents to which subarticle (1) of this article applies are –

(a) its audited accounts;

(b) its annual report, in accordance with the requirements in Schedule One to this Act; and

(c) a directors' report providing such information as is sufficient to enable the persons mentioned in subarticle (1) of this article to make an informed judgement on the development management, operation and financial performance of the Retirement Fund.

(3) In all other respects, the annual account and directors' report of a Retirement Fund shall be prepared in accordance with the provisions applicable to companies generally to the extent that they are not inconsistent with the provisions of the preceding subarticles of this article and Schedule One to this Act.

(4) The Authority may by Directive specify additional requirements with respect to keeping the persons mentioned in subarticle (1) of this article, or any of them, informed of any changes with respect to, or additions to the terms and provisions -

(a) of the Retirement Fund's administration and finances;

(b) of the rights and obligations that arise or may arise in respect of the Retirement Fund; and

(c) of any other matters that appear to the Authority to be relevant to Retirement Funds in general or to Retirement Funds of a description to which the Retirement Fund in question belongs.

(5) The Directive may distinguish between -

(a) cases in which information is to be given as of course; and

(b) cases in which information need only be given on request or in such circumstances as may be prescribed.

(6) The Authority may by Directive make provision as to the form and content of any such document as is mentioned in this article.

44. (1) The Authority may make Directives requiring the Retirement Scheme Administrator to submit to the Authority and to publish or make available to beneficiaries a document containing information about the Scheme and complying with such requirements as may be prescribed.

Disclosure of
Retirement Fund
Information.

(2) Directives may further require the Retirement Scheme Administrator to submit and publish or make available revised or further Scheme particulars if -

(a) there is significant change affecting any matter contained in such particulars previously published or made available as may be prescribed; or

(b) a significant new matter as may be prescribed arises.

Annual Accounts
Of
Occupational
Schemes.

45. (1) The Retirement Scheme Administrator of an Occupational Scheme, other than one falling within such class or description as may be prescribed, shall produce a copy of the annual accounts of the Scheme to the Authority not later than three months after the closing of its financial year, or at any other time as may be prescribed.

(2) Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Authority at the same time as the annual accounts are submitted.

(3) The Authority may exempt in writing a Scheme specified in the exemption from any provision contained in regulations made under this Act relating to accounts.

(4) In this article, annual accounts means the Scheme accounts as prescribed under this Act.

Scheme Document
as
Binding Agreement.

46. (1) A Scheme as written out in its Scheme Document shall, when duly disclosed to a beneficiary, be binding on the beneficiary, unless such beneficiary notifies the Retirement Scheme Administrator of his written opposition thereto within a period of two months from the receipt by him of the Scheme Document.

(2) A beneficiary who is not himself also a contributor shall cease to be a beneficiary under a scheme if he opposes a scheme document which does not reduce the benefits due to him under the scheme.

Unenforceability
of
Unregistered
Schemes.

47. (1) A Scheme which is not registered in accordance with this Act shall be unenforceable against any contributor who is also a beneficiary; and such contributor shall be entitled to recover any money paid, or other property transferred by him under the Scheme, or where such property cannot be so recovered, such contributor shall be entitled to have it replaced by its value at the time of the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him.

(2) The provision of subarticle (1) of this article shall not affect any liability which any person may incur apart from this article.

48. Regulations or Directives may prescribe the circumstances in which and the conditions subject to which -

Transferability
of Rights and
Obligations.

(a) a beneficiary may transfer his accrued rights from one Scheme to another; and

(b) a Scheme may transfer the liabilities attributable to it to another Scheme; and

(c) a Scheme may provide for the payment of a Retirement Benefit in the form of a lump sum instead of an annuity; and

(d) a contributor may transfer, dispose of or charge his interest in a Scheme.

49. (1) The creditors of a contributor may not enforce their rights over the contributor's interest in the Scheme; nor may such creditors attach or subject such interest to any precautionary or executive warrant:

Assignment or
Attachment of
Retirement Fund
Assets.

Provided that nothing in this subarticle shall be deemed to deprive any creditor of such contributor of any rights granted to a creditor under article 1144 of the Civil Code.

Cap. 16.

(2) Except as may be prescribed under this Act, every agreement that is made by a contributor to transfer, dispose of or charge his interest in the Scheme shall be void.

PART III

GENERAL PROVISIONS

50. (1) The Minister, acting on the advice of the Authority, 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, in particular, do any of the following;

Minister's Power.

(a) extend or restrict the definition of "Contributor", "Beneficiary", "Defined Benefit Retirement Scheme", "Defined Contribution Retirement Scheme", "Instrument", "Investment Service", "Occupational Scheme", "Overseas Retirement Plan", "Retirement Benefit", "Retirement Fund" or "Scheme", contained in article 2 of this Act to such class of persons, schemes, instruments, services, plans or benefits as the Minister deems fit;

(b) regulate Retirement Funds and Retirement Schemes, as well as the services provided and activities carried on in conjunction therewith or in relation thereto, providing for any matter he may deem expedient and may in particular grant rights to the public in respect of such Funds and Schemes and regulate the exercise thereof;

(c) establish or make arrangements for the compensation of beneficiaries in cases where a Retirement Fund or Retirement Scheme is unable to satisfy claims in respect of any liability incurred by it in connection with a Retirement Scheme;

(d) regulate the format, content or amendment of a Scheme Document;

(e) prescribe the circumstances in which auditors or actuaries shall be obliged to communicate information to the Authority in accordance with article 29 of this Act and may in particular increase the circumstances wherein auditors or actuaries shall be obliged to report to the Authority and prescribe the circumstances or classes thereof wherein they shall be exempted from the provisions of the said article 29; and prescribe rules governing the disclosure by auditors or actuaries of information, and establish supervisory and disciplinary procedures for auditors or actuaries in respect of their duties;

(f) exempt any person, Scheme, Retirement Fund, or Advertisement from any one or more of the provisions of this Act and on such conditions as may be prescribed;

(g) regulate the provision by any one Retirement Fund of separate investment portfolios, regulate the investment in any one Retirement Fund of separate Schemes, providing for any matter he may deem expedient, including the regulation of the contents of the memorandum and articles of association of such Retirement Funds, and for the segregation of the assets of any one Scheme from that of another, the regulation of the manner and the form whereby such Retirement Fund may create and issue shares, and the provision of any matter consequential, incidental to or connected therewith;

(h) require the keeping and maintenance of records with respect to the transactions and financial position of an Overseas Retirement Plan, a Scheme or a Retirement Fund, and for the keeping of records in Malta and for the inspection of such records;

(i) require the preparation and presentation of periodical or other reports by an Overseas Retirement Plan, a Scheme or a Retirement Fund, to the Authority and to any other person as the said Minister may prescribe;

(j) require an Overseas Retirement Plan, a Scheme or a Retirement Fund -

(i) to obtain at prescribed times or on the happening of prescribed events such information and documents as may be prescribed;

(ii) to furnish that information and copies of those documents to the Authority and, or, such persons as may be prescribed in the form, manner and at the time prescribed;

(k) restrict or otherwise regulate the manner in which a Defined Benefit Retirement Scheme deals with surplus funds;

(l) provide for the content, format and audit of the annual accounts of an Overseas Retirement Plan, a Scheme or a Retirement Fund;

(m) regulate the payment (including the time thereof), nature and amount of benefits which may or may not be paid to beneficiaries;

(n) regulate the manner by which the amount or value of the assets or liabilities of a Scheme shall be determined, calculated and, or, verified, and determine the assets and liabilities that are to be taken into account for such purpose;

(o) prescribe anything that is to be or which may be prescribed; and

(p) provide for any matter incidental to or connected thereto.

(2) Any regulations made under this article may also contain provision for enabling a beneficiary, contributor, and generally any person who has entered, or offered to enter, into a Scheme, to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make provision -

(a) requiring the service of notice with respect to the rights exercisable under such regulations;

(b) for the restitution of property and the making or recovery of payments where those rights are exercised; or

(c) for such other matters as are incidental to or connected with any of the above.

(3) Any 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 Authority such powers of adaptation of the regulations as may be therein specified.

(4) Regulations made under this article may provide that any contravention or failure of compliance therewith shall constitute an offence and that any person guilty of such an offence shall be liable on conviction to such penalty as may be prescribed being a penalty not exceeding a fine (*multa*) of forty thousand lira or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Powers of
the Authority.

51. (1) The administration of this Act shall be vested in the Authority. The Authority shall perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.

(2) The Authority shall have the power to carry out the functions assigned to it by or under this Act and to ensure that the provision of Retirement Schemes and Retirement Funds complies with this Act and with any regulations made thereunder, with any Directive made by the Authority in virtue of this Act, and with the conditions specified in any registration of a Scheme.

(3) The Authority may make, amend or revoke Directives as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. Such Directives, amendment and revocations may relate to a particular class of persons or situations or to persons and situations generally.

(4) All Directives and any amendment or revocation thereof shall be officially communicated to the persons concerned and be open to public inspection in all the offices of the Authority at all times during the normal working hours of the Authority.

(5) The Authority shall enjoy the powers assigned to the competent authority in terms of articles 15 and 16 of the Investment Services Act *mutatis mutandis*.

(6) The Authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:

(a) the power to impose, revoke or vary conditions on the registration of a Scheme or a Retirement Fund made pursuant to the provisions of subarticle (3) of article 7 and of subarticle (3) of article 8 of this Act;

(b) the power to cancel or suspend a registration under articles 11 and 12 of this Act;

(c) the powers of inquiry under article 52 of this Act;

(d) the power to appoint inspectors under article 53 of this Act;

(e) the powers of intervention under subarticle (5) of this article;

(f) the powers of entry under subarticle (5) of this article;

(g) the power to communicate to the overseas regulatory authority information which is in the possession of the Authority, whether or not as a result of the exercise of any of the above powers.

(7) The Authority shall exercise powers by virtue of this article:

(a) where the assistance is requested by the overseas regulatory authority for the purpose of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta's international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a Memorandum of Understanding concluded with the Authority.

52. (1) The Authority may, by notice in writing, require -

Power of
Authority to
Obtain Information.

(i) any contributor, Retirement Scheme Administrator, Retirement Fund Administrator or Asset Manager who is or was providing, or who appears to be or to have been providing, a Retirement Scheme, Overseas Retirement Plan or a Retirement Fund, or who appears to be or have been carrying on activities in connection with a Retirement Scheme, Overseas Retirement Plan or a Retirement Fund; or

(ii) any contributor, Retirement Scheme Administrator, Retirement Fund Administrator, or Asset Manager who has issued, or appears to have issued an advertisement falling within the provisions of article 42 of this Act; or

(iii) any other contributor, Retirement Scheme Administrator, Retirement Fund Administrator, or Asset Manager who appears to be in possession of relevant information,

to do all or any of the following:

(a) to furnish to the Authority, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such Retirement Scheme or advertisement;

(b) to furnish to the Authority any information or documentation authenticated in such manner as it may specify; or

(c) to attend before the Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such service, scheme or advertisement.

(2) The Authority may take and retain copies of any documents furnished or provided under this article.

(3) Where the Authority has appointed a person under paragraph (c) of subarticle (1) of this article, such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement by the Authority.

Appointment of
Inspectors.

53. (1) The Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any person, Scheme, Overseas Retirement Plan or Retirement Fund referred to in paragraphs (i) to (iii) of subarticle (1) of article 52 of this Act.

(2) An inspector appointed under subarticle (1) of this article -

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any person, Scheme, Overseas Retirement Plan or Retirement Fund mentioned in subarticle (1) of this article;

(b) shall have and may exercise all the powers conferred on the Authority by article 51 of this Act, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement by the Authority; and

(c) may, and if so directed by the Authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the Authority.

(3) The Authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the person, Scheme or Retirement Fund concerned.

54. (1) Subject to the provisions of this article, an appeal shall lie to the Tribunal established in article 21 of the Malta Financial Services Authority Act with respect to: Appeals.

(a) any determination in accordance with subarticle (5) of article 3 of this Act;

(b) any refusal, variation, cancellation or suspension of a registration under article 7, 8, 11 or 12 of this Act;

(c) any decision under subarticle (3) of article 13 of this Act, and any directive given under paragraph (e) of subarticle (6) of article 51 of this Act;

(d) any decision to make a public statement, under the provisions of article 59 of this Act, as to a person's misconduct; or

(e) any administrative penalty in respect of infringements as may be prescribed under article 7, 8, 17 and 24 of this Act.

(2) An appeal under this article shall lie only on any of the following grounds:

(a) that the Authority has wrongly applied any of the provisions of this Act; or

(b) that the decision or Directive of the Authority constitutes an abuse of discretion and is manifestly unfair, but the discretion of the Authority may not, so long as it has been exercised properly, be queried by the Tribunal.

(3) An appeal made under this Article shall not suspend the operation of any decision or Directive from which the appeal is made:

Provided that a decision to cancel a registration shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned:

Provided further that a decision to issue a statement as to a person's misconduct shall not be published until expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the statement shall not be published before the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.

(4) The provisions of article 21 of the Malta Financial Services Authority Act shall, except in so far as any of them is incompatible with the provisions of this article, apply to appeals made to the Tribunal under this Act.

Powers of
the Court.

55. (1) If, on an application by the Authority made to the Civil Court, First Hall, the court is satisfied -

(a) that there is reasonable likelihood that a person will contravene any of the provisions of this Act or any regulations or Directives made thereunder, or will contravene or fail to comply with any condition, obligation, requirement, regulation, Directive, or order made or given under any of the provisions of this Act; or

(b) that a person has contravened any such provision or has contravened or failed to comply with any such condition, obligation, requirement, regulation, Directive, or order and that steps could be taken to remedy the contravention or failure,

the court may give such orders as it may deem appropriate to restrain the contravention or, as the case may be, to require the person referred to in paragraph (a) or (b) of this subarticle, or any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct.

(2) If, on an application made under subarticle (1) of this article, the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of this Act, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on application made under subarticle (1) of this article, the court is further satisfied that -

(a) profits have accrued to any person as a result of the contravention; or

(b) a shareholder, contributor or a beneficiary has suffered loss or been otherwise adversely affected as a result of that contravention,

the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(4) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and authenticated in such manner, as the court may deem appropriate.

(5) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Authority.

(6) (a) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning proceedings before the civil Court, First Hall, under this article.

(b) The Minister responsible for justice may by regulations under this paragraph establish the fees payable in the registry of the Court relative to the filing of judicial acts in connection with proceedings under this article:

Provided that until such fees are so established, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

Offences.

56. (1) Any person who contravenes or fails to comply with any of the provisions of this Act, or contravenes or fails to comply with any condition, obligation, requirement, regulation, Directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder, or any condition, obligation, requirement or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who is knowingly a party to the carrying on of any Retirement Fund or Scheme with an intent to defraud, shall be guilty of an offence.

(4) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a Retirement Fund or Scheme, shall be guilty of an offence.

(5) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(6) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

Penalties.

57. A person guilty of an offence under the provisions of article 56 of this Act shall unless another penalty is prescribed be liable on conviction to a fine (*multa*) not exceeding two hundred thousand lira or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

Criminal
Proceedings.

58. (1) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(2) The provisions of this Act shall not affect any criminal liability that may be incurred by any person under any other law.

59. (1) If it appears to the Authority that a person who is or was providing or who appears to be or to have been providing, a Retirement Scheme has contravened any of the provisions of this Act or of any regulations made thereunder or has contravened or failed to comply with any condition, obligation, requirement, Directive or order made or given under any of the provisions of this Act, the Authority may publish a statement to that effect.

Public Statement as to Misconduct.

(2) Before publishing a statement under subarticle (1) of this article, the Authority shall give the person concerned written notice of the proposed statement and of the reasons for which it is proposed to publish the statement.

(3) Where the reasons stated in the notice relate specifically to matters which -

(a) refer to a person identified in the notice other than the person who is the subject of the notice; and

(b) are in the opinion of the Authority prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice also on that other person.

(4) A notice served on a person pursuant to the provisions of this article shall give particulars of the person's right of appeal under article 54 and of the provisions of subsection (5) of this article.

(5) Subject to the provisions of subarticle (4) of article 54, upon the expiration of one month from the date of service of the notice under subarticle (2), or a copy of the notice under subarticle (3) of this article, whichever was the later, the Authority may publish the proposed statement and, after publication, shall send a copy to that person and to any person on whom a copy of the notice was served under subarticle (3) of this article.

60. (1) Subject to the provisions of subarticle (2) of this article, information obtained by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations or Directives promulgated thereunder, 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 person other than to a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, except in the case of the consent of the person from whom it obtained the information, provided the information relates solely to that person.

Confidentiality.

(2) The provisions of subarticle (1) of this article shall not preclude the disclosure of information -

(a) with a view to the institution of, or otherwise for the purposes of, criminal proceedings or of any proceedings by the Authority before any court under this Act;

(b) with a view to enabling or assisting the Authority in the performance or discharge of any of its functions under this Act;

(c) which 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) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained;

(e) to an auditor or actuary where such disclosure would assist the auditor or actuary in the exercise of its functions under article 29 of this Act;

(f) to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act, where such information is required by the Bank or the Listing Authority in the exercise of their respective functions in terms of law;

(g) in response to a request from, or for the purpose of assisting an overseas regulatory authority pursuant to article 51 of this Act;

(h) 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;

(i) in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of a Scheme or Retirement Fund provided such information does not concern third parties involved in attempts to rescue such a Scheme or Retirement Fund, and to such overseas bodies responsible for the liquidation of bankruptcy of a person holding a licence or an equivalent authorisation from an overseas regulatory authority or for other similar procedures.

61. The Authority and any officer or employee of the Authority, and any other person appointed to perform a function under this Act, or under any regulation and, or, Directive promulgated thereunder, or under an order made or given under any of the provisions of this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any regulation and, or Directive thereunder, unless the act or omission is shown to have been done or omitted to be done in bad faith.

Exclusion of Liability.

62. A notice or other document to be given or served under this Act, or any regulations or Directives made thereunder, shall be deemed to have been duly given or served on a person if -

Notices.

- (a) it has been delivered to it; or
- (b) it has been left at the address furnished by it to the Authority, or to its last known address; or
- (c) it has been sent to it by post, e-mail or by telefax at any of the aforesaid addresses; or
- (d) in the case of a body of persons, whether corporate or unincorporated, or of a Scheme or a Retirement Fund, if it has been given or served in any of the manners aforesaid to or on a Scheme or Retirement Fund Administrator, secretary, clerk, manager, trustee or their equivalent, or to any contributor or to any director or member of the governing body or an appointed representative.

63. The Exchange Control Act shall not apply to transactions carried out by a Scheme or Retirement Fund with persons or entities not resident in Malta for the purposes of the said Act.

Application of Exchange Control Act, Cap. 233

64. The Minister, acting on the advice of the Authority, may by regulations, make transitional provisions in respect of such persons who, on the effective date of this Act, were providing a Scheme or a Retirement Fund, or in respect of companies which in accordance with this Act are to be converted into Retirement Funds, and, without prejudice to the generality of the foregoing, may, by such regulations, in particular -

Minister's Power to make Transitional Arrangements.

- (a) prescribe a period within which such persons shall apply for a registration under this Act; and
- (b) allow such person to continue carrying on the activities of a Scheme or a Retirement Fund including the issue or creation of units, to the extent of the activities then carried on until such

time as the Scheme or Retirement Fund is registered or the registration is refused or until the expiry of the deadline provided in such regulations, which is the shorter period, and on condition that such person has applied for a registration in accordance with the provisions of this Act within the period referred to in paragraph (a) of this article.

PART IV

AMENDMENT OF THE CENTRAL BANK OF MALTA ACT, CAP. 204

Amendment
of the Central
Bank of Malta
Act, Cap. 204.

65. (1) This Part amends and shall be read and construed as one with the Central Bank of Malta Act, hereinafter referred to as "the principal Act".

(2) This Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Amendment of
article 2 of the
principal Act.

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

(a) for the definition "bank" therein, there shall be substituted the following:

" "bank" or "credit institution" means any person carrying on the business of banking and includes any branch, agency or office in Malta of a bank or credit institution not incorporated in Malta;"

(b) for the definition "business of banking" there shall be substituted the following:

Cap. 371. " "business of banking" has the same meaning assigned to it under the Banking Act; "

(c) in the definition "Competent Authority" immediately after the words "or other financial services" there shall be added the words "under the Banking Act, the Financial Institution Act, Cap. 376, the Investment Services Act, the Insurance Business Act, the Cap. 370, Insurance Brokers and other Intermediaries Act, the Financial Cap. 403, Markets Act, or such other law as the Minister may from time to Cap. 345.

time by notice in the Gazette for the purposes of and under the authority of this article establish”;

(d) the definitions “convertible” and “current deposits” shall be deleted;

(e) immediately after the definition “Competent Authority” there shall be inserted the following new definition:

““directive” means a directive issued by the Bank under this Act;”;

(f) immediately after the definition “director” there shall be added the following new definition:

““external assets” includes securities and all other assets in the currency of any country other than Malta or units of account in whatever form held;” and

(g) the definitions “saving deposits” and “time deposits” shall be deleted.

67. For article 4 of the principal Act there shall be substituted the following:

Substitution of
article 4 of the
principal Act.

“Principal
objective.

4. (1) The primary objective of the Bank shall be to maintain price stability. Without prejudice to its primary objective, the Bank shall promote orderly and balanced economic development.

(2) To the extent that this does not interfere with its primary objective, it shall also be the objective of the Bank -

(a) to influence the volume and conditions of supply of credit;

(b) to manage and maintain external reserves, so as to safeguard the international value of the currency;

(c) to ensure the stability of the financial system;

(d) to promote and participate in the establishment of a sound and efficient payment system;

(e) to issue legal tender currency notes and coins;

(f) to advise the Government generally on financial and economic matters;

(g) to compile and publish statistics as may be necessary to carry out its tasks under the provisions of this Act and of any other law;

(h) to perform such other functions as may be assigned to it by law.

(3) The Bank may issue, amend or revoke directives as may be required for carrying into effect any of the provisions of this Act.”

Substitution of
article 5 of the
principal Act.

68. For article 5 of the principal Act there shall be substituted the following:

“Principal
office of
Bank.

5. The Bank shall have its principal office in Malta; it may open offices outside Malta and it may appoint agents and correspondents.”

Amendment of
article 7 of the
principal Act.

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

(a) in subarticle (1) thereof, for the words “business of the Bank.” there shall be substituted the words “business of the Bank, except in relation to matters of monetary policy under articles 17 to 17D of this Act.”; and

(b) immediately after subarticle (2) thereof there shall be added the following subarticle (3):

“(3) Without prejudice to the provisions of articles 39 to 49A, neither the Bank, nor any member of the Board when exercising the functions, duties and powers under this Act, shall seek or take instructions from the Government or from any other body.”

Amendment of
article 8 of the
principal Act.

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

(a) in subarticle (1) thereof:

(i) for the words “of recognised experience in financial matters” there shall be substituted the words “of recognised standing and experience in economic, financial or banking matters”; and

(ii) for the words "a period not exceeding five years" there shall be substituted the words "a term of five years";

(b) for the words "The Governor" in subarticle (2) thereof, there shall be substituted the words "Without prejudice to the provisions of article 17 of this Act, the Governor";

(c) subarticle (4) thereof shall be deleted;

(d) for the proviso to subarticle (5) thereof there shall be substituted the following new proviso:

"Provided that they may be appointed in their capacity as Governor or Deputy Governor of the Bank, as the case may be, to sit on any board, commission or committee, by whatever name called, whether in Malta or outside Malta and provided further that such activity is not in the opinion of the Board in conflict with the performance of their duties under this Act."; and

(e) subarticle (6) thereof shall be deleted.

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

Amendment of article 9 of the principal Act.

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

"(b) be persons of recognised standing and professional experience in economic, financial or banking affairs"; and

(b) for the words "not exceeding three years" in paragraph (c) therein, there shall be substituted the words "of five years".

72. For the marginal note to article 10 of the principal Act, there shall be substituted the words "Disclosure of interest."

Amendment of the marginal note to article 10 of the principal Act.

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

Amendment of article 11 of the principal Act.

(a) in subarticle (1) therein:

(i) for the words "regulated by the Bank" in paragraph (b) therein, there shall be substituted the words "licensed to provide financial or banking services";

(ii) immediately after paragraph (d) therein there shall be added the following paragraph (e):

“(e) holds any other position, or is otherwise in a position, which is in conflict with his duties as a director under this Act.”; and

(b) for subarticle (2) thereof there shall be substituted the following:

“(2) A director may be relieved of his office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.”; and

(c) in subarticle (4) thereof, the words “and for the unexpired term of office” shall be deleted.

Amendment of
article 13A of
the principal Act.

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

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered, there shall be added the following subarticle:

“(2) The provisions of subarticle (1) of this article shall also apply to the Bank and to any director, officer or servant thereof and to any other person appointed by the Bank, in the performance or purported performance of any function assigned to the Bank or to any director, officer, servant or other person under any other law.”.

Substitution
of articles 15
and 16 of the
principal Act.

75. For articles 15 and 16 of the principal Act there shall be substituted the following:

“Principal
business
and powers
of the Bank.

15. (1) Without prejudice to the other provisions of this Act, the Bank may, in order to achieve its objectives and to carry out its functions under this Act:

(a) open accounts and accept and place deposits as provided in articles 26 and 33 of this Act, and, in special cases, with the prior approval of the Board, open accounts for and accept deposits from other persons;

(b) maintain accounts with central banks or other credit institutions and agents abroad, accept from, and place deposits with, any such credit institution or agent, and act as correspondent, banker or agent for any central bank or other credit institution or other monetary authority and for any international financial institution established under international treaties;

(c) subscribe to, purchase, sell, discount or re-discount equity, debt or other financial instruments as may be approved by the Board, provided that any equity interests in an undertaking as the Bank may in any way acquire in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable moment;

(d) issue, purchase, sell, discount or re-discount financial instruments bearing the Bank's name in such form and for such terms and maturities as may be approved by the Board;

(e) at its discretion, grant to any credit or financial institution in Malta loans and advances on such terms and conditions as may be approved by the Board and for such periods not exceeding twelve months against such adequate security as the Board may consider appropriate;

(f) enter into contractual agreements for the repurchase and reverse repurchase of publicly issued securities of or guaranteed by the Government and of other financial instruments as may be approved by the Board; and

(g) when it deems such action necessary to safeguard financial stability or in other exceptional circumstances, grant a loan or advance to any credit institution incorporated in Malta against such forms of security as the Board may consider appropriate.

(2) In managing and maintaining the external reserves, the Bank may carry out any transactions that it deems suitable, and in particular it may:

(a) hold, manage, acquire and sell, spot and forward, all types of external assets and precious metals; and

(b) carry out any type of financial transaction with domestic or foreign institutions or with international organisations, including borrowing and lending operations.

(3) The Bank may invest its staff and pension funds and other internal funds of the Bank in government securities or other first-class securities approved by the Board.

(4) Subject to any other provisions of this Act, the Bank may generally conduct business as a bank, and do all things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(5) (a) The Bank shall, in the exercise of its functions as a Central Bank under this Act, enjoy a special privilege over any funds held in the accounts of the Bank as well as any securities, precious metals or any other assets belonging to its debtors and deposited with it as well as any other funds or other assets pledged in its favour by its debtors or by third parties to guarantee the obligations of its debtors.

(b) The special privilege granted by this subarticle shall rank before any other privilege under any other law and notwithstanding the provision of any other law the funds and other assets subject to such privilege shall be applied to the satisfaction of the debt due to the Bank before any other claim.

(c) The Bank may, subsequent to prior notification to the debtor, apply any such funds or assets in satisfaction of the debts due to it without the necessity of any authorisation or sanction by any court or other authority, and may also, for such purpose, dispose of any such assets so held by it or pledged in its favour and apply the proceeds from such disposal directly to satisfy its claims.

Prohibited
activities.

16. The Bank may not -

(a) purchase, acquire or lease immovable property except in accordance with the provisions of this Act or except in so far as the Bank may consider necessary or expedient for the provision, or future provision, of premises for the conduct of its business, for the use of and residence of staff or other similar requirements incidental to the performance of its functions under this Act;

(b) accept for discount, or as security for an advance made by the Bank, any instruments signed by members of the Board or by the Bank's officials or other employees;

(c) pay interest except, at its discretion, on deposits maintained with the Bank in accordance with article 26, or sub-article (1) of article 33 of this Act, or on special accounts maintained with the approval of the Board;

(d) open accounts and accept and place deposits otherwise than as provided in paragraphs (a) and (b) of sub-article (1) of article 15 of this Act; and

(e) grant or permit to be outstanding in respect of any one of its employees unsecured advances or unsecured credit facilities which in the aggregate exceed twelve months emoluments of such employees."

76. Article 17 of the principal Act shall be repealed.

Repeal of article 17 of the principal Act.

77. Immediately after article 16 of the principal Act there shall be added the following new Part IIA:

Addition of new Part IIA to the principal Act.

"PART IIA

MONETARY POLICY

Monetary
Policy
Advisory
Council.

17. (1) There shall be a council of the Bank, to be known as the Monetary Policy Advisory Council, which shall have responsibility to advise the Governor on matters relating to monetary policy.

(2) The Council shall consist of -

(i) the Governor, Deputy Governor and the other three Directors of the Bank, and

(ii) three members appointed by the Governor, after consultation with the Board, from among the senior officials within the Bank, or from among suitably qualified individuals from outside the Bank, being in each case persons who the Governor is satisfied have knowledge or experience which is likely to be relevant to the Council's functions.

Governor
to take
decisions
on
monetary
policy.

17A. (1) The sole authority and responsibility within the Bank to take decisions and to perform any function or duty or to exercise any power relating to monetary policy shall vest in the Governor.

(2) The Governor shall keep the Council informed of, and may discuss with the Council, the discharge of the functions, duties and powers vested in him under this article.

(3) Whenever the Governor is unable, by reason of absence, ill-health or any other cause to discharge the functions, duties and powers referred to in this article, or where the office of the Governor is vacant, the authority and responsibility vested in the Governor under sub-article (1) of this article shall, during such inability or vacancy, vest in the Deputy Governor.

(4) Neither the Bank nor any member of the Council, including the Governor, shall when exercising the functions, duties and powers under this article, seek or take instructions from the Government or from any other body.

(5) The Governor, after consulting the Council, may give directions and guidance on the measures to be adopted in the implementation by the Bank of the monetary policy functions established in accordance with this Act.

Governor to
report
to the House
of
Representatives.

17B. The Governor may be requested by the House of Representatives to report on the conduct by the Bank of its monetary policy functions before a committee of the House of Representatives appointed for this purpose and to provide such committee with any information deemed necessary:

Provided that the Governor may not be so requested more often than once every six months.

Proceedings.

17C. (1) Four members of the Council shall form a quorum at any meeting, provided that the Governor is present for all the meetings, otherwise the Council shall regulate its own proceedings.

(2) Subject to the provisions of article 17D of this Act, the members of the Council shall be bound by the duty of professional secrecy in matters relating to monetary policy.

Publication
of
decisions and
interest rates.

17D. (1) As soon as practicable after each meeting of the Monetary Policy Advisory Council, the Bank shall publish a statement of the decision on monetary policy taken by the Governor.

(2) The Bank shall also make public at all times its official interest rates.

(3) The publication of decisions and of interest rates under this article shall be in such manner as the Bank deems fit.”.

78. Article 18 of the principal Act shall be amended as follows: Amendment of article 18 of the principal Act.

(a) in subarticle (2) thereof immediately after the words “Special Reserve Fund” there shall be inserted the words “which, at the end of each financial year of the Bank, shall be of not less than five million liri and two million liri respectively”; and

(b) for subarticles (3), (4) and (5) there shall be substituted the following new subarticle (3):

“(3) The General Reserve Fund shall be available for any purpose as may be determined by the Board and the Special Reserve Fund shall be available for the purpose specified in subarticle (2) of article 24 of the Act.”.

79. For article 19 of the principal Act, there shall be substituted the following: Substitution of article 19 of the principal Act.

“External
reserves.

19. (1) In managing and maintaining the external reserves under the provisions of subarticle (2) of article 15 of this Act, the Bank shall maintain a reserve of external assets which shall at all times be determined at no less than sixty per centum of the value of the Bank’s liabilities.

(2) For the purposes of this article, the term “Bank’s liabilities” shall mean:

(i) the value of the Bank’s notes and coins issued, excluding coins issued for numismatic purposes;

(ii) the deposit liabilities of the Bank; and

(iii) the nominal amount of financial instruments issued and outstanding in terms of paragraph (d) of subarticle (1) of article 15 of the Act.”

Amendment of
article 22 of the
principal Act.

80. Subarticle (2) of article 22 of the principal Act shall be deleted and subarticle (1) thereof shall be renumbered as the whole provision; and for the words “shall be audited by” there shall be substituted the words “shall be audited by independent external”.

Amendment of
article 23 of the
principal Act.

81. Article 23 of the principal Act, shall be amended as follows:

(a) in subarticle (1) therein paragraph (b) shall be renumbered as paragraph (c) and immediately after paragraph (a) therein there shall be inserted the following:

“(b) a statement of the Bank’s investments; and”;

(b) in paragraph (c) the words “paragraph (b)” shall be replaced with the words “paragraph (c)”;

(c) in paragraph (a) in subarticle (2) thereof, immediately after the words “annual accounts” there shall be inserted the words “, of the statement;” and

(d) subarticle (4) thereof shall be deleted.

Amendment of
article 24 of the
principal Act.

82. Article 24 of the principal Act shall be amended as follows:

(a) for subarticle (2) thereof there shall be substituted the following:

“(2) The profits and losses which are attributable to any revaluation of the Bank’s net external assets or liabilities made as a result of any adjustment of the external value of the Maltese lira in terms of article 40 of this Act shall be excluded from the computation of the annual profits and losses of the Bank and shall be credited or debited, as the case may be, to the Special Reserve Fund established under subarticle (2) of article 18 of the Act. Without prejudice to the aforesaid provisions of subarticle (2) of article 18 of the Act, the balance in such Fund shall be dealt with as determined by the Board.”;

(b) subarticle (3) thereof shall be deleted; and

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

“(4) After such allocations as may be determined by the Bank under the provisions of subarticle (1) of this article have been made, the remainder of the net profits established as aforesaid shall be paid to the Government.”.

83. Immediately after article 24 of the principal Act there shall be inserted the following new Part IIIA:

Addition of new Part IIIA to the principal Act.

“PART III A

COLLECTION OF INFORMATION

Collection of Information.

24A. (1) Without prejudice to the provisions of subarticle (2) of article 38A of this Act, the Bank may require a reporting agent as defined in subarticle (3) of this article to provide the Bank with such information as the Bank may consider necessary to carry out its functions under this Act, and the Bank may enquire into and ask for clarifications of any information so provided.

(2) It shall be the duty of every reporting agent required to provide the Bank with information as specified in subarticle (1) above, to comply with such requirement.

(3) For the purpose of this article and of the following article, a “reporting agent” may include:

(a) a credit institution licensed under the Banking Act;

(b) a financial institution licensed under the Financial Institutions Act;

(c) a person licensed under the Investment Services Act;

(d) a person licensed to conduct business of insurance under the Insurance Business Act or a person registered or enrolled to conduct insurance intermediaries’ activities under the Insurance Brokers and other Intermediaries Act;

(e) a person who has issued a debt security, and is not a credit institution licensed under the Banking Act or a person licensed under the Investment Services Act;

(f) a person who has acted as an agent in connection with arranging or managing the issue of a debt security, and is not a credit institution licensed under the Banking Act or a person licensed under the Investment Services Act;

(g) a person who holds external assets and liabilities or carries out cross-border transactions which the Bank determines relevant to compile balance of payments statistics or to establish the balance sheet of the stock of external financial assets and liabilities for Malta, otherwise referred to as the international investment position; or

(h) any other person who the Bank determines, after consultation with such person, is in possession of information considered relevant to carry out its tasks under this Act.

(4) Except as provided for under Part VI of this Act, information collected under the provisions of this article shall be subject to the duty of professional secrecy.

Collection of
Statistical
Information.

24B. (1) The Bank may issue directives providing for the definition and imposition of its statistical reporting requirements, establishing the standards for transmission and accuracy of statistical information and specifying the conditions under which the right to verify or to carry out the compulsory collection of statistical information may be exercised under the provisions of subarticle (2) of this article.

(2) The Bank shall have the right to verify the accuracy and quality of the statistical information submitted under subarticle (1) of article 24A, and to carry out its compulsory collection. The right to verify statistical information or to carry out its compulsory collection shall comprise the right to:

(a) require submission of documents;

(b) examine the books and records of the reporting agent;

(c) take copies or extracts from such books and records; and

(d) obtain written or oral explanations.

Any reference to documents, books or records under this article includes a reference to the electronic form of any such documents, books or records.

(3) When it deems it necessary in the carrying out of its functions under this Act, the Bank shall prepare and publish statements, consolidating and, or, aggregating statistical information so furnished under this article and, where necessary, under article 38A(1)."

84. For the words "on financial matters" in article 25 of the principal Act, there shall be substituted the words "on financial and economic matters".

Amendment of article 25 of the principal Act.

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

Amendment of Article 26 of the principal Act.

(a) for the marginal note thereto, there shall be substituted the words "Banker to Government."; and

(b) the proviso to subarticle (1) thereof shall be deleted.

86. For articles 27 and 28 of the principal Act there shall be substituted the following:

Substitution of articles 27 and 28 of the principal Act.

"Prohibition of public sector financing.

27. (1) The Bank shall not grant overdrafts or any other type of credit facility to the Government or to any public undertaking, public authority or Government-owned corporation, nor shall the Bank directly purchase their debt instruments.

(2) The Government-controlled credit institution shall be given the same treatment as other credit institutions with regard to the supply of reserves.

Bank as agent for Government.

28. The Bank may act generally as agent for the Government and may be entrusted with the issue and management of Treasury Bills and Government loans publicly issued in Malta -

(a) where the Bank can do so appropriately and consistently with the provisions of this Act and with its duties and functions as a Central Bank; and

(b) on such terms and conditions as may be agreed between the Government and the Bank.”.

Repeal of articles 29 and 32 of the principal Act.

87. Articles 29 and 32 of the principal Act shall be deleted.

Substitution of the heading of Part V of the principal Act.

88. Immediately after article 32 of the principal Act and immediately preceding article 33 thereof, for the heading of Part V there shall be substituted the heading “PART V RELATIONS WITH CREDIT AND FINANCIAL INSTITUTIONS”.

Amendment of article 33 of the principal Act.

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

(a) in subarticle (1) thereof for the words “banks and financial institutions” wherever they appear, there shall be substituted the words “credit and financial institutions”;

(b) in subarticle (2) thereof for the word “with the approval of the Minister,” shall be deleted, and for the words “banks” there shall be substituted the words “credit institutions”; and

(c) for the marginal note thereto, there shall be substituted the following:

“Banker to Credit and Financial Institutions.”.

Amendment of article 34 of the principal Act.

90. In article 34 of the principal Act, including the marginal note thereto, for the word “banks” wherever it appears, there shall be substituted the words “credit institutions”.

Amendment of article 35 of the principal Act.

91. For the word “banks” in the marginal note to article 35, there shall be substituted the words “credit institutions”, and for the words “banks and financial institutions” in the said article, there shall be substituted the words “credit and financial institutions”.

Substitution of articles 36 to 38C of the principal Act.

92. For article 36 to 38C of the principal Act there shall be substituted the following:

“Payment systems.

36. (1) The Bank shall oversee and regulate the operation of, and the participation in, domestic payment systems as well as any form of cash or security transactions, whether domestic or cross-border, that may be involved therein, and may itself establish and operate such a payment system.

(2) No person shall organise, establish, operate or participate in a domestic payment system unless such system is approved and authorised by the Bank.

(3) Any person who contravenes or fails to comply with the provisions of subarticle (2) of this article shall be guilty of an offence and shall be liable on conviction to a fine (multa) not exceeding twenty thousand liri or to imprisonment not exceeding two years, or to both such fine and imprisonment.

(4) No proceedings for an offence under subarticle (3) of this article shall be commenced without the consent of the Attorney General.

(5) The Bank may issue directives in respect of:

(a) any or all of the objects mentioned in subarticle (1) of this article including, without prejudice to the generality of the aforesaid, the regulation of clearing houses, settlement agents and participants in payment systems as well as the legal enforceability of payments made through such systems and the collateral given in connection with the operation of such a payment system;

(b) cross-border credit transfer services provided by credit and financial institutions or by any person that by way of business executes cross-border credit transfers; and

(c) electronic payment services, including, but not limited to, the provision of debit and credit card, and electronic money, services.

(6) Unless otherwise provided in the directives made in virtue of subarticle (5) of this article, payments, set-off or netting made through or within a payment system including any collateral given by a participant in connection with any such system, shall, notwithstanding any other law relating to bankruptcy or insolvency or to the regulation and enforcement of collateral or otherwise regulating the validity of such payments, set-off or netting and the giving of collateral, be final and binding on all parties thereto and may not be attacked or impugned in any court of law. Any payment order, set-off

or netting made through or within a payment system by a participant and any collateral given in connection with such a system shall, notwithstanding any other law as aforesaid, not be the subject of an attachment or seizure order, nor of a warrant of prohibitory injunction issued at the request of the creditors of the participant.

(7) In this article and in any directive issued hereunder, unless the context otherwise requires:

“participant” means any person, including the Bank, who participates in a payment system and may include an indirect participant approved by the Bank;

“payment system” or “system” means a formal arrangement between three or more participants with common rules and standardised arrangements, for the execution of transfer orders between participants, including a clearing house, or for the settlement of payments relating to securities, which is approved by the Bank, and may include a payment, clearing, settlement, netting and, or, similar system. The Bank may also, on a case-by-case basis, designate as a payment system such a formal arrangement between two participants where the Bank considers that this is warranted on grounds of systemic risk.

Appeals.

36A. Any person who:

(a) is aggrieved by decisions taken by the Bank under subarticle (2) of article 36 or under any directives issued under subarticle 5(a) of article 36;

(b) is a party to any disputes in respect of rights and obligations arising under any directives issued under subarticles (5)(b) and (c) of article 36; or

(c) has had an administrative penalty imposed upon him pursuant to subarticle (1) of article 52A:

may appeal to the Financial Services Tribunal established under the Malta Financial Services Authority Act within such period and under such conditions as established under that Act.

Deposit of
Credit
Institution
with Bank.

37. (1) The Bank may require credit institutions carrying on the business of banking in Malta to maintain reserve deposits with the Bank on such terms and conditions as the Bank may prescribe from time to time by directives in relation to its monetary policy functions.

(2) No credit institution shall be required to maintain a larger minimum proportion of reserve deposits than any other credit institution.

(3) In order to ensure observance of any directive issued under subarticle (1) and in carrying out the compulsory collection of information, the Bank shall have the powers granted to it under, and shall act in accordance with, the provisions of article 52A of this Act.

(4) For the purpose of this article, the term "credit institution" shall include electronic money institutions as defined in the Banking Act.

Interest
rates of
credit
and
financial
institutions.

38. Notwithstanding anything else contained in any other law, credit and financial institutions may determine the rate of interest payable on deposits held by credit institutions, and the rate of interest that they may charge on loans, advances and any other credit facility as well as in the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness.

PART VI RELATIONS WITH THE COMPETENT AUTHORITY

Information,
inspection
and
reporting
by the
Competent
Authority.

38A. (1) The Bank may require the Competent Authority to pass to it any information in the possession of or accessible to the Competent Authority which is necessary for the Bank in the discharge of its duties under this Act or any other Act.

(2) The Bank may, in writing, request the Competent Authority to inspect, verify and file a report to the Bank on any matter which the Bank may reasonably require in the exercise of its duties under this Act or any other Act and the Competent Authority shall comply with such request.

Information
to
Competent
Authority.

38B. (1) The Bank shall pass to the Competent Authority any information in the possession of or accessible to the Bank when so requested by the Competent Authority in the exercise of its duties under any law.

(2) The Bank shall discuss with the Competent Authority matters of mutual interest resulting from information collected under article 24A of this Act.

Confidentiality.

38C. Any information exchanged between the Bank and the Competent Authority shall be subject to the duty of professional secrecy."

Amendment of
article 40 of the
principal Act.

93. In article 40 of the principal Act, the words from " , having due regard" to the words "International Monetary Fund", shall be deleted.

Amendment of
article 41 of the
principal Act.

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

(a) For subarticle (1) thereof, there shall be substituted the following:

"(1) Subject to the provision of any law relating to the control of exchange and to subarticle (2) of this article, the Bank shall at its principal office in Malta issue and redeem Malta currency at its discretion against external assets in such amounts and at such rate of exchange as the Bank shall determine."; and

(b) in subarticle (2) thereof for the words "that determined" there shall be substituted the words "that which may be determined".

Amendment of
article 42 of the
principal Act.

95. For subarticle (6) of article 42 of the principal Act, there shall be substituted the following:

"(6) After the expiration of one year following the end of the period mentioned in the notice calling in any notes under subarticle (4) of this article, any notes so called in but not presented for redemption shall cease to be included in the currency liabilities of the Bank and the value of such notes, after deducting therefrom the value of any notes which are subsequently redeemed, shall be apportioned to the profits of the Bank over the remaining period

until the expiration of the ten-year period specified under the provisions of subarticle (4) of this article.

(7) Any note which has been tampered with or has ceased to be legal tender or is counterfeit may be called in, cut, destroyed or otherwise disposed of in such manner and under such conditions as the Bank may determine. It shall be lawful for any Police officer to seize any such note as aforesaid from the possession of any person even though such person be not charged with, or suspected of having committed a crime.”.

96. For subarticle (7) of article 43 of the principal Act, there shall be substituted the following:

Amendment of article 43 of the principal Act.

“(7) After the expiration of six months following the end of the period mentioned in the notice calling in any coins under subarticle (6) of this article, any coins so called in but not presented for redemption shall cease to be included in the coin liabilities of the Bank and the value of such coins, after deducting therefrom the value of any coins which are subsequently redeemed, shall be apportioned to the profits of the Bank over the remaining period until the expiration of the two-year period specified under the provisions of subarticle (6) of this article.”.

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

Amendment of article 44 of the principal Act.

“Definition of currency note or coin.

44. For the purposes of the next following six articles, “currency note” or “coin” means a currency note or coin issued or deemed to be issued under this Act and any other note or coin, by whatever name called, which is legal tender in the country outside Malta in which it is issued.”.

98. Article 47 of the principal Act shall be amended as follows:

Amendment of article 47 of the principal Act.

(a) immediately after the words “or other material,” in paragraph (c) therein, there shall be inserted the words “or produces in electronic or digital form,”; and

(b) immediately after the words “or other material” in paragraph (d) therein there shall be inserted the words “or any other electronic or digital storage device”, and immediately after the words “have been engraved” there shall be inserted the words “, produced or stored in electronic or digital form,”.

Addition of new article 49A to the principal Act.

99. Immediately after article 49 of the principal Act there shall be added the following new article 49A:

"Obligations of credit and financial institutions.

49A. Credit institutions, including financial institutions licensed under the Financial Institutions Act to exchange notes and coins of different currencies as a business activity, shall be obliged to withdraw from circulation all currency notes and coins received by these institutions which they know or have sufficient reason to believe to be counterfeit, and shall immediately deliver them over to the Bank.",

and article 49A of the principal Act shall be renumbered as 49B.

Substitution of article 53 of the principal Act.

100. For article 53 of the principal Act there shall be substituted the following:

"Administrative penalties.

52A. (1) The Minister may by regulations provide for administrative penalties which may be imposed and recovered by the Bank without recourse to a court hearing:

Provided that an administrative penalty may not be greater than five thousand Maltese liri.

(2) Without prejudice to the generality of the provisions of subarticle (1), the Minister may by such regulations prescribe administrative penalties for the following breaches:

(a) where a reporting agent contravenes or fails to comply with a reporting requirement under the provisions of article 24A or article 24B or fails to comply with a requirement contained in any directive issued under article 24B(1) of this Act; and

(b) where a participant in a payment system contravenes or fails to comply with a requirement contained in any directive issued under article 36.

(3) The Minister may, by regulations, further provide for administrative penalties which may be imposed and recovered by the Bank without recourse to a court hearing:

(a) upon a credit or financial institution, as the case may be, where the institution -

(i) contravenes or fails to comply with a reserve deposit requirement as may be contained in any directive issued under the provisions of article 37 of this Act; and

(ii) contravenes or fails to comply with the provisions of article 49A;

(b) upon any body corporate where the offences referred to in articles 45 to 49 of this Act are committed for their benefit by any person, acting either individually or as part of an organ of the body corporate, who has a senior position within the body corporate, on the basis of -

(i) a power of representation of the body corporate, or

(ii) an authority to take decisions on behalf of the corporate, or

(iii) an authority to exercise control within the legal person,

as well as for aiding or acting as accessory in the commission of such offences or the attempted commission of such offences; and

(c) upon any body corporate where the lack of supervision or control by the person referred to in paragraph (b) of this subarticle has rendered possible the commission of an offence referred to in the same paragraph for the benefit of that body corporate by a person under its authority.

Recovery of
Administrative
penalties.

52B. (1) Where by virtue of regulations made under article 52A, the Bank imposes an administrative penalty, it shall so notify the person on whom the penalty is being imposed by means of a notice in writing.

(2) Where an administrative penalty is imposed on a reporting agent in respect of a breach of the provisions referred to in article 52A(2) (a), such penalty shall be without prejudice to the obligation of the undertaking to meet the costs of the verification and, or, the compulsory collection procedure, as the case may be.

(3) Where a notice imposing an administrative penalty is served on any person and:

(a) such person does not appeal to the Financial Services Tribunal (hereinafter in this article "the Tribunal") in accordance with the provisions of article 36A and fails to pay to the Bank the administrative penalty within thirty days from the date of service of such notice; or

(b) such person appeals to the Tribunal and fails to pay to the Bank the administrative penalty as confirmed or reduced by the Tribunal within fifteen days from the date of the decision of the Tribunal,

then, in each case, the Bank shall be entitled to recover the sum due as a civil debt and the provisions of subarticle (4) hereof shall apply.

(4) A notice as is referred to in subarticle (3) of this article or, as the case may be, the decision of the Tribunal shall, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice or the decision of the Tribunal, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure.

Bye-laws. 53. The Board may make bye-laws not inconsistent with this Act, for the good order and management of the Bank."

Transitory provision.

101. The provisions of the principal Act as amended by this Part shall not apply with regard to the qualification for appointment, term of office or terms of appointment of any person who on the day immediately preceding the date of coming into force of this Part was a member of the Board of the Central Bank of Malta, and the provisions of the

principal Act as in force immediately before the coming into force of this Part with respect to the qualification for appointment, the term of office and the terms of their appointment shall apply with respect to such persons until the expiration of their appointment.

PART V

AMENDMENT OF THE MALTA FINANCIAL SERVICES CENTRE ACT, CAP. 330

102. (1) This Part amends and shall be read and construed as one with the Malta Financial Services Centre Act, hereinafter in this Part referred to as "the principal Act".

Amends the Malta
Financial Services
Centre Act,
Cap. 330.

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

103. In the long and short titles of the principal Act and in article 1 thereof for the words "Malta Financial Services Centre" there shall be substituted the words "Malta Financial Services Authority".

Amends short
and long title
of the principal
Act.

104. The "Arrangement of Sections" appearing before the principal Act shall be deleted.

Deletion of
Arrangement of
Articles.

105. For article 2 of the principal Act there shall be substituted the following:

Substitution
of article 2
of the principal
Act.

"Interpretation.

2. In this Act unless the context otherwise requires:

"Authority" means the Malta Financial Services Authority established by article 3 of this Act;

"Board of Governors" means the Board of Governors of the Authority established by article 6 of this Act;

"Board of Management and Resources" means the Board established by article 11 of this Act;

"Chief Operations Officer" means the Chairman of the Board of Management and Resources;

"Consumer Complaints Manager" means the person appointed in terms of article 20 of this Act;

"Director-General" means the Chairman of the Supervisory Council established by article 10 of this Act;

"Executive Co-Ordination Committee" means the Committee established by article 9 of this Act;

"financial year" means a period of twelve months beginning on the 1st day of January and ending on the 31st day of December of each year;

"financial services" means the business of banking, the business of insurance and insurance intermediaries activities, securities business, and the business of financial institutions and includes company registration and compliance with company legislation and such other areas of financial activities or services as may be placed by the Minister under the supervisory and regulatory authority of the Authority;

"Minister" means the Minister responsible for Finance;

"person" includes any entity corporate or unincorporated which may hold a licence or other authorisation issued by the Authority or which falls within the supervisory or regulatory authority of the Authority;

"prescribed" means prescribed under this Act;

"Supervisory Council" means the Council appointed in terms of article 10 of this Act."

Substitution of
Parts I to IV
and the Schedules to
the
principal Act.

106. (a) Article 16 and 17 of the principal Act shall be renumbered as article 25 and 26 thereof respectively.

(b) For Part I (other than articles 25 and 26 as renumbered) and for Parts II, III and IV of the principal Act and for the schedules to the principal Act, there shall be substituted the following:

"Establishment
of the
Authority.

3. (1) There shall be an authority, to be called the Malta Financial Services Authority.

(2) The Authority shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring and disposing of property of any kind for the purposes of its functions under this Act or any other law, of suing and of being sued, and of doing all such things and entering into all transactions as are incidental to or conducive to the exercise or performance of its functions aforesaid.

Functions
of
the
Authority.

4. (1) Without prejudice to any other power or function conferred to it by this Act or any other law, it shall be the function of the Authority:

(a) to regulate, monitor and supervise financial services in Malta;

(b) to promote the general interests and legitimate expectations of consumers of financial services, and to promote fair competition practices and consumer choice in financial services;

(c) to monitor and keep under review trading and business practices relating to the supply of financial services to private and other persons, and to provide relevant information and guidelines to the public;

(d) to monitor the working and enforcement of laws that directly or indirectly affect consumer of financial services in Malta, and to undertake or commission such study, research or investigation which it may deem necessary in this regard;

(e) to advise the Government generally on the formulation of policies in the field of financial services, and to make recommendations to Government on action which in the opinion of the Authority would be expedient in relation to matters falling within the regulatory and supervisory functions of the Authority;

(f) to investigate allegations of practices and activities detrimental to consumers of financial services, and generally to keep under review trading practices relating to the provision of financial services and to identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers of financial services;

(g) to ensure high standards of conduct and management throughout the financial system;

(h) to perform such other functions or duties as may be assigned to it under this Act or any other law.

(2) For the better performance of its functions, the Authority shall collaborate with other local and foreign bodies, Government departments, international organisations and other entities which exercise regulatory, supervisory or licensing powers under any law in Malta or abroad or which are otherwise engaged in overseeing or monitoring areas or activities in the financial services sector, and to make arrangements for the mutual exchange of information and for other forms of assistance in regulatory and supervisory matters.

(3) The Authority shall have the power to impose such fees as may be prescribed, and to levy charges in respect of any request, application or other matter that may be submitted to it under this or any other Act including the fees and charges in respect of any permission, licence, authorisation, exemption or other benefit, as well as fees and charges in respect of its regulatory, supervisory or investigative functions under this or any other law.

(4) In exercising its functions and powers assigned to it under this Act or any other Act, the Authority shall be obliged to have regard to Malta's international commitments. In this Act, "Malta's international commitments" shall have the same meaning assigned to the term under article 2 of the Investment Services Act.

The Authority.

5. (1) The main organs of the Authority are the Board of Governors, the Executive Co-Ordination Committee, the Supervisory Council, the Board of Management and Resources and the Legal Office.

(2) It shall be the duty of the organs of the Authority to provide the Board of Governors with all such information as may be required for the proper performance of its functions and in particular to enable it to ensure that its policies are being properly carried out.

The Board
of
Governors.

6. (1) The Board of Governors shall establish the policies to be pursued by the Authority. In determining such policies the Board of Governors shall follow such policy guidelines as may be set out by Government. The Board of Governors shall also be responsible for advising the Government as provided in section 4 of this Act and for advising the Minister under section 31 of this Act.

(2) The Board of Governors shall consist of the following:

(a) a Chairman, appointed by the Prime Minister;

(b) six other members appointed by the Prime Minister from among persons who have distinguished themselves in business, financial activities, the professions, the public services or academic affairs and who in his opinion are able to represent the points of view of the industry and consumers of financial services.

(3) A person shall not be eligible to be appointed as Chairman or as a member of the Board of Governors or of any other organ of the Authority, or to hold any office with the Authority, if he is the holder of a licence or other authorisation issued by the Authority or otherwise falls under the regulatory or supervisory functions of the Authority, or is a director, an officer or employee of such holder or other such person.

(4) Where the Chairman is absent or is unable to exercise the functions and powers of his office and the Prime Minister has not appointed another person to act as chairman during the period of absence or disability the remaining members of the Board of Governors shall designate one of the other members of the Board to carry out the functions of the chairman during each period.

(5) The Chairman and the members of the Board of Governors shall hold office for such term, being a period of not more than five years, as may be specified in the letter of

appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Minister may from time to time, determine.

(6) (a) Without prejudice to the provisions of subarticle (3) hereof a person shall not be eligible to be appointed or to hold office as Chairman or as a member of the Board of Governors if he -

(i) is a member of the House of Representatives;
or

(ii) is legally incapacitated or interdicted; or

(iii) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(iv) has contravened any provision made by or under any law appearing to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice concerned in the provision of financial services or in the management of companies; or

(v) has engaged in any business practice appearing to the Prime Minister to be deceitful or oppressive or otherwise improper (whether unlawful or otherwise) or which otherwise reflects discredit on his method of conducting business or professional activities; or

(vi) has engaged in or been associated with any other business practice or otherwise conducted himself in such a manner as to cast doubt on his competence or soundness of judgement; or

(vii) has a financial or other interest as is likely to prejudicially affect the discharge by him of his functions; or

(viii) is otherwise not a fit and proper person to hold that office.

(b) In determining whether a person is a fit and proper person, the Prime Minister shall have regard to that person's probity, to his competence and soundness of judgement for

fulfilling the responsibilities of that office, to the diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of any person are, or are likely to be, in any way threatened by his holding that office.

(c) Any person whom the Prime Minister has appointed or proposes to appoint as a member of the Board of Governors shall, whenever requested by the Prime Minister to do so, furnish to him such information as the Prime Minister considers necessary for the performance of his duties under subparagraphs (a) and (b) above.

(d) A member of the Board may be relieved of office by the Prime Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and for the purposes of this paragraph repeated and unjustified non-attendance of meetings may be deemed to amount to misbehaviour.

(e) Any member of the Board of Governors, may resign his office by letter addressed to the Prime Minister.

(f) The appointment of any person as a member of the Board of Governors and the termination of office or resignation of any such person, shall be notified in the Gazette.

Meetings of
the Board of
Governors.

7. (1) The Board of Governors shall meet as often as may be necessary or expedient but in no case not less frequently than once every three months. The meetings shall be convened by the Chairman either on his own initiative or on the written request of any three members.

(2) The Board of Governors may act notwithstanding any vacancy amongst its members provided there is a quorum consisting of not less than three members present at the meeting.

(3) The meeting of the Board of Governors shall be chaired by the Chairman, or in his absence by the acting Chairman, or by a member elected for the particular meeting by the other members present at the meeting.

(4) Decisions of the Board of Governors shall be taken by a majority of votes of the members present, and the

Chairman or other person chairing the meeting shall have an original vote and in the event of an equality of votes a second or casting vote.

(5) (a) The Board of Governors shall designate one of the officers of the Authority to act as Secretary to the Board of Governors for such period and as the Board of Governors shall deem appropriate.

(b) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board of Governors and to keep minutes of those meetings.

(6) Any participation in the proceedings of the Board of Governors by a person not entitled so to do, shall not invalidate the proceedings.

(7) Subject to the foregoing provisions of this section, the Board of Governors may regulate its own proceedings.

(8) The Board may invite any person and may require any officer or employee of the Authority to attend a meeting of the Board of Governors and to take part in the discussions.

Legal and
judicial
representation.

8. The legal and judicial representation of the Authority shall vest in the Chairman of the Board of Governors, or in such other person as the Board of Governors may determine for any specific case or class of cases:

Provided that the Board of Governors may from time to time appoint any one or more of its members, or any one or more of the officers or employees of the Authority, to appear in the name and on behalf of the Authority in any judicial proceedings or on any act, contract, instrument or other document whatsoever, or in any class or category thereof.

The
Executive
Co-
Ordination
Committee.

9. (1) The Executive Co-ordination Committee shall be responsible for co-ordinating the implementation of the policies of the Authority.

(2) The Executive Co-ordination Committee shall consist of the Chairman of the Board of Governors, who shall preside thereat, the Director-General and the Chief Operations Officer of the Authority.

(3) The Board of Governors shall designate one of the officers from the Legal Office to act as Secretary to the Executive Co-ordination Committee for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Executive Co-ordination Committee and to keep minutes of those meetings.

(5) The provisions of article 7 of this Act shall, in so far as applicable, apply to the meetings of the Executive Co-ordination Committee as they apply to the meetings of the Board of Governors.

The
Supervisory
Council.

10. (1) The Supervisory Council shall be responsible for the approval of and for the issuing of licences and other authorisations, for the processing of applications for such licences and authorisations, and for the monitoring and supervision of persons and other entities licensed or authorised by the Authority in the financial services sector.

(2) The Supervisory Council shall consist of the Director-General, who shall preside thereat, and of each of the Directors responsible respectively within the Authority for Banking Company Compliance, Insurance, Investment Services and for any other area of financial services under the regulatory supervision of the Authority.

(3) The Supervisory Council shall designate one of the officers of the Authority engaged in any of its functions mentioned in sub-article (1) as its Secretary for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparation for the meetings of the Supervisory Council and to keep minutes of those meetings.

(5) The provisions of article 7 of this Act shall, insofar as applicable, apply to the meetings of the Supervisory Council as they apply to the meetings of the Board of Governors.

The Board of
Management
and
Resources.

11. (1) The Board of Management and Resources shall be responsible for carrying out the day-to-day management and the finances of the Authority including business development and ancillary services and for the

general co-ordination of the Authority's administrative affairs, and shall be composed of the persons responsible for such activities within the Authority as may be designated by the Board of Governors.

(2) The Chief Operations Officer shall preside over the Board of Management and Resources.

(3) The Board of Management and Resources shall designate one of the officers of the Authority engaged in any of the activities mentioned in sub-article (1), to act as secretary of the Board of Management and Resources for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board and to keep minutes of those meetings.

(5) The provisions of article 7 of this Act shall, insofar as applicable, apply to the meetings of the Board of Management and Resources as they apply to the meetings of the Board of Governors.

The Legal
Office.

12. The Legal Office shall provide such legal advice and assistance and other services as the Board of Governors and the other organs of the Authority may require for the execution of their functions and duties.

Officers and
employees of
the
Authority.

13. (1) The Authority may appoint a Director General, a Chief Operations Officer, a Consumer Complaints Manager and such other officers and employees as it may consider necessary for the efficient discharge of its functions, powers and duties under this Act or any other law. The appointment of officers and other employees of the Authority other than the Director-General, the Chief Operations Officer and the Consumer Complaints Manager shall be made by the Executive Co-Ordination Committee on such terms and conditions as the Board of Governors may establish.

(2) For the purposes of the Criminal Code and of any provision of penal nature in any other law, the members of the Authority, and every officer or employee thereof, shall be deemed to be public officers.

Dissemination
of
information.

14. (1) The Authority shall arrange for the dissemination in such form and manner as it considers appropriate of such information and advice as it may consider expedient to give the public about matters relating to the exercise of its functions under this Act or any other enactment.

(2) In arranging for the publication of any such information or advice, the Authority shall have regard to the duty of professional secrecy and, as far as practicable shall refrain from publishing any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interest of that individual.

Compensa-
tion
Schemes.

15. Without prejudice to any provisions of other laws, the Minister may, acting on the advice of the Authority, make regulations to establish, co-ordinate, amalgamate and otherwise regulate compensation schemes or sub-schemes or other similar arrangements in the financial services sector:

(a) for the provision of compensation where licence holders, or categories thereof, are unable to satisfy their obligations towards depositors, investors, policy-holders or other claimants in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed or otherwise authorized, and

(b) for the provisions of compensation arising out of or in connection with any other liability as may be prescribed, and to regulate the management and the financing of any such schemes or arrangements for compensation and the contributions and levies to be paid thereto, and such regulations may make different provision for different classes of licence holders and claimants.

Powers of
the
Authority.

16. (1) Without prejudice to any other function and power under this or any other law, in the exercise of its functions and powers under this Act, the Authority shall have the right to request reasonable access to the business premises, offices, documentation and other information relating to the activities licensed or authorised by the Authority or otherwise falling under its supervisory or regulatory functions. The directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations

or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(2) The Authority may issue directives and guidelines regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions and such directives and guidelines may:

(a) 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

(b) prescribe the information that such persons are to submit to the Authority.

Exchange of
information.

17. (1) Other than for the proper discharge of their duties or functions under this or any other Act, or as may be otherwise provided in any other law, the members of the Board of Governors or of any other organ of the Authority, and the officers and employees of the Authority shall treat any information acquired in the discharge of their duties as confidential, and shall not, directly or indirectly, disclose such information to any other person, except with the consent of the person who had divulged the information.

(2) Notwithstanding the foregoing provisions of this article, the Authority may, pursuant to a written request, disclose information to:

(a) a foreign competent authority or body carrying out similar or equivalent functions in order to assist the same in matters related to the regulation and supervision of financial services;

(b) any other body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial or licensing function in terms of law;

Provided that the Authority shall disclose the requested information where required or requested to do so within the terms of Malta's international commitments, or where so required within the terms of understanding assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a Memorandum of Understanding concluded with the Competent Authority.

Communications
with the
Central Bank
of Malta. Cap.
204.

18. The Central Bank of Malta and the Authority shall on request exchange information in their possession which is necessary for the discharge by the Central Bank of its duties under the Central Bank of Malta Act, and by the Authority under this Act or any other law.

Consideration
of
complaints.

19. (1) The Authority may investigate any matter which:-

(a) relates to the functions exercisable by the Authority under this Act or any law, and

(b) is the subject of a representation (other than one appearing to the Authority to be frivolous) made to the Authority by or on behalf of a person appearing to the Authority to have an interest in that matter.

(2) Where the Authority has investigated any matter under this article, it shall prepare a report on that matter and (subject to any obligation with respect to professional secrecy) shall send a copy of any such report to such of the following persons as it thinks appropriate, that is to say:-

(a) any person to whom the report refers or who appears to the Authority to have an interest in the matter to which the report relates;

(b) any person whose functions under any enactment appear to the Authority to be exercisable in relation to that matter;

(c) any person who appears to the Authority to be a person who ought to take account of the report in determining how to act in relation to that matter.

Appointment
of a
Consumer
Complaints
Manager.

20. (1) The Authority shall appoint a Consumer Complaints Manager.

(2) It shall be the function of the Consumer Complaints Manager to investigate complaints from private consumers arising out of or in connection with any financial services transaction, and to refer such cases as may be necessary or appropriate to the Supervisory Council for its consideration; provided that nothing in this subsection shall be construed as giving a consumer a specific right to require the Consumer Complaints Manager to give him advice on any particular matter or to act on his behalf in any dispute with a licensed person before any court or tribunal, except to the extent, if any provided for by this or any other law.

(3) The Consumer Complaints Manager or any other duly authorised officer of the Authority may communicate to a consumer, whose complaint may have been investigated by the Authority, information concerning any matter which may have come to his cognisance in the course or as a result of the investigation.

Financial
Services
Tribunal.

21. (1) There shall be a tribunal to be called "The Financial Services Tribunal", in this Act also referred to as "the Tribunal", which shall exercise and perform the functions and powers assigned to it by law.

(2) The Tribunal shall consist of a chairman and two other members appointed by the Minister.

(3) The chairman shall be an advocate who for a period of, or periods amounting in the aggregate to, not less than twelve years has served as an advocate in Malta or served as a magistrate in Malta, or partly so practised and partly so served.

(4) Subject to any other provision in any other law related to the composition of the Tribunal or to the qualifications of its members, the two other members mentioned of the Tribunal shall be persons who in the opinion of the Minister possess the necessary expertise and experience in the business or regulation of financial services, or finance.

(5) The chairman and the other members of the Tribunal shall hold office for a period of three years, shall be eligible for re-appointment and may not be removed during

their term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(6) The chairman and other members of the Tribunal shall receive such remuneration as may be determined in their instrument of appointment.

(7) The remuneration referred to in subarticle (6) shall not be altered during the tenure of office of a member by whom it is receivable, except for such changes as may from time to time be required to preserve at all times during the tenure of the appointment the proportion of the remuneration to the salary of a judge of the superior courts, as existed on the date of the appointment.

(8) Upon the hearing of an appeal, made to it under any law, the Tribunal shall have the power –

(a) to confirm, reverse or vary the decision of the competent authority under the relevant law and to give directions within its powers under this Act or any other law to the said competent authority to implement the decision of the Tribunal;

(b) to require the production of any document or other information;

(c) to order the payment of costs and expenses by any party to the appeal.

(9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

Provided further that no appeal shall lie from any decision imposing a penalty not exceeding one hundred liri.

(10) The Tribunal shall have the power to summon witnesses and to administer the oath thereto, and to appoint any expert or experts as it may deem necessary for the determination of the case before it.

(11) An appeal to the Tribunal shall be made in writing explaining clearly the grounds for the appeal by not later than thirty days from the date the decision or act in question has been notified to the aggrieved person, and the Tribunal shall proceed to deal with any matter before it with utmost urgency and shall give its decision without delay.

(12) The Tribunal shall hold its sittings in public unless having regard to the nature of the matter before it, the Tribunal deems it fit and proper to conduct the proceedings or any part thereof behind closed doors; in any such case the decision of the Tribunal shall always be delivered in public.

(13) The Minister may make regulations governing the procedure for bringing and conducting appeals before the Tribunal, provided that in the absence of such regulations and subject to the rules of natural justice, the Tribunal shall regulate its own procedure.

(14) An appeal on a question of law only from a decision of the Tribunal shall lie to the Court of Appeal. In the determination of such an appeal, the Court of Appeal shall have all the powers of the Tribunal to make orders.

(15) The Minister responsible for Justice may by regulations made under this subsection establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals to the Court of Appeal under this article:

Provided that until such fees are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

(16) In this article, "competent authority" refers to a competent authority appointed in terms of any law relating to financial services.

Financial
Provisions.

22. The revenue of the Authority shall consist of:

(a) income derived in respect of licences, authorisations and registrations and other fees or charges payable under this Act or any other law in respect of which the Authority exercises registration, supervisory, regulatory or similar functions;

(b) rents, interest and profits accruing from property, deposits and other assets of the Authority;

(c) any other money receivable or received by the Authority.

Estimates
and
Expenditure.

23. (1) The Executive Co-ordination Committee shall cause to be prepared in respect of each financial year and shall not later than six weeks after the end of the previous financial year prepare for adoption by the Board of Governors, within six weeks of presentation with or without amendments, estimates of the income and expenditure of the Authority for that financial year.

(2) In the preparation of such estimates the Authority shall endeavour to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its income and expenditure account, including, but, without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board of Governors may direct.

(4) Notwithstanding the provisions of subarticle (1) of this article, if in respect of any financial year, it is found that the amount approved by the Board of Governors is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Executive Co-ordination Committee may adopt supplementary estimates for approval by the Board of Governors and, in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

Other Powers
of the
Authority.

24. (1) The Authority may:

(a) hold accounts with any bank;

(b) invest any of its liquid assets in short and medium term first class securities as approved by the Board of Governors;

(c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

(2) For the purpose of carrying out of its functions under this Act, the Authority may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such conditions as the Minister, may in writing approve."; and

"Accounts
and
Audit.

27. (1) The Authority shall cause to be kept proper books of accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Authority shall be audited by auditors appointed by the Board of Governors from among persons who are qualified to be appointed as auditors of a company.

Authority's
reporting
duties to
the House.

28. The Authority shall, as soon as may be but not later than three months after the close of each financial year, transmit to the House, through the Minister, a copy of its annual accounts certified by the auditors together with a report on its activities during the previous year.

Exemption
from
liability.

29. The Authority, the Board of Governors, the Executive Co-Ordination Committee, the Supervisory Council, the Board of Management and Resources, the Legal Office and the officers and employees of the Authority shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Exemption
from taxes.

30. The Authority shall be exempt from any liability for the payment of income tax, duty on transfers and documents, and customs and excise duty, under any law for the time being in force."

107. (1) The Authority established by article 3 of the principal Act as amended by this part shall continue in the personality of the Malta Financial Services Centre as established by the principal Act as in force immediately before the coming into force of this part and accordingly shall succeed to all its rights and obligations.

(2) All licences, warrants, approvals, authorisations, appointments, notices, decisions or other acts made or taken by the Malta Financial Services Centre before the coming into force of this Part shall be deemed to have been made or taken by the Malta Financial Services Authority, and any reference in any law to the Malta Financial Services Centre shall be deemed to be a reference to the Malta Financial Services Authority established under article 3 of the principal Act as amended by this Act.

(3) The Tribunal established by section 21 of the principal Act as amended by this Part shall be a continuation of the Financial Services Tribunal set up under the Banking Act and any reference in any law to the said Tribunal established under the Banking Act shall be deemed to be a reference to the Tribunal established under article 21 of the principal Act as amended by this Part. All decisions and acts taken or made by the Tribunal established under the Banking Act shall be deemed to be decisions or acts taken or made by the Tribunal established under the principal act as amended by this Act and all proceedings pending before the Tribunal established under the Banking Act shall continue to be heard by the Tribunal as established by the principal Act as amended by this Act. The appointment of the members of the Tribunal established under the Banking Act shall continue in force as if made under the principal Act, provided that any appointment so made shall expire on the date on which it would have originally expired.

(4) The provisions of the principal Act as in force immediately before the coming into force of this Part shall continue to regulate the matters contained and referred to therein with respect to offshore companies and to nominees until such time as the Minister responsible for Finance, acting on the advice of the Malta Financial Services Authority established by article 3 of the principal Act by notice in the Gazette under the authority of this subarticle, otherwise prescribes; and such provisions shall continue to apply as if any reference therein to the Centre were a reference to the Authority, and any reference therein to the Committee or to the Executive Committee were each a reference to the Supervisory Council appointed under the principal Act as amended and as if reference therein to the Chief Executive were a reference to the Director-General appointed under the principal Act as amended.

(5) Any person enjoying a privilege, exemption or any other benefit under the provisions of the principal Act as in force prior to the coming into force of this part shall, unless in accordance with such provisions such privilege, exemption or benefit was to cease at an earlier date, continue to enjoy the same until such time as the Minister responsible for Finance by notice in the Gazette under the authority of this subarticle otherwise directs.

(6) Notwithstanding the provisions of subarticles (4) and (5) hereof the Minister may by regulations made under the authority of this subarticle substitute the fees contained in the First Schedule to the principal Act as in force immediately before the coming into force of this Act:

Provided that he may not unless authorised by resolutions of the House increase any such fees by more than a hundred per centum. ”.

PART VI

AMENDMENT OF MALTA STOCK EXCHANGE ACT, CAP. 345

Amendment of
Malta Stock
Exchange Act,
Cap 345.

108. (1) This Part amends and shall be read and construed as one with, the Malta Stock Exchange Act, hereinafter in this part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for Finance may by Order in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Renaming and
renumbering of
parts of the
principal Act.

109. (1) The headings of the Parts of the principal Act, that is Part I Preliminary, Part II Constitution, Functions and Composition of the Exchange, Part III The Malta Stock Exchange Tribunal, Part IV Financial Provisions and Part V Miscellaneous, shall be renumbered and renamed as follows:

- (a) “Part I Preliminary”
- (b) “Part II Recognised Investment Exchanges”
- (c) “Part III Listing Authority”
- (d) “Part IV The Malta Stock Exchange”
- (e) “Part V Regulatory and Investigatory Powers”
- (f) “Part VI Financial Services Tribunal” and
- (g) “Part VII Miscellaneous”.

(2) The various headings as renumbered and renamed in subarticle (1) shall appear respectively as follows:

- (a) the heading in paragraph (a) before article 1;
- (b) the heading in paragraph (b) before article 3;
- (c) the heading in paragraph (c) before article 11;
- (d) the heading in paragraph (d) before article 24;
- (e) the heading in paragraph (e) before article 32;
- (f) the heading in paragraph (f) before article 42; and
- (g) the heading in paragraph (g) before article 45.

(3) References to articles in subarticle (2) are references to articles of the principal Act as renumbered or introduced by this Part of this Act.

110. (1) Articles 6, 9, 10, 13 to 26, 29, 32, 34 and 37 of the principal Act shall be deleted.

Deletion and renumbering articles of the principal Act.

(2) Articles 3, 4, 5, 7, 8, 12, 27, 28, 30 and 31 of the principal Act shall be renumbered as articles 24, 25, 26, 28, 29, 38, 30, 31, 48 and 50 respectively and shall be transposed in the principal Act, in their proper numerical sequence in accordance with their renumeration.

111. In the long title to the principal Act for the words "To establish the Malta Stock Exchange and to regulate its functions" there shall be substituted the words "To regulate Investment Exchanges and".

Amendment of long title to the principal Act.

112. In article 1 of the principal Act, for the words "The Malta Stock Exchange Act" there shall be substituted the words "The Financial Markets Act".

Amendment of article 1 of the principal Act.

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

Amendment of article 2 of the principal Act.

(a) for the definition "bye-laws" there shall be substituted the following:

" "Bye-Laws" means the Bye-laws made in terms of article 28 of this Act;";

(b) immediately after the definition "Central Bank" there shall be inserted the following definitions:

" "Central Securities Depository" means the depository established by the Exchange in accordance with its Bye-Laws;";

“Chairman” means the chairman of the Exchange;”;

(c) for the definition “company” there shall be substituted the following:

“ “company” includes:

(i) a public company formed and registered in accordance with the Companies Act (Cap 386); and

(ii) a company constituted or incorporated or to be constituted or incorporated outside Malta, irrespective of whether the company has or has not established a place of business in Malta;”;

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

“ “Competent Authority” means the person or body as the Minister shall by notice in the Gazette appoint to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.”;

(e) in the definition “Council” for the word “4” there shall be substituted the word “25”;

(f) the definition “Governor” shall be deleted;

(g) in the definition “insider dealing” for the words “Insider Dealing Act” there shall be substituted the words “Insider Dealing and Market Abuses Offences Act”;

(h) in the definition “inspector” for the word “16” there shall be substituted the word “33”;

(i) immediately after the definition “inspector” there shall be inserted the following definitions:

“ “licence holder” means a person who holds a licence under the Investment Services Act ;

“Listing Authority” means such person or body appointed by the Minister by notice in the Gazette to be the Listing Authority, for the purposes of article 11 of this Act,

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;

"Listed company" means a company whose securities have been admitted to listing on a recognised investment exchange in accordance with this Act;

"Listed securities" or "quoted securities" means securities which have been admitted to listing on a recognised investment exchange in accordance with this Act;

"market abuse" means conduct amounting to an offence of market abuse under the Insider Dealing and Market Abuse Offences Act;";

(j) for the definition "members" there shall be substituted the following:

" "members" in relation to a recognised investment exchange means the members of that recognised investment exchange;";

(k) immediately after the definition "Minister" there shall be inserted the following new definition:

" "Official List" means the list prepared and published by the Exchange as its official list in accordance with its Bye-Laws;";

(l) in the definition "orderly" for the words "dealing rules" there shall be substituted the words "Bye-Laws";

(m) in the definition "quoted company" for the words "dealing on the Exchange in accordance with the listing requirements, as may be specified in the Bye-Laws" there shall be substituted "listing and trading on a recognised exchange in accordance with the provisions of this Act";

(n) the definition "quoted securities" shall be deleted;

(o) immediately after the definition "quoted company", there shall be inserted the following definition:

“Recognised List” means a list prepared and published by a recognised investment exchange in accordance with the Bye-Laws of such recognised investment exchange;”;

(p) in the definition “related company” immediately after the words “by that company” there shall be inserted the words “its holding company;”;

(q) in the definition “securities” for the words “a company” there shall be substituted the words “a commercial partnership;”;

(r) the definition “special inspector” shall be deleted;

(s) in the definition “statute” for the words “article 7” there shall be substituted the words “article 28”;

(t) for the definition “stockbroker” there shall be substituted the following:

Cap. 370.

“stockbroker” means any licence holder authorised by the Competent Authority under the Investment Services Act to carry out the functions of broker for the purchase or sale of quoted securities; provided that any stockbroker’s licence issued by the Council of the Malta Stock Exchange shall continue in force until renewed or revoked by the Competent Authority under the Investment Services Act;”;

(u) in the definition “trading” for the word “securities” there shall be substituted the words “quoted securities”; and

(v) for the definition “tribunal” there shall be substituted the following:

Cap. 330.

“tribunal” means the Financial Services Tribunal established under article 21 of the Malta Financial Services Authority Act;

Provided that for the purposes of procedures under this Act the members of the tribunal appointed under article 21 of that Act shall be substituted by persons appointed by the Minister under this article being persons who in the Minister’s opinion possess the necessary expertise and experience to deal with such cases, and the other provisions of the said article 21 of the said Act shall apply to the members appointed under this article in the same manner and extent as they apply to the members substituted by them.”.

114. Immediately after article 2 of the principal Act, there shall be inserted the following new articles 3 to 23:-

Addition of
new articles
3 to 23 to the
principal Act.

"Require-
ments for
recognition.

3. 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 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;

(b) the requirements including reporting requirements and conditions which a recognised investment exchange must continue to satisfy if it is to remain a recognised investment exchange;

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

(d) rules for the regulation and supervision of recognised investment exchanges;

(e) arrangements for the investigation of complaints about recognised investment exchanges;

(f) the functions of the Tribunal with respect to proceedings under the rules of a recognised investment exchange by persons subject to such rules;

(g) arrangements for the scrutiny of rules and practices of recognised investment exchanges and for preventing restrictive practices in terms of the Competition Act and any rules, regulations or directives made thereunder;

Cap. 379.

(h) categories of transactions that are to be carried out exclusively on a recognised investment exchange and the circumstances in which investors may be exempted therefrom;

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

Application
for
recognition.

4. (1) (a) No person shall provide, or hold itself out to provide the services of an investment exchange in or from within Malta unless such person is in possession of a recognition order.

(b) Any body corporate or unincorporate may apply to the Competent Authority for a recognition order under this Part of the Act declaring it to be a recognised investment exchange for the purposes of this Act.

(2) An application under subarticle (1) shall be made in such manner as the Competent Authority may direct and shall be accompanied by a copy of the applicant's rules or bye-laws.

(3) The Competent Authority may issue directives setting out -

(a) the manner and form in which an application is to be made;

(b) the particulars and such other matters which are to be set out by an applicant;

(c) such further information as the Competent Authority may reasonably require for the purpose of determining the application;

(d) any other matter incidental to or connected with any of the above.

(4) Information which the Competent Authority may require in connection with an application shall be provided in such form, and shall be verified in such manner, as the Competent Authority may direct.

(5) Different directives may be issued by the Competent Authority under subsection (3) of this section with respect to different classes or categories of applications.

(6) In determining an application the Competent Authority may have regard to any information which it considers relevant to the application.

(7) The Competent Authority may on an application duly made in accordance with subarticles (1) and (2) and

subject to any directives issued under article 4 (3) make or refuse to make a recognition order.

(8) A recognition order shall state the date on which it shall take effect.

(9) Where the Competent Authority refuses an application for a recognition order it shall give the applicant a notice to that effect stating the reasons for the refusal.

(10) If the Competent Authority refuses an application for a recognition order the applicant shall have a right of appeal to the Tribunal in accordance with section 43 of this Act.

(11) A recognition order may, in accordance with such regulations as may be prescribed, be varied, suspended or revoked by the Competent Authority.

Directives.

5. (1) The Competent Authority may issue directives requiring a recognised investment exchange to give it -

(a) notice of such events relating to that recognised investment exchange as may be specified by the Competent Authority; and

(b) such information in respect of those events as may be specified by the Competent Authority;

(c) such other information relating to that recognised investment exchange, at such times or in respect of such period as may be specified by the Competent Authority.

(2) Any directives issued by the Competent Authority may require information to be given in a specified form and to be verified in a specified manner.

(3) The Competent Authority may issue directives for the better regulation of recognised investment exchanges.

Non-application or Modification of directives.

6. (1) The Competent Authority may direct that any of the directives issued under article 5 of this Act are not to apply in respect of any recognised investment exchange or are to apply to such recognised investment exchange with such modification as may be specified in the directive, if it is satisfied that -

(a) compliance by the recognised investment exchange with the directives, or with the directives as unmodified, would be unduly burdensome or would not achieve the purpose for which the directives were made; and

(b) the non-application or modification of the directive as aforesaid would not result in undue risk to persons whose interests such directives are intended to protect.

(2) A directive issued by the Competent Authority under subarticle (1) of this article may be made subject to such conditions as the Competent Authority may deem fit.

Supervision. 7. (1) The Competent Authority may, whenever it appears that a recognised investment exchange -

(a) has failed, or is likely to fail, to satisfy the requirements for recognition in or under this Act; or

(b) has failed to comply with any other obligation imposed on it by or under this Act,

issue such directives as it may deem appropriate in the circumstances -

(i) for the purpose of securing the body's compliance with such requirements or any obligation imposed by or under this Act;

(ii) requiring anything to be done or to be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement whatsoever.

(2) The power to issue directives under this section includes the power to make such directives subject to such conditions as the Competent Authority may deem fit as well as the power to amend, revoke or substitute any such directive.

Revocation
of
recognition
order.

8. (1) A recognition order may be revoked by an order made by the Competent Authority at the request, or with the consent of the recognised investment exchange concerned or otherwise as provided in this Act.

(2) If it appears to the Competent Authority that a recognised investment exchange -

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

(b) is failing or has failed, to comply with any other obligation imposed on it by or under this Act,

it may make an order revoking the recognition order for that body even though the body does not wish or does not consent to the revocation of the recognition order.

(3) An order under subarticles (1) and (2) of this article revoking a recognition order hereinafter referred to as a "revocation order" shall specify the date on which it is to take effect.

(4) In the case of a revocation order made under subarticle (2) of this article the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.

(5) A revocation order may contain such transitional provisions as the Competent Authority deems necessary or expedient.

Notice of
directive
or
revocation.

9. (1) Before issuing a directive under article 7, or before making a revocation order under article 8 (2), the Competent Authority shall -

(a) give written notice of its intention so to do to the recognised investment exchange concerned; and

(b) take such steps as it considers reasonably practicable to bring the notice to the attention of any other persons who are, in its opinion, likely to be affected.

(2) A notice under subarticle (1) shall

(a) state the reasons why the Competent Authority intends to issue the directive or make the revocation order; and

(b) draw attention to the right to make representations conferred by subarticle (3).

(3) Before the end of the period for making representations

(a) the recognised investment exchange; and

(b) any other person who is likely to be affected by the proposed revocation order and notified in terms of paragraph (b) of subarticle (1)

may make representations to the Competent Authority.

(4) The period for making representations is -

(a) two (2) months beginning -

(i) with the date on which the notice is served on the recognised investment exchange in the case of the recognised investment exchange, or

(ii) with the date on which the notice is brought to the attention of any other persons notified in terms of paragraph (b) of subarticle (1) of this article in the case of such other persons.

(b) such longer period stated in the notice as the Competent Authority may deem fit to allow in the particular case.

(5) In deciding whether to issue a directive or make a revocation order, the Competent Authority shall have regard to any representations made in accordance with subarticle (3).

(6) If the Competent Authority decides to issue the proposed directive or to make the proposed revocation order it shall:

(a) give the recognised investment exchange written notice of its decision; and

(b) where it decides to issue the directive or to make the order, take such steps as it considers reasonably practicable for bringing its decision to the attention of any other persons who are, in the Competent Authority's opinion, likely to be affected thereby.

Notification
of intended
action.

10. A recognised investment exchange intending to take any of the following actions shall notify the Competent Authority in writing and the consent of the Competent Authority shall be required before a recognised investment exchange may lawfully:

- (a) alter or revoke any of its rules or bye-laws; or
- (b) make or issue new rules or bye-laws; or
- (c) make a change in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange concerned or in the criteria which it applies when determining to whom it will provide clearing services.

Constitution
and
functions of
the
Listing
Authority.

11. There shall be a Listing Authority having the following functions:

- (a) to authorise the admissibility of such securities as it considers appropriate to the Official List and to any other Recognised List;
- (b) to make rules ("listing rules") for the purposes of this Part of the Act;
- (c) to ensure compliance with any requirements or conditions set out in listing rules for listed securities to remain listed;
- (d) to make any other rules that it is empowered to make under this Part of the Act.

Admissibility
to
listing.

12. (1) (a) Without prejudice to paragraph (b) hereof, no securities may be admitted to listing and trading on the Official List or on any other Recognised List unless the Listing Authority shall have first authorised the admissibility of such securities to listing in accordance with any rules made under article 13 of this Act:

(b) The Minister may by regulations provide that any securities which fall within a description or category specified in such regulation shall not be admissible to listing on the Official List or on any other Recognised List.

(2) 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 such securities as may be considered appropriate and -

(a) which have been authorised as admissible to listing by the Listing Authority; and

(b) which do not fall within a description or category specified in any regulation made by the Minister under paragraph (b) of subarticle (1) as not being admissible to the Official List or to any other Recognised List:

Provided that with the consent of the Listing Authority the Exchange and every recognised investment exchange may admit to listing securities which are not traded.

Listing rules.

13. The Listing Authority may make listing rules:

(a) setting out the requirements and conditions which must be satisfied by a person making an application for its securities to be authorised as admissible to the Official List or to any other Recognised List;

(b) setting out the requirements and conditions the applicant must continue to satisfy if its listed securities are to remain listed on any of such lists;

(c) setting out the manner and form in which an application for admissibility to listing must be made to the Listing Authority and any fees payable in connection therewith;

(d) setting out the form of and information required to be set out in any listing particulars, prospectus or other document to be submitted to the Listing Authority in accordance with any listing rules made hereunder;

(e) setting out the registration requirements in respect of any listing particulars, prospectus or other documents to be published in accordance with any listing rules made hereunder;

(f) requiring in such circumstances as may be set out in the Rules the publication of advertisements or other information in connection with applications for the admissibility to listing or admission to listing and trading of securities on the Official or on any Recognised List;

(g) setting out regulatory, investigatory, disciplinary and enforcement powers of the Listing Authority, the Exchange and other recognised investment exchanges in relation to issuers of listed securities;

(h) setting out, without prejudice to the provisions of articles 17 and 18 of this Act, the penalties for the breach of listing rules that may be imposed by the Listing Authority under article 19 of this Act;

(i) anything that is incidental to or connected with any of the matters above as the Listing Authority may consider appropriate.

Listing
Committee.

14. (1) The Listing Authority may establish a committee, hereinafter referred to as the "Listing Committee", to which it may delegate any of its functions and powers under this Part:

Provided that the Listing Authority may not delegate its power:

(a) to grant or refuse authorisation for admissibility to listing under this Part of the Act;

(b) to discontinue the listing of any securities under this Part of the Act.

(2) The Listing Committee shall be composed of such persons and have such powers and observe such rules of procedure as set out in the instrument setting it up.

(3) The Listing Authority may vary, amend or substitute any instrument setting up the Listing Committee.

Listing.

15. (1) An application for admissibility to listing shall be made to the Listing Authority in such manner as may be required by the listing rules.

(2) No application for admissibility to listing may be entertained by the Listing Authority unless it is made by, or with the consent of, the issuer of the securities concerned.

(3) The Listing Authority shall not authorise admissibility to listing unless it is satisfied that -

(a) the requirements of any applicable listing rule, and

(b) any other requirements imposed by the Listing Authority in relation to the application,

are complied with.

(4) An application for admissibility to listing shall be refused if the Listing Authority considers that granting it would be detrimental to the interests of investors.

Notification
of
decision.

16. (1) The Listing Authority shall notify the applicant of its decision to accept an application for admissibility to listing -

(a) before the end of the period of 40 days beginning with the date on which the application is received; or

(b) if within that period the Listing Authority has required the applicant to provide further information in connection with the application, before the end of the period of 40 days beginning with the date on which that information is provided.

(2) If the Listing Authority fails to notify the applicant in accordance with subarticle (1), it shall be deemed to have sent an advance notice in writing as provided in subarticle (4).

(3) If the Listing Authority decides to authorise admissibility to listing it shall give the applicant written notice accordingly.

(4) If the Listing Authority proposes to refuse authorisation for admissibility to listing, it shall give the applicant advance notice in writing of its intention to refuse the application stating the reasons for its proposed refusal and drawing the applicant's attention to its rights to make representations in accordance with subarticle (5).

(5) An applicant who has received advance notice in writing of the Listing Authority's intention to refuse authorisation for admissibility to listing may make representations to the Listing Authority -

(a) within one month from the date on which the advance notice is served on the applicant; or

(b) within such longer period to be stated in the advance notice in writing as the Listing Authority may deem fit to allow in the particular case.

(6) If the Listing Authority decides to refuse an application for admissibility to listing it must give the applicant notice of its decision in writing stating the reasons for its refusal and drawing the applicant's attention to its right to refer the matter to the Tribunal.

(7) If the Listing Authority decides to refuse an application for admissibility to listing the applicant shall have a right of appeal to the Tribunal in accordance with article 43 of this Act.

Discontinu-
ation
or
suspension.

17. (1) (a) The Listing Authority may, in accordance with the listing rules, and whether of its own motion or at the request of the Exchange or another recognised investment exchange on which any securities have been admitted to listing and trading, discontinue or suspend the listing of such securities if it is satisfied that there are circumstances which warrant such suspension or discontinuance.

(b) The provisions of this subsection shall be without prejudice to the power of the Exchange or any recognised investment exchange on which any securities are listed to suspend the listing of any such securities in accordance with its rules if there is reason to believe that this is the interest of the Exchange or the other recognised investment exchange as the case may be or the public or investors generally:

Provided that a suspension ordered by the Exchange or another recognised investment exchange on which the securities concerned are listed may not without the approval of the Listing Authority be for more than ten working days in any period of three months:

Provided further that the provisions of sub-articles (2) and (3) and of article 18 of this Act shall apply mutatis mutandis to any suspension ordered by the Exchange or another recognised investment exchange on which the securities concerned are listed and the rules of every recognised investment exchange shall state that the provisions of sub-sections (2) and (3) and of section 18 of this Act shall apply mutatis mutandis to any suspension ordered by that recognised investment exchange.

(2) If the listing of any securities is suspended under subarticle (1) such securities may still be treated as being listed for such purposes as may be set out in listing rules.

(3) If the Listing Authority discontinues or suspends the listing of any securities, the issuer shall have a right of appeal to the Tribunal in accordance with section 43 of this Act.

Notice of
discontinuation
or
suspension.

18. (1) If the Listing Authority -

(a) proposes to discontinue or suspend the listing of securities, or

(b) decides to suspend the listing of securities with immediate effect,

it must give the issuer of such securities written notice.

(2) The discontinuance or suspension of the listing of securities takes effect immediately or on such date as may be specified in the notice under subarticle (1).

(3) A notice given under subarticle (1) shall -

(a) give details of the discontinuance or suspension;

(b) state the Listing Authority's reason for the discontinuance or suspension, provided that the interest of the Exchange or of any recognised investment exchange or the interest of the public or the investors shall constitute sufficient reason;

(c) inform the issuer of securities that he may make representations to the Listing Authority within such period as may be specified in the notice; and

(d) inform the issuer of the date on which the discontinuance or suspension will take effect or of the date on which the suspension took effect if the notice under subarticle (1) of this article states that suspension is to take place with immediate effect:

Provided that the obligation to give notice of a decision to suspend the listing of securities and the right of the issuer to make representations in relation thereto shall be without prejudice to the power of the Listing Authority to suspend the listing of any securities with immediate effect.

(4) The Listing Authority may extend the period within which representations may be made to it.

(5) If having considered any representations made by the issuer of the securities the Listing Authority decides -

(a) to discontinue or suspend the listing of the securities, or

(b) if the suspension has taken effect, not to cancel it,

the Listing Authority shall give the issuer of the securities written notice of its decision.

(6) If the Listing Authority decides to discontinue or suspend the listing of securities, or if the suspension has taken effect, not to cancel it, the issuer of the securities concerned shall have a right of appeal to the Tribunal in accordance with article 43 of this Act and a notice given under subarticle (5) shall inform the issuer of his right to refer the matter to the Tribunal.

(7) The effect of cancelling a discontinuance is that the securities concerned are to be re-admitted to the Official List or such other Recognised List on which the securities concerned have been admitted to listing.

Penalty or
censure in
respect
of
contraventions.

19. (1) If the Listing Authority considers that -

- (a) an issuer of listed securities, or
- (b) an applicant for admissibility to listing;

has contravened any provision of listing rules, it may, without recourse to a court hearing, impose on such issuer or applicant as the case may be, an administrative penalty not exceeding twenty thousand liri.

(2) Whenever the Listing Authority is entitled to impose a penalty on a person under this article in respect of a particular matter, it may, in addition to, or instead of, imposing a penalty on him in respect of that matter, publish a statement censuring such person.

(3) Nothing in this article shall prevent the Listing Authority from taking any other steps which it has power to take under this Part of the Act.

(4) A penalty under this article is payable to the Listing Authority as a civil debt.

(5) The Listing Authority may not take action against any issuer, applicant or person under this article after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that issuer, applicant or person, in respect of the contravention were begun before the end of that period.

(6) For the purposes of subarticle (5) -

(a) the Listing Authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and

(b) proceedings against a person in respect of a contravention are to be deemed to have begun when a notice is given to him under article 20 of this Act.

Notice of
penalty
or censure.

20. (1) If the Listing Authority proposes to take action against any issuer, applicant or person under article 19 of this Act it shall give such issuer, applicant or person a notice to this effect, stating the reason for such action, and the person receiving such notice shall have the right to make representations in writing to the Listing Authority within fifteen days from receipt of such notice.

(2) A notice about a proposal to impose a penalty must state the amount of the penalty proposed.

(3) A notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) A notice about the imposition of a penalty must state the amount of the penalty.

(5) A notice about the publication of a statement must set out the terms of the statement.

(6) If after hearing such representations the Listing Authority decides to take action against any issuer, applicant or person under article 19, such issuer, applicant or person shall have a right of appeal to the Tribunal under article 43 of this Act.

Regulatory
and
Investigatory
powers
of the
Listing
Authority.

21. In the fulfilment of its functions to ensure compliance with any requirements or conditions for listed securities to remain listed, the Listing Authority shall have, mutatis mutandis, the regulatory and investigatory powers of the Competent Authority in terms of articles 32, 33 and 34 of this Act.

Delegation
of
powers.

22. The Listing Authority may delegate any of its powers under article 19 of this Act and under listing rules made pursuant to paragraphs (b) and (c) of article 13 to the Exchange or to such other recognised investment exchange in relation to any securities listed on the Exchange or on the other recognised investment exchange concerned;

Provided that:

(a) if the Listing Authority delegates any of its powers to impose an administrative penalty or, to publish a statement of censure under subarticles (1), (2) and (3) of article 19 to the Exchange or the other recognised

investment exchange concerned subarticle (4) of article 19 and article 20 shall apply mutatis mutandis to the Exchange or to the other recognised investment exchange concerned -

(b) any penalty imposed under article 19 of this Act shall, in all cases, be payable to the Listing Authority unless the Listing Authority otherwise consents in writing:

Provided further that if the Listing Authority delegates any of its powers under sub-articles (1), (2) and (3) of article 19 as aforesaid neither the Listing Authority nor the Exchange or other recognised investment exchange concerned to which such powers have been delegated may take action against any issuer, applicant or person after the end of the period of two years beginning with the first day on which either the Listing Authority or the Exchange or recognised investment exchange concerned as the case may be, knew of the contravention unless proceedings against that issuer, applicant or person, in respect of the contravention were begun before the end of that period.

Non Liability
for
acts done in
good faith.

23. Neither the Listing Authority nor any committee, officer or employee thereof, nor any person appointed to perform any functions thereby shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions of the Listing Authority under this Act, unless the act or omission is shown to have been done in bad faith."

Amendment of
article 24
of the principal
Act.

115. Article 24, as renumbered, of the principal Act shall be amended as follows:

(a) subarticles (2) to (4) thereof shall be renumbered as subarticles (3) to (5) respectively;

(b) immediately after subarticle (1) thereof there shall be inserted the following sub-article (2):

"(2) The Exchange shall, for all intents and purposes of this Act and of any other law, be deemed to be a body in respect of which the Competent Authority has issued a recognition order in terms of Part II of this Act, and any reference in this Act to a recognised investment exchange

shall unless the context otherwise requires, be deemed to be a reference also to the Exchange:

Provided that nothing in this subarticle shall be deemed to exempt the Exchange from the provisions of this Act, and provided further that the Exchange shall at times be in possession of the requirements for recognition under this Act.”; and

(c) in subarticle (4) as renumbered:

(i) for the words “shall have the sole and exclusive authority in Malta” there shall be substituted the words “shall have authority”;

(ii) for paragraph (b) thereof, there shall be substituted the following paragraphs (b), (c), (d) and (e)

“(b) to provide the place to be known as “the Borza” for the trading of quoted securities;

(c) to provide facilities for the maintenance of a central securities depository;

(d) to perform all other functions as are customarily performed by a recognised investment exchange;

(e) to do all such things as may be necessary or incidental for the proper functioning of the Exchange.”; and

(iii) the proviso thereto shall be deleted.

116. Article 26, as renumbered, of the principal Act shall be amended as follows:

Amendment of article 26 of the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof;

(b) in subarticle (1) thereof as renumbered:-

(i) for the words “by this Act” there shall be substituted words “by this Part of this Act”;

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

“(b) promote and sustain an orderly, equitable and visible securities market on the Exchange;”;

(iii) paragraph (c) to (j) and paragraphs (l) to (p) thereof shall be deleted;

(iv) paragraph (k) shall be renumbered as paragraph (c);

(v) paragraphs (q) and (r) shall be renumbered as paragraphs (d) and (e) respectively; and

(vi) for paragraph (d) as renumbered there shall be substituted the following:

“(d) to perform all other functions as are necessary to establish a market in quoted securities on the Exchange;” and

(c) immediately after subarticle (1) thereof as renumbered there shall be added the following subarticles (2) and (3):-

“(2) The Council may delegate all or any of its functions under this Part of the Act to the Executive Committee established in accordance with the Statute or to any Committee established by the Council in accordance with the Statute.

(3) The Council may at any time resume all or any of the functions transferred to the Executive Committee or to any other Committee under the provisions of subsection (2) of this article”.

Addition
of new article
27 to the
principal
Act.

117. Immediately after article 26 as renumbered, of the principal Act, there shall be added the following article 27:

“Enforcement. 27. The Council shall, without prejudice to any of the provisions of this Act, or of any regulations or directives made thereunder, have such disciplinary and enforcement powers as are set out in the Statute.”.

118. Article 28, as renumbered, of the principal Act shall be amended as follows:

Amendment
of article
28 of the
principal
Act.

(a) in subarticle (1) thereof, immediately after the words "of this Act" there shall be inserted the words "and of any regulations or directives made thereunder";

(b) in subarticle (2) thereof:

(i) for the words "and the statute, the Council shall have the power to make such bye-laws not inconsistent with the Act or statute" there shall be substituted the words ", and any regulations or directives made thereunder and of the Statute, the Council shall, with the approval of the Competent Authority, have the power to make such bye-laws not inconsistent with the Act, or any regulation or directive made thereunder or with the Statute"; and

(ii) the words from "A copy of such bye-laws" to the words "at all reasonable times." shall be deleted; and

(c) immediately after subarticle (2) thereof, there shall be added the following subarticles:

"(3) Without prejudice to the provisions of Part V of this Act, to the provisions of articles 17 and 19 of this Act and to any sanctions as may be set out in listing rules in accordance with paragraph (i) of article 13 of this Act, the Bye-Laws may set out such rules as the Council may deem fit for the investigation and sanction of breaches of the Bye-Laws.

(4) A copy of such Bye-laws shall be kept by the Exchange, and shall be available to the public for inspection. Maintenance of the Bye-laws on line shall constitute sufficient publication for the purposes of this Act.

(5) Any reference in this Act to any rules or bye-laws of a recognised investment exchange shall be deemed to include a reference to the Statute and the bye-laws of the Exchange."

119. Article 29, as renumbered of the principal Act shall be amended as follows:

Amendment of
article 29 of
the principal Act.

(a) subarticle (2) thereof shall be renumbered as subarticle (3);

(b) for subsection (1) thereof there shall be substituted the following subarticles (1) and (2):

“(1) The Minister may, acting on the recommendation of the Competent Authority make such regulations as he may deem fit to give effect to the provisions of this Part of the Act, and without prejudice to the generality of the foregoing may, by such regulations amend, substitute or revoke the Schedule to this Act.

(2) The Minister may refer to the Competent Authority such matters concerning the Exchange for its consideration as he may deem fit and may refer back to the Competent Authority any recommendation received from it for further consideration.”; and

(c) in subarticle (3) thereof as renumbered:-

(i) for the words from “as it may deem fit”, there shall be substituted the words, “with the approval of the Competent Authority”;

(ii) for the words from “A copy of such amendment” to the words “of this Act” there shall be substituted the words “A copy of such amendment substitution or revocation shall be kept in the manner as is provided in article 28 (4).”; and

(iii) the words from “The bye-laws” to the words “of the House” shall be deleted.

Amendment of
article 30
of the principal
Act.

120. For subarticle (3) and (4) of article 30 of the principal Act as renumbered, there shall be substituted the following:

“(3) For the purpose of carrying out any of its functions under this Act, the Council may borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as it may deem appropriate and may secure the repayment of any money borrowed or raised by hypothecation, charge or pledge upon the whole or any part of its property or assets, whether present or future.

(4) The Minister may make advances to the Exchange of such sums as he may agree to be required by the Council for carrying out any of its functions under this Act, which advances are to be repaid by the Council on such terms and conditions as the Minister may deem appropriate.”.

121. Article 31, of the principal Act as renumbered, shall be amended as follows:

Amendment of article 31 of the principal Act.

(a) in subarticle (1) thereof:

(i) for the words "to the Minister through the Central Bank", there shall be substituted the words "to the Competent Authority"; and

(ii) the words from "Those accounts" to the words "by the Minister". shall be deleted; and

(b) in subarticle (2) thereof, for the words "of the Minister" there shall be substituted the words "of the Competent Authority".

122. Immediately after article 31, as renumbered, of the principal Act, there shall be inserted the following article:

Addition of new article 32 to the principal Act.

"Power to require information.

32. (1) The Competent Authority may, by notice in writing, require -

(i) any recognised investment exchange;

Cap. 370.

(ii) any person who holds or held a licence under the Investment Services Act, or who appears to be or to have been acting as a licence holder thereunder; or

(iii) any person who is or was an officer, employee or agent of a recognised investment exchange or any other person who is or was involved in the operations of a recognised investment exchange;

(iv) any person who is or was carrying on, or who appears to be or have been carrying on any activity in connection with quoted securities;

to do all or any of the following:

(a) to furnish to the Competent Authority, at such time and place and in such form as it may specify, such information and documentation as it may require;

(b) to furnish to the Competent Authority any information or documentation as it may require verified in such manner as it may specify;

(c) to attend before the Competent Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide such information and documentation as it may require;

(d) to give the Competent Authority any assistance which it may require and which that person is reasonably able to give.

(2) Without prejudice to anything which the Competent Authority may require under subarticle (1), all information in respect of listed securities held on the Register of the Central Securities Depository shall be freely accessible to the Competent Authority.

(3) The Competent Authority may take copies of any documents furnished, provided or to which it has access under this article.

Cap. 9. (4) Without prejudice to the provisions of article 642(1) of the Criminal Code a statement made and any information or documentation provided in pursuance of any requirement under this article may be used in evidence against any person to whom they relate:

Provided that nothing in this section shall preclude any person with respect to any question that may be put to him from claiming any privilege that would be competent to a witness before a court of criminal jurisdiction in respect of any question the answer to which may incriminate such person, and where the Competent Authority disagrees that any such claim is justified, it may by application to the Court of Appeal (Inferior Jurisdiction), request such court to determine upon such claim, and the said court shall, after hearing the person who has claimed such privilege and the Competent Authority, determine such question with urgency:

Cap. 377. Provided further that nothing in this article shall require any person, who by reason of his calling, profession or office becomes the depository of any secret confided in him, to disclose any information or produce any document which is subject to the duty of professional secrecy, unless upon the application of the Competent Authority the Court of Appeal (Inferior Jurisdiction) is satisfied, after hearing the person concerned and the Competent Authority that notwithstanding the provisions of the Professional Secrecy Act, the disclosure

or production is necessary and should be allowed, and the Court of Appeal shall determine any question referred to it hereunder with urgency.

(5) The power to require the production of documentation under the provisions of this article shall be without prejudice to any, pledge, charge or other security interest claimed by any person in relation to such documentation but notwithstanding such pledge, charge or security interest, the Competent Authority shall have a right to require production of such document and to make a copy thereof.

(6) Where the Competent Authority has appointed a person under paragraph (c) of subarticle (1) such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Competent Authority by this section, including the power to apply to the Court of Appeal in the circumstances described in subarticle (4), and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority.

(7) The Board referred to in article 29 of the Code of Organisation and Civil Procedure shall make rules with respect to any procedures under this article.

(8) The Minister responsible for justice may prescribe fees in connection with procedures before the Court of Appeal under this article."

123. For article 33, of the principal Act, there shall be substituted the following:

Substitution of article 33 of the principal Act.

"Appointment of inspectors.

33. (1) The Competent Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any persons referred to in paragraphs (i) to (iv) of subarticle (1) of article 32 of this Act.

(2) An inspector appointed under subarticle (1) -

(a) may, if he thinks it necessary or expedient for the purposes of an investigation, investigate the affairs of any person mentioned in subarticle (1) of this section;

(b) shall have and may exercise all the powers, conferred on the Competent Authority by article 32 of this Act, including the power to apply to the Court of Appeal in the circumstances described in subarticle (4) of that article, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority;

(c) may, and if so directed by the Competent Authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the Competent Authority.

(3) In appointing an inspector or inspectors under subarticle (1) the Competent Authority may direct that the investigation shall be carried out within such time and shall be confined to such specific or general matters as the Competent Authority may deem fit.

(4) In the event that it results that the investigated person shall have been in breach of any provision of law, regulation or in breach of a licence condition, the Competent Authority shall have power to order that all reasonable expenses of an investigation pursuant to this article be paid by any of the persons concerned. Any such order shall be communicated to the persons concerned by a notice for payment. A notice for payment under this article shall:

(a) be in writing; and

(b) require the authorised person to pay the expenses of and incidental to the investigation before the end of such period being not less than fourteen days from the date of service of the notice, as may be specified in the notice.

(5) Any person who is aggrieved by a decision of the Competent Authority with respect to any order concerning the expenses of and incidental to an investigation under this article shall have a right of appeal to the Tribunal in accordance with article 43 of this Act.

"Right
of entry."

34. (1) Any officer, employee or agent of the Competent Authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 32 or whose affairs are being investigated under article 33, for the purpose of obtaining therefrom the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the Competent Authority has cause to believe that if such notice as is referred to in subarticle (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such officer, employee or agent may, on producing, if required, evidence of his authority, enter any premises referred to in subarticle (1) for the purpose of obtaining therefrom any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in subarticle (1).

(3) For the purposes of any action taken under the provisions of this article, the Competent Authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him by law."

125. For article 35, of the principal Act there shall be substituted the following:

Substitution of
article 35 of the
principal Act.

"No
enquires to
be made
into the
affairs of
any
person
trading on a
Recognised
Investment
Exchange.

35. Nothing in this Act or any regulations made thereunder, or in any rules or bye-laws of a recognised investment exchange shall authorise the Minister, the Competent Authority, the Listing Authority, any recognised investment exchange or any person whomsoever to enquire or cause an enquiry to be made into the affairs of any person except for the purpose of ensuring compliance with the provisions of this Act, any regulations made thereunder, the rules and bye-laws of the recognised investment exchange concerned and the Insider Dealing and Market Abuse Offences Act or any regulations made thereunder."

Addition of new
articles 36 and 37
to the principal Act.

126. Immediately after article 35, of the principal Act there shall be added the following articles 36 and 37:

"Insider
dealing
and market
abuse.

36. (1) Where the Exchange or any recognised investment exchange suspects that there may exist circumstances to indicate that any offence in terms of the Insider Dealing and Market Abuse Offences Act may have been committed, is being committed or is likely in the circumstances to be committed, it shall report such suspicion to the Competent Authority.

(2) Where the Competent Authority, whether pursuant to a report in terms of subarticle (1), or otherwise, suspects that there may exist circumstances to indicate that an offence in terms of the Insider Dealing and Market Abuse Offences Act may have been committed, is being committed or is likely in the circumstances to be committed, it shall appoint in an inspector or inspectors under article 33 to carry out an investigation for the purpose of establishing whether or not any offence in terms of the said Act may have been committed, is being committed or is likely in the circumstances to be committed, and to report the results of the investigation to it.

(3) Where from an inspector's final report the Competent Authority has reason to believe that an offence in terms of the Insider Dealing and Market Abuse Offences Act has been committed the Competent Authority shall refer the matter together with a copy of the report to the Commissioner of Police.

(4) A person found guilty of insider dealing or market abuse shall be liable to pay to such person as may be determined by the Tribunal compensation in an amount to be fixed by the tribunal on the application of any person who in a transaction for the purchase or sale of securities entered into with the offender or with a person acting for or on the offender's behalf suffers loss. An action under this subarticle shall be barred by the lapse of two years from the date on which judgement in which the person liable to pay compensation has been found guilty shall have become res judicata.

(5) The right to claim compensation under this section shall not prejudice, and shall be in addition to, the right of any person to claim damages under any other law.

Co-operation
with
overseas
regulatory
authority.

37. (1) The Competent Authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:

- (a) the powers of inquiry under article 32;
- (b) the power to appoint inspectors under articles 33 and 36;
- (c) the power to communicate to the overseas regulatory authority information which is in the possession of the Competent Authority, whether or not as a result of the exercise of any of the above powers.

(2) The Competent Authority shall not exercise any powers by virtue of this article unless it is satisfied that the assistance is requested by the overseas regulatory authority only for the purposes of the exercise of one or more of its regulatory functions.

(3) In deciding whether to exercise its powers by virtue of this article, the Competent Authority shall take into account, in particular -

- (a) whether corresponding assistance would be given in that country or territory to the Competent Authority;
- (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Malta or involves the assertion of a jurisdiction not recognised by Malta;
- (c) the seriousness of the case and its importance in Malta and whether the assistance could be obtained by other means;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.”.

127. For article 38, as renumbered, of the principal Act, there shall be substituted the following:

Substitution of
article 38 of the
principal Act.

“Confiden-
tiality of
information.

38. (1) Recognised investment exchanges and their officers and other staff shall deal with all documents and other information relating to the relevant recognised investment

exchange 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, and all matters and things related to such documents and information as confidential and protected by the duty of professional secrecy, and shall not disclose the same to any other person, not being a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, except with the consent of the person from whom the information was obtained and provided the information relates solely to that person.

(2) The provisions of subarticle (1) shall not preclude the disclosure of information -

(a) with a view to the institution of, or otherwise for the purposes of any proceedings by the Competent Authority or the Listing Authority before any court or tribunal under this Act or for the purposes of any criminal proceedings; or

(b) with a view to enabling or assisting the Competent Authority or the Listing Authority in the performance or discharge of any of its functions under this Act, whether of its own motion or at the request of the Competent Authority or the Listing Authority; or

(c) which 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; or

(d) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or

(e) in such circumstances and under such conditions as may be prescribed by regulations made by the Minister; or

(f) (i) to a foreign competent authority or body carrying out similar or equivalent functions in order to assist the same in matters related to the regulation and supervision of financial services;

(ii) to any other body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial or licensing function in terms of law;

Provided that the Authority shall disclose the requested information where required or requested to do so within the terms of Malta's international commitments, or where so required within the terms of understanding assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a Memorandum of Understanding concluded with the Competent Authority.

(g) to the Central Bank of Malta in pursuance of the fulfilment of its obligations in terms of law or to any other regulatory body designated by order of the Minister where the Competent Authority considers that such disclosure would assist such regulatory body in the exercise of its functions.

(3) The Competent Authority, its officers and other staff are prohibited from using such documents and information and all other matters which in accordance with subarticle (1) are confidential and protected by the duty of professional secrecy and which comes 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 securities market.

(4) The provisions of subarticle (3) shall apply *mutatis mutandis* to all recognised investment exchanges, their officers and other staff.

(5) Any person who acts in contravention of subarticle (3) or (4) shall, without prejudice to the provisions of the Insider Dealing and Market Abuse Offences 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.

(6) Any person other than those mentioned in subarticles (1) and (3) who acquires any documents or any other information to which the said subarticles 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 provisions of the Insider Dealing and Market Abuse Officers 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 subarticles (3) and (4)."

Addition of new
articles 39 to 47 to
the principal Act.

128. Immediately after article 38, as renumbered, of the principal Act, there shall be added the following articles 39 to 47:

"Powers of
the
Court to
make
certain
orders.

39. (1) If, on an application by the Competent Authority made to the Civil Court, First Hall, the said court is satisfied:

(a) that there is reasonable likelihood that a person will contravene any of the provisions of this Act, the regulations made thereunder 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; or

(b) that a person has contravened any such provision or has contravened or failed to comply with any such obligation, requirement, directive, or order and that there is a reasonable likelihood that the contravention will continue or be repeated -

the court may give such orders as it may deem appropriate to restrain the contravention.

(2) If, on an application by the Competent Authority made to the Civil Court, First Hall, the said court is satisfied -

(a) that a person has contravened any of the provisions of this Act, the regulations made thereunder, 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; and

(b) that there are steps which could be taken for remedying the contravention,

the court may give such orders as it may deem appropriate to require that person and any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it or to mitigate its effect, as appropriate.

(3) If, on an application by the Competent Authority made to the First Hall Civil Court, the court is satisfied -

(a) that a person has contravened any of the provisions of this Act, the regulations made thereunder, 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; or

(b) that any person has been knowingly concerned in the contravention,

it may make an order restraining him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(4) If, on an application made under subarticle (1), the court is further satisfied that -

(a) profits have accrued to any person as a result of the contravention; or

(b) an investor has suffered loss or has been otherwise adversely affected as a result of that contravention, the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such

sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(5) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and verified in such manner, as the court may deem appropriate.

(6) The First Hall Civil Court shall after hearing the person or persons mentioned in this article and the Competent Authority determine an application made under this section with urgency.

(7) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Competent Authority.

(8) The provisions of this article shall be without prejudice to the right of any person to demand the issue of any precautionary act under Title VI of Book Third of the Code of Organisation and Civil Procedure Cap. 12.

Offences.

40. (1) Any person who contravenes or fails to comply with any of the provisions of article 32 or of any court order made under article 39 or fails to comply with any condition, obligation, requirement, order, directive, rule or regulation made or given under any of the provisions of this Act shall be guilty of an offence under this Act.

(2) Any person who in purported compliance with any requirement imposed by or under this Act, the regulations made thereunder or the rules or bye-laws of a recognised investment exchange knowingly or recklessly gives the Competent Authority, any person appointed by it under paragraph (c) of subarticle (1) of article 32 or any inspector appointed under article 33 of this Act information which is false or misleading in a material particular shall be guilty of an offence.

(3) Any person who with intent to avoid detection of the commission of an offence under this Act, removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence under this Act.

(4) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence under this Act.

Criminal
proceedings.

41. (1) A person guilty of an offence under the provisions of section 40 of this Act shall be liable on conviction to a fine (multa) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

(2) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(3) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

Appeal to
the Financial
Services

42. (1) The Tribunal shall have the exclusive competence to determine all appeals as may be referred to it under articles 4(10), 16(7), 17(3), 18(6), 20(6) and 33(5) of this Act or under any regulations made by the Minister under articles 3 and 49 of this Act.

(2) An appeal shall also lie to the Tribunal 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 from any decision of a recognised investment exchange to suspend or revoke membership of any of its members or to impose a penalty in excess of five hundred Maltese liri.

Ground for
Appeal.

43. (1) An appeal to the tribunal under article 42 shall lie only on any of the following grounds -

(a) that the Competent Authority, the Listing Authority, the Exchange or the recognised investment exchange concerned, as the case may be, has wrongly applied any of the provisions of this Act, of the regulations made thereunder or of the rules or bye-laws of the Exchange or the recognised investment exchange concerned; or

(b) that the decision of the Competent Authority, the Listing Authority, the Exchange or the recognised investment exchange concerned, as the case may be, constitutes an abuse of discretion, provided that the discretion of any of the aforesaid bodies may not, so

long as it has been exercised properly, be queried by the tribunal.

(2) An appeal made under this section shall not, unless the tribunal otherwise determines in the course of the proceedings, suspend the operation of any decision from which the appeal is made except in the case of an appeal from:

(a) a decision to discontinue the listing of any securities 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) above shall become operative on the date of the decision of the tribunal dismissing the appeal, or on the date on which the appeal is abandoned.

Appeal from
decision
of the
Financial
Services
Tribunal.

44. There shall be an appeal on questions of law only from a decision of the Tribunal to the Court of Appeal (Inferior Jurisdiction). Upon the hearing of such an appeal, the Court of Appeal shall have all the powers of the Tribunal to make orders.

Trading
outside
recognised
investment
exchanges.

45. (1) Quoted securities may not be traded outside the recognised investment exchange on which they are listed:

Provided that with effect from such date as the Minister may by order establish and save as may otherwise be determined by regulations made by the Minister in accordance with article 3(g), quoted securities may be traded outside the recognised investment exchange on which such quoted securities are listed and other than by means of facilities provided by any such recognised investment exchange.

(2) Nothing in this Act shall preclude:

(a) such quoted shares or debentures as are mentioned in paragraph (b) of subarticle (1) of article 395 of the Companies Act, from being traded outside a recognised investment exchange and other than by means of facilities provided by any recognised investment exchange;

(b) units as defined by the Investment Services Act, of a collective investment scheme licensed under

that Act, whether or not they are quoted securities, from being traded outside a recognised investment exchange and other than by means of facilities provided by any recognised investment exchange, by or with the manager of the scheme or a person acting for him and under his authority.

(c) securities issued by or guaranteed by the Government from being traded outside a recognised investment exchange as the minister may determine.

Transfer of
securities.

46. Notwithstanding the provisions of any other law, the transfer of quoted securities in quoted companies need not be made by an instrument in writing.

Civil Code.
Cap. 16.

47. The provisions of subsections (3) and (4) of article 1966 of the Civil Code shall not apply with respect to quoted securities 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 the Exchange in accordance with the Bye-laws."

129. For article 48, as renumbered, of the principal Act, there shall be substituted the following:

Substitution of
article 48 of the
principal Act.

"Temporary
suspension
of
operations.

48. (1) Without prejudice to the provisions of article 17 the Listing Authority shall have the power to suspend temporarily the trading in securities on any recognised investment exchange, if in its opinion, the orderly transaction of business is being prevented, or is likely to be prevented because of the occurrence of:

- (a) any emergency or natural disaster;
- (b) any economic, financial or political crisis; or
- (c) any other event which disrupts trading.

(2) The Minister may recommend to the Listing Authority the temporary suspension of trading if he is of the opinion that the orderly transaction of business of a recognised investment exchange is being disrupted because of any of the occurrences referred to in paragraphs (a), (b) or (c) of subarticle (1) which in the opinion of the Minister merits such closure.

(3) The Listing Authority may order that for such time as it may determine no trading of any kind may be transacted

in one or more specified securities of quoted companies if it has reasons to believe that this would be in the interest of the recognised investment exchange concerned, the public or investors generally:

Provided that a temporary suspension ordered by the Listing Authority under this article may not be of more than thirty days in a period of three months unless such longer suspension is approved by the Minister.

(4) No transaction may be executed at any time in the event of the temporary suspension of trading under this article. Any transaction so executed in contravention of this subsection shall be invalid.”.

Addition of new article 49 to the principal Act.

130. Immediately after article 48, as renumbered of the principal Act, there shall be added the following new article 49:

“Power to make regulations.

49. The Minister acting on the advice of the Competent Authority may make regulations to give effect to the provisions of this Act, including regulations for the better regulation of recognised investment exchanges and, or the admissibility to listing of securities thereon, for the application of article 50 to recognised investment exchanges other than the Exchange and to commercial partnerships other than companies and for the purposes of transposing, implementing and giving effect to the provisions, requirements, obligations and commitments relating to regulation of recognised investment exchanges and or the admissibility to listing of securities thereon arising out of membership of, affiliation to or relationship with international or regional organisations or groupings of countries or any treaty, convention or other international agreement whether bilateral, regional or multilateral, to which Malta is a party.”.

Amendment of article 50 of the principal Act.

131. In subarticle (1) of article 50, as renumbered, of the principal Act for the words “of a quoted company” there shall be substituted the words “of a quoted company on the Exchange”.

Addition of new articles 51 and 52 to the principal Act.

132. Immediately after article 50, as renumbered, of the principal Act there shall be added the following new articles 51 and 52:-

“Executive title.

51. (1) An order for the payment of expenses of and incidental to, an investigation under subarticle (4) of article 33 of this Act shall constitute an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure.

(2) If all or any of the amount payable under an order under subarticle (4) of article 33 of this Act is outstanding at the end of the specified period, the Competent Authority may proceed to enforce payment after two days from the service on the debtor of an intimation for payment made by means of a judicial act.

Exclusion
of
liability.

52. Neither the Competent Authority, nor the Listing Authority, nor any officer or employee of the Competent Authority or the Listing Authority, nor any other person appointed thereby to perform a function under this Act shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act or any rules or regulations made thereunder, unless the act or omission is shown to have been done in bad faith.”.

133. For the Schedule to the principal Act, there shall be substituted the following:

Substitution of
Schedule to the
principal Act.

“SCHEDULE

(Article 28)

THE STATUTE

1. Applicability

This Statute applies to the Malta Stock Exchange.

2. Interpretation and General Provisions

(1) In this Statute unless the subject or context otherwise requires:

“accredited representative” shall have the same meaning as provided in Article 3(11) of this Statute;

“the Act” means the Financial Markets Act;

“College of Stockbroking Firms” means the College established by Article 9 of the Statute;

“Committee” means any Committee established by Article 10 of the Statute;

“securities” means -

(a) Shares, stock, bonds, debentures, certificates of deposits, notes and other like instruments denoting ownership or creating or acknowledging indebtedness;

Provided however that securities shall not mean:

(i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(ii) a cheque or other bill of exchange, a banker's draft or a letter of credit; or

(iii) a banknote, a statement showing a balance in a current deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, or an insurance policy.

(b) Units in a collective investment scheme as defined in the Investment Services Act (Cap. 370).

(c) Warrants, options, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire, sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument falling within this definition or for any currency.

(d) Certificates or other instruments which confer property rights in respect of any instrument falling within this definition.

(e) Futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes.

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

3. Membership Members

(1) The membership of the Exchange shall consist of stockbrokers licensed in terms of the Investment Services Act (Cap. 370), to carry out the functions of broker for the purchase or sale of quoted securities:

Provided that a person or persons nominated by the Central Bank shall be licensed to act as stockbroker for the purpose of trading solely in securities issued by the Government and of

executing transactions on behalf of Government, of quoted securities of companies or other entities, owned wholly or in part by the government, subject to the following conditions:

(a) such person or persons will not be entitled to vote at any meeting of the members of the Exchange or the College of Stockbrokers;

(b) such person or persons will take a position and act as a principal for the Central Bank;

(c) such person or persons are exempt from the applicability of the provisions of paragraphs (b) and (c) of subarticle (3), subarticles (4) to (6), (9), (13) and (14) of this Article.

Application

(2) Every candidate for membership shall make an application for admission to membership in writing to the General Manager, in such form as the Council may from time to time by Bye-laws establish.

Qualifications

(3) No person shall be admitted to membership of the Exchange unless such person:

(a) is licensed to act as stockbroker under the Investment Services Act (Cap. 370), (such person being hereinafter referred to as a "licensed stockbroker");

(b) is, in the opinion of the Council, a fit and proper person to be a member of the Exchange; and

(c) deposits such security and, or, indemnity, if any, as the Council may in the Bye-Laws establish:

Provided that the security and, or, indemnity shall be established in an amount which shall be equal to all stockbrokers, so however that the Council may at any time, with the consent of the Competent Authority, alter the amount of the security and, or, indemnity as it may deem fit, giving when such amount is raised at least thirty days within which licensed stockbrokers shall have to comply; and

(d) possesses such other qualifications and fulfils such other requirements as may from time to time be established by Bye-laws.

Notification

(4) On receipt of an application for admission to membership the Council shall fix a date on which it will consider such application and, at least six weeks prior to that date, the Exchange shall post a notice at the Borza stating the name, address and other relevant details of the applicant, and giving the date, which shall not be less than four weeks after the date of posting of the notice by which any person may make written submissions to the Council with respect to such application.

Consideration

(5) Applications for admission to membership shall be considered by the Council on the date fixed in accordance with subarticle (4) hereof and subsequently at such other meeting of the Council as the Council may deem to be necessary.

Voting

(6) No person shall be admitted to membership except by resolution of the Council supported by at least four votes.

Acceptance/Rejection

(7) The General Manager, on the direction of the Council following such voting, shall in writing inform the applicant of the decision of the Council with regard to his application. Upon being admitted to membership by the Council the candidate shall become a member of the Exchange.

Disclosure

(8) The Council shall be required to state the reasons for its decision.

Rejected Applications

(9) Following the rejection of an application for membership, the applicant may not again apply for membership before the lapse of twelve calendar months from the date of such rejection.

Registered Addresses

(10) Every licensed stockbroker admitted to membership of the Exchange as aforesaid shall furnish the General Manager with a business address in Malta, not being a post office box number, to which all

communications and correspondence shall be sent. Members shall notify the General Manager of any change of address.

Accredited Representative

(11) (a) A member may appoint an accredited representative to carry on trading on the Exchange and such member shall be responsible for and be bound by all actions or omissions of such representative in his activities in connection with the Exchange.

(b) The provisions of Articles 5, 6 and 7 of this Statute shall apply *mutatis mutandis* to accredited representatives, and in any such case the Council may take any action referred to in the said articles with regard to the member and his accredited representative and the Council may determine that such person shall not act as an accredited representative for any other member for any period it may deem fit.

Members' Register

(12) A register of members and accredited representatives together with their registered addresses shall be kept and maintained by the Exchange and shall be open to inspection by members and the public during normal business hours.

Resignation

(13) (a) A member wishing to resign membership shall do so in writing, to the Council which shall forthwith post a notice on the notice board at the Borza. Such notice shall remain posted for such time as may be determined in the Bye-laws.

(b) The members of the Exchange, including the member intending to resign shall within such time as may be established in the Bye-laws advise the Council of any outstanding debts, obligations, or commitments of the member intending to resign and of any outstanding dealings and transactions in which such member may be concerned in connection with its activities as a member of the Exchange.

(c) Notwithstanding its resignation a member shall retain all its obligations and liabilities arising under the Act, this Statute and the Bye-laws unless the Council shall have discharged such member therefrom in writing.

Re-admission

(14) Any licensed stockbroker that has resigned its membership may re-apply for admission; such new application shall be subject to the conditions applicable to the admission of new members at the time of its filing.

4. Disciplinary Procedure

In the fulfilment of its functions in terms of law;

(1) The Council shall have -

(a) such regulatory and monitoring powers in relation to issuers of listed securities as may be specified by listing rules made under Part III of the Act;

(b) such disciplinary and enforcement powers in relation to issuers of listed securities as may be specified by listing rules under Part III of the Act;

(c) such further powers as may be delegated to the Council by the Listing Authority under the Act.

(2) It shall be the duty of the Council to enforce the Statute and Bye-laws and to ensure compliance therewith by:

(a) the members of the Exchange and their accredited representatives;

(b) financial intermediaries licensed under the Investment Services Act (Cap. 370), acting or purporting to act as intermediaries in relation to members of the Exchange.

(3) Any of the persons mentioned in subarticles (1) and (2) of this Article whose conduct is being investigated by the Council, shall be given the opportunity to appear before the Council in their own defence, either in person or assisted by an advocate, on such day and at such time as the Council may determine, being not less than fourteen days from the service of notice on such person giving him particulars of his right to make his submissions and to produce such evidence as the Council may allow.

Penalties for failing to comply with the Statute and the Bye-Laws

5. Suspension and revocation of membership

(1) The Council may suspend or revoke the membership granted to any licensed stockbroker:-

(a) if the member no longer holds a licence to act as stockbroker under the Investment Services Act (Cap. 370);

(b) if it is of the opinion that such person is no longer a fit and proper person to remain a member of the Exchange;

(c) if the member no longer fulfils the requirements of, or has failed to satisfy or comply with or has contravened any provisions of the Statute or Bye-laws or in purported compliance with any such provisions has furnished the Council false, inaccurate or misleading information; or has acted in a manner which is detrimental to the Exchange, its members or the public in general;

(d) in any circumstances as may be provided for in this Statute and the Bye-laws.

(2) Suspension of membership under this Act shall be for such period not in excess of one year as the Council may determine, provided that such suspension may be extended by the Council for a good and sufficient reason. During such period of suspension the suspended member shall not carry on business as a member of the Exchange. A copy of the notice of the revocation or suspension of membership shall be kept in a book kept for the purpose by the Council, which book shall be open to inspection by the public at all reasonable times.

(3) Before suspending or revoking membership of a licensed stockbroker the Council shall give the licensed stockbroker written notice thereof stating the reasons for such suspension or revocation of membership.

(4) Where a member has resigned, or where membership of a member is revoked or where a member is insolvent or is unable to meet its liabilities to other members or to the Exchange, the Council shall have the power to retain or to call in the security deposited in terms of subparagraph (c) of paragraph (iii) of Article 3 of this Statute and to place such monies or other sums realised thereby to such reserve or other account as the Council shall deem fit and to use all or any of such monies to discharge the liabilities of the member towards fellow members to the Exchange and any surplus, shall be refundable to the member.

6. Other Disciplinary Measures

(1) If it appears to the Council that a member of the Exchange has contravened or has failed to comply with any of the provisions of the Statute or the Bye-laws, the Council may publish a statement to that effect.

(2) If it appears to the Council that a member has contravened or has failed to comply with any of the provisions of this Statute or the Bye-laws, the Council may require him to pay an administrative penalty not exceeding five thousand liri Lm5,000 in respect of such contravention or failure. A penalty under this sub-article shall be payable to the Exchange.

(3) Before publishing a statement under subarticle (1) of this Article or imposing an administrative penalty under subarticle (2) of this Article, the Council shall:

(a) give the person concerned written notice of the proposed statement providing reasons therefore and setting out the terms of the statement; or

(b) give the person concerned written notice of the proposed administrative penalty, stating the amount of the penalty and of the reasons for which it is proposed to act.

(4) Where the reasons stated in the written notice of the proposed statement relate specifically to matters which -

(a) refer to a person identified in the notice other than the person who is the subject of the notice; and

(b) are in the opinion of the Council prejudicial to that person in any office or employment,

the Council shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(5) A notice served on a person pursuant to the provisions of subarticle (3) and (4) shall give particulars of the person's right of appeal under section 42 of the Act and of the provisions of subarticle (6) of this article.

(6) Subject to the provisions of subarticle (5) of this article, upon expiry of such period as may be specified in the notice, (being not less than fourteen days from the date of service of the notice under subsection (3) or of a copy of the notice under subsection (4) of this section,

whichever was the later), the Council may publish the proposed statement and, after publication shall send a copy to that person and to any person on whom a copy of the notice was served under subarticle (4) of this article.

(7) Subject to the provisions of subarticle (5) of this article, upon expiry of such period as may be specified in the notice under subarticle (3), (being not less than fourteen days from the date of service of the notice), the Council may give the person concerned a notice for payment. A notice for payment under this subarticle must:

(a) be in writing; and

(b) require the notified person to pay the penalty before the end of such period (being not less than fourteen days from the date of service of the notice) as may be specified in the notice.

(8) Nothing in this Article shall restrict or otherwise prejudice the powers of the Competent Authority or the Listing Authority under the Act.

7. Power to issue directives

(1) Without prejudice to any of the powers delegated to it under the Act and any of the powers conferred on it by this Statute, the Council may, whenever it deems it necessary give any of the persons mentioned in subarticle 4(2) of this Statute, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person as is referred to in subarticle 4(2) of this Statute to whom or to which notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any person having functions in relation to the persons mentioned in subarticle 4(2) of this Statute be removed or removed and replaced by another person acceptable to the Council;

(c) in the event of a member which is to cease or has ceased operations or is to wind up or has wound up its affairs, provide for the appointment of a person to take possession and control all documents, records, assets and property belonging to or in the possession or control of the member by reason of or in connection with his membership of the Exchange.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the Council is satisfied that the circumstances so warrant, it may at any time subject to the provisions of article 5 of this Statute, make public any directive it has given under any of the provisions of this article.

8. Council

(1) The Council established in virtue of article 4 of the Act shall be constituted in accordance with the following paragraphs of this article.

Chairman

(2) The Minister shall appoint one of the members of the Council as Chairman.

Membership in the Council

(3) (a) The Council shall consist of a Chairman and four other members;

(b) The members of the Council, including the Chairman, shall be appointed by the Minister from among persons who, in his opinion, have had experience of and shown capacity in matters relating to business, financial activities, the professions or academic affairs.

Co-opted members

(4) In addition to the above members the Council may co-opt not more than two other persons to be members of the Council as it may deem expedient.

Deputy Chairman

(5) The Council shall elect one of its members as Deputy Chairman who shall act as chairman in the absence of the Chairman.

Terms of office

(6) The members of the Council shall hold office for a period not exceeding three years but shall be eligible for re-appointment.

Executive Committee

(7) The Council shall establish an Executive Committee which shall be responsible for implementing the policies of the Council and for planning and formulating new development policies for approval by the Council. The Council shall appoint a Chief Executive Officer to head the Executive Committee and may appoint such other officers to perform such functions in relation to the Executive Committee as the Council shall deem fit.

General Manager

(8) (a) The Council shall appoint a General Manager who shall be responsible for the day to day management of the Exchange according to the policy set by the Council.

(b) The General Manager shall have such duties as are assigned to him by this Statute or the Bye-laws and shall act under the general direction of the Council.

Council member involved in matter under discussion

(9) Any member of the Council who is directly or indirectly involved in any matter under discussion before the Council shall withdraw from the sitting of the Council when such matter is being discussed or decided upon and in such an event for all intents and purposes the Council shall be constituted of all the other members.

Incumbency of decision about member's involvement

(10) The determination as to whether a member of the Council is directly or indirectly involved in any such manner, shall rest exclusively with the other members of the Council to the exclusion of such member.

9. College of Stockbrokers

(1) (a) There shall be a College of Stockbrokers made up of members of the Exchange, in accordance with paragraph (a) of this subarticle, hereinafter referred to as the "College" whose task it shall be:

(i) to tender advice to the Council on matters affecting trading procedures;

(ii) to report to Council any matter of concern to the members of the Exchange or incidental to the proper functioning of the Exchange;

(iii) to examine any complaint and/or report received from members of the Exchange, clients and/or the Council of alleged misconduct or failure of a member in maintaining the highest ethical standards or of any alleged failure of a member to comply with the Act, Statute and Bye-laws;

(iv) to report to the Council on any findings whatsoever and to make such recommendation as the College may deem necessary.

(b) In exercise of the task mentioned in paragraph (1) (a) (iii) above, the College shall have all such powers, including the power of holding meetings with any complainant or any person lodging a report as aforesaid, as may be necessary or expedient.

(c) Each stockbroker which is admitted to membership of the Exchange shall be a member of the College.

(d) Each member of the College shall appoint an individual to represent it on the College and attend any meetings thereof.

(e) The College shall elect from among the individuals appointed to represent the members thereof, a Chairman, a Deputy Chairman and a Secretary.

(f) Each individual elected to hold office as Chairman, Deputy Chairman, and Secretary shall hold Office for a period of one year effective from the first day of April but shall be eligible for re-appointment.

Vacancies in the College

(2) (a) The appointment of the individual appointed to represent a member of the College shall cease in the following cases:

(i) if he ceases to represent the member concerned, for any reason whatsoever;

(ii) upon resignation notified in writing to the Chairman of the College;

(iii) in the event that he is adjudged bankrupt or is convicted of any crime involving public trust;

(iv) in the event that he has been interdicted or incapacitated;

(b) Where a vacancy occurs among the individuals appointed to represent members of the College such vacancy shall be filled by another representative of the member that was previously represented by the representative giving rise to the vacancy.

Meetings of the College

(3) (a) The College shall meet on such dates and at such places as the College Chairman shall from time to time determine so however that the College shall meet at least once every calendar month.

(b) Notice of the date, place and time of the College meeting stating the business to be dealt with in the meeting shall be given in writing by the College Chairman to each member of the College.

(c) In the event that the appointed representative is unable to attend, the member shall have the right to be represented at the meeting by an alternative representative in lieu of the appointed representative.

(d) No business shall be transacted at any meeting of the College unless a quorum of members is present. The quorum necessary for the transaction of business shall be at least fifty per cent of the members entitled to attend. If within thirty minutes after the time fixed for the meeting the representatives present are

not sufficient to form a quorum, such meeting shall stand adjourned to the same day in the next week, at the same time and place, and a notice to this effect shall be sent to all members.

(e) If at the adjourned meeting a quorum is not present within thirty minutes from the time fixed for the meeting, the members present shall then form a quorum.

(f) Every member of the College shall have one vote.

(g) All decisions of the College shall require the support of a least sixty percent of the representatives present at the meeting.

(h) Special meetings of the College may be convened by the College Chairman on the request by notice in writing of not less than fifty per cent of the College members and shall be held within one week of such request. Notice of any such special meeting, stating the objects thereof shall be given by the Chairman to each representative at least seventy-two hours before the date fixed for such meeting.

(i) Any College member who is directly or indirectly involved in any matter under discussion before the College shall withdraw from the meeting when such matter is being discussed or decided upon and in such an event for all intents and purposes the meeting shall be constituted of all the other members;

Provided that where the College is fulfilling the task mentioned in Article 9(1)(a)(iii) of the Statute it shall afford an opportunity to the member concerned to present his case.

(j) The College shall have the power, subject to the provisions of this Statute, to fix its own meetings and regulate its own proceedings.

10. Committees

(1) The Council may establish any committee or committees which shall be responsible for performing such functions as the Council may direct and for tendering advice to the Council on such matters as may be determined by the Council.

(2) The Council shall appoint one of its members to head any committee established herein and may appoint any person or persons (whether or not a member of the Council or of the Exchange) to sit on such committee.

(3) The Council may at any time dismiss or replace any member sitting on any committee established herein or if it considers it appropriate to dissolve any such committee altogether.

(4) Every such committee shall determine the frequency of its meetings and shall regulate its own procedure.

11. Vacancies in the Council

Vacancies

(1) A person shall cease to be a member of the Council in the following cases:

- (a) upon resignation notified in writing to the Minister;
- (b) if he ceases to be qualified to be appointed or nominated as a member of the Council;
- (c) in the event that he is adjudged bankrupt or is convicted of any crime involving public trust;
- (d) in the event that he has been interdicted or incapacitated;
- (e) upon unjustified absence from meetings of the Council on three consecutive occasions.

Personal interest

(2) No member of the Council shall be forced to vacate his office by reason only of his being a member, director or officer of any company which has entered into contracts with or done any work for the Exchange, but a member of the Council shall disclose any personal interest in any transaction or contract and may not vote in respect of any such contract or work. A member of the Council who acts in contravention of this paragraph shall be liable to be removed by order of the Minister and shall be liable to compensate the Exchange for any loss caused by him in consequence of such act.

Removal

(3) Upon the occurrence of any circumstances mentioned in subarticle (1) hereof the Council shall declare that the seat of the Council member concerned has become vacant.

Other vacancies

(4) Where any vacancy occurs among the members of the Council, such vacancy shall be filled by the appointment of another person by the Minister, in accordance with the provisions of subarticle (3) of article 8 of this Statute.

Voting

(5) Every member of the Council shall at a Council meeting have only one vote except for the Chairman, or the Deputy Chairman in the absence of the Chairman, who shall have an original and a casting vote. Decisions of the Council shall be taken by a simple majority unless otherwise provided for in the Statute.

Remuneration

(6) The Chairman and members of the Council shall be paid such remuneration as may be approved by the Minister. The remuneration of the Chief Executive and the General Manager shall be decided by the Council.

Indemnity

(7) Every member of the Council shall be indemnified by the Exchange against all liabilities, costs, losses and expenses to which such member of the Council may become liable in respect of any matter or thing done in good faith by him in the execution of his duties as a member of the Council:

Provided that no such member may accept liability without the authority of the Council.

12. Council Meetings

Frequency

(1) Meetings of the Council shall be held on such dates and at such places as the Chairman of the Council shall from time to time determine so however that the Council shall meet at least once every calendar month.

Notice

(2) Notice of the date, place and time of a Council meeting stating the business to be dealt with in a meeting shall be given in writing by the General Manager to each member of the Council.

Quorum

(3) (a) No business shall be transacted at any meeting of the Council unless a quorum of members is present. The quorum necessary for the transaction of business shall be three members qualified to vote.

(b) If within thirty minutes after the time fixed for the meeting the members present are not sufficient to form a quorum, such meeting shall stand adjourned to the same day in the next week, at the same time and place, and a notice to this effect shall be sent to all the members.

(c) If at the adjourned meeting a quorum is not present within thirty minutes from the time fixed for the meeting, the members present shall then form a quorum:

Provided, however, that a meeting with such reduced quorum shall not have power to amend the Bye-laws.

Special Meetings

(4) (a) A special meeting convened by the Council shall be held not later than the 31st March of each financial year. The Chairman shall at such meeting make his report for the previous financial year and lay on the table a copy of the audited accounts of the Exchange as approved by the Council. Members of the Exchange shall be entitled to attend this Council meeting.

(b) Other special meetings of the Council may be convened by the Chairman on the request by notice in writing of not less than three members of the Council and shall be held within one week of such request. Notice of any such special meeting, stating the objects thereof, shall be given by the General Manager in writing to each member of the Council at least seventy-two hours before the date fixed for such meeting.

Proceedings

(5) The Council shall have the power, subject to the provisions of this Statute, to fix its own meetings and regulate its own proceedings.

13. Finance

Funds

(1) The funds of the Exchange shall be held in such banks as the Council shall from time to time determine. All cheques drawn on account of the Exchange shall be signed by such person or persons as the Council may from time to time direct.

Income

(2) The income and property of the Exchange shall be applied solely towards the promotion of the objects and in the interest of the Exchange as the Council may determine.

Proper books of accounts

(3) The Council shall cause proper books of accounts to be kept with respect to:

(a) all sums of money received and expended by the Exchange and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases by the Exchange; and

(c) the assets and liabilities of the Exchange.

True and fair view

(4) Proper books of accounts shall be kept to give a true and fair view of the state of the Exchange's affairs and to explain its transactions.

Place where accounts are kept

(5) The books of accounts shall be kept at the registered office of the Exchange and shall always be open to inspection by the members of the Council, and as the Council may from time to time determine.

Appointment of auditors

(6) Auditors shall be appointed annually by the Council at a fee to be agreed by the Council.

Rights of auditors

(7) The auditors of the Exchange shall be entitled to attend any special meeting convened in terms of subparagraph (a) of subarticle (4) of Article 12 of this Statute and to receive all notices of, and other communications relating to, such special meeting which any member of the Exchange is entitled to receive, and to be heard at such special meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Compensation Fund

Establishment

(1) The Council shall by Bye-laws establish a compensation fund for the purpose of ensuring the security of Exchange transactions in the event of financial difficulties of any member to meet his obligations towards the investing public.

Constitution

(2) Such fund shall be regulated in such manner as may be provided for in the Bye-laws.”.

Transitory Provision.

134. Any proceedings pending before the Malta Stock Exchange Tribunal which are not concluded before the coming into force of this Part, shall on the coming into force of this Part continue to be heard and determined by the Malta Financial Services Tribunal as provided under the principal Act as amended by the provisions of this Part.

PART VII

AMENDMENT OF THE INVESTMENT SERVICES ACT, CAP. 370

135. (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 such date as the Minister responsible for finance may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions or different purposes thereof.

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

(a) the definition "advertisements" shall be deleted;

(b) in the definition "collective investment scheme":

(i) for the words "any of the following characteristics" there shall be substituted the words "the following characteristics";

(ii) for the words "risk spreading; or" at the end of paragraph (a) therein, there shall be substituted the words "risk spreading; and either"; and

(iii) immediately at the end of the definition there shall be added the following proviso:

"Provided that the Competent Authority may issue a licence with respect to a scheme or arrangement whose units are to be offered for subscription, sale or exchange to:

(i) licence holders; or

(ii) persons whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instrument or instruments in which the scheme or arrangement invests; or

(iii) persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, in which the scheme or arrangement invests; or

(iv) persons who by regulation under this Act are exempt from the requirement of an investment services licence provided that the scheme or arrangement invests in instruments or property in respect of which such persons are exempt;

Notwithstanding that such a scheme or arrangement does not have the characteristic listed in paragraph (a) above, and in any such case, such scheme or arrangement shall be deemed to be a collective investment scheme;"

(c) for the definition of "competent authority" there shall be substituted the following:

" "competent authority" means the body appointed by the Minister in terms of article 2A of this Act;";

(d) immediately after the definition of "instrument", there shall be added the following new definition:

" "investment advertisement" means any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons:

(i) to become or offer to become participants in a collective investment scheme; or

(ii) to subscribe for or otherwise acquire or underwrite an instrument; or

(iii) to purchase or otherwise procure an investment service;";

(e) immediately after the definition "licence holder", there shall be added the following new definition:

" "Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of 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, multilateral, to which Malta is a party;";

(f) for paragraphs (c) and (d) in the definition "overseas regulatory authority" there shall be substituted the following:

"(c) a function of the Listing Authority under the Financial Markets Act; or

(d) a function of the Competent Authority under the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act;";

(g) immediately after the definition of "prescribed", there shall be added the following new definition:

Cap. 386.

“prospectus” has the meaning assigned to it in article 2 of the Companies Act, and the word “shares” therein shall be read as including a reference to the word “unit”;

(h) immediately after the definition of “qualifying shareholding”, there shall be inserted the following new definition:

“recognised investment exchange” has the meaning assigned to it under the Financial Markets Act;” and

(i) in the definition of “subsidiary”, for the words “section 97 of the Commercial Partnership Ordinance”, there shall be substituted the words “article 2 of the Companies Act”.

Cap. 386.

Addition of new article 2A to the principal Act.

137. Immediately after article 2 of the principal Act, there shall be inserted the following new article 2A:

“Competent Authority.

2A. The Minister shall by Order in the Gazette appoint a body to be the Competent Authority for the purposes of this Act to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.”.

Amendment of article 3 of the principal Act.

138. Immediately after subarticle (2) of article 3 of the principal Act, there shall be added the following new subarticle:

“(3) The Competent Authority may by notice in writing to any person determine that:-

(a) a service falls within the First Schedule to this Act when provided in relation to an instrument; or

(b) an instrument, contract or right falls within the Second Schedule to this Act and whether or not issued in Malta;

and subject to any appeal under article 19 of this Act with respect to such person the determination by the Competent Authority unless over ruled by the Tribunal shall be conclusive for all purposes of this Act.”.

Amendment of article 6 of the principal Act.

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

(a) the present subarticle (2) thereof shall be renumbered as paragraph (a) of the said subarticle (2) and immediately after

paragraph (a), as re-numbered, there shall be inserted the following new paragraph (b):

“(b) For the better carrying out of the provisions of this Act, the Competent Authority may, from time to time, issue and publish Guidelines which shall be binding on licence holders and others as may be specified therein. Such Guidelines may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, and any other matters as the Competent Authority may consider appropriate.”;

(b) in paragraph (a) of subarticle (3) thereof, for the words “the protection of the public;”, there shall be substituted the words “the protection of investors and the general public;”;

(c) for paragraphs (b) and (c) of subsection (3) thereof, there shall be substituted the following:

“(b) the protection of the reputation of Malta taking into account Malta’s international commitments;

(c) the promotion of competition and choice; and ”;

(d) for subarticle (6) thereof, there shall be substituted the following:

“(6) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the Competent Authority shall inform an applicant of its decision whether or not to grant a licence.”;

(e) in subarticle (7) thereof, for the words “but also that any director or officer of such person” there shall be submitted the words “but also that any qualifying shareholder or members, director or officer of such person”;

(f) for subarticle (8) thereof there shall be substituted the following subarticles (8) (9) (10) and (11):-

“(8) (a) Where close links exist between an applicant and any other person the Competent Authority shall:

(i) only grant a licence if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to grant such a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The Competent Authority may from time to time, by means of Guidelines under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(9) Where a licence holder or the manager, secretary, director or other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence issued under this article, 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 other persons, as the case may be an administrative penalty which may not exceed forty thousand liri.

(10) Within a period of 30 days beginning with the date of service of a notice imposing an administrative penalty in accordance with subarticle (9) of this article, a person upon whom the notice is served may appeal to the Financial Services Tribunal against the decision of the Competent Authority in accordance with article 19 of the Act.

(11) Where a notice as referred to in subarticle (9) of this article has not been appealed or where such notice has been appealed within fifteen days of the determination of such appeal, the administrative penalty as contained in the notice or as reduced by the decision of the Tribunal shall be due to the Authority and upon the service of a copy of the notice or 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."

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

(a) in subarticle (2) thereof –

(i) in paragraph (e) thereof, for the words “for the protection of the public or the reputation of Malta; or”, there shall be substituted the words “for the protection of investors and the general public, and the reputation of Malta taking into account Malta’s international commitments; or”;

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

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

“(g) in any of the circumstances under which the Competent Authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse the grant of such licence; and

(h) if the licence holder thereof has obtained the licence by making false statements or by any other irregular means.”; and

(b) in paragraph (e) of subarticle (3) thereof, for the words “for the protection of the public or the reputation of Malta; or”; there shall be substituted the words “for the protection of investors and the general public and the reputation of Malta taking into account Malta’s international commitments; or”.

141. For subarticle (3) of article 8 of the principal Act, there shall be substituted the following: Amendment of article 8 of the principal Act.

“(3) The Competent Authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under subarticle (1) of this article.”.

142. In subarticle (1) of article 9 of the principal Act for the words “aware of such changes” there shall be substituted the words “aware of such changes and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning in article 6 of this Act.”. Amendment of article 9 of the principal Act.

Addition of new article 9A to the principal Act.

143. Immediately after article 9 of the principal Act, there shall be inserted the following new article 9A:

"Persons providing administrative services.

9A (1) Any person who in Malta or from Malta provides to licence holders in Malta, or to equivalent authorised persons and schemes overseas, administrative services which do not themselves constitute licensable activity under this Act, shall be required to apply for recognition by the Competent Authority under this article, and no person shall provide such services unless he is so recognised.

(2) The Competent Authority may from time to time, issue guidelines laying down the requirements for recognition and generally regulating the provision of such administrative services. Such guidelines may in particular include provision for the following matters:

(i) establishing which activities constitute administrative services for the purposes of this article;

(ii) the form and the content of applications to the Competent Authority for recognition;

(iii) the application, annual and other fees payable in respect of recognition;

(iv) the obligation to supply documentation and other information to the Competent Authority;

(v) measures to allow the Competent Authority to ensure compliance by recognised administrators with this Act and guidelines issued thereunder;

(vi) arrangements for the exchange of information with other regulatory bodies both in Malta and overseas;

(vii) providing for the mutual recognition of persons recognised as fit to provide such services outside Malta;

(viii) generally any other matter ancillary or connected with the above."

Amendment of article 10 of the principal Act.

144. Article 10 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "shall acquire a qualifying shareholding", there shall be substituted the words "shall acquire, directly or indirectly, a qualifying shareholding";

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

"(5) The Competent Authority shall notify its final decision in writing to the person who makes representations in writing under subarticle (4) of this article, within thirty days of receipt of representations as provided for in the said subarticle (4).";

(c) in subarticle (6) thereof, for the words "proposes to sell or dispose of a qualifying shareholding", there shall be substituted the words "proposes to sell or dispose, directly or indirectly, of a qualifying holding";

(d) immediately after subarticle (7) thereof, there shall be added the following new subarticles:

"(8) Where the influence exercised by a person acquiring or proposing to acquire a part of the share capital is likely to be prejudicial to the sound and prudent management of a licence holder, the Competent Authority may issue a notice of objection; and exercise any of the powers assigned to it under this Act, including the power to issue directives, as it may deem reasonable and appropriate in the circumstances.

(9) A copy of any notice served on the person concerned in terms of subarticle (8) of this article shall be served on the company to whose shares it relates.

(10) Without prejudice to the provision of article 22 of this Act, where a share holding in a licence holder is acquired despite the objection of the Competent Authority, the exercise of the corresponding voting rights shall be suspended and any votes cast in contravention of this subarticle shall be null and void.

(11) If the acquirer of the qualifying holding referred to in this article is:

(a) a person holding a licence or an equivalent authorisation from an overseas regulatory authority, or

(b) the parent undertaking of a person referred to in paragraph (a) above, or

(c) any person controlling a person referred to in paragraph (a) above,

and if, as a result of that acquisition, the licence holder in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition by the competent authority must be the subject of prior consultation with the overseas regulatory authority taking into account Malta's international commitments."

Substitution of
article 11
of the principal
Act.

145. For article 11 of the principal Act there shall be substituted the following:

"Prospectus
and
Investment
Advertisements

11. (1) (a) No collective investment scheme, whether licensed or not, shall issue or cause to be issued a prospectus in or from within Malta unless the prospectus has been approved by the Competent Authority.

(b) No person, other than licence holders, may issue or cause to be issued an investment advertisement in or from within Malta unless its contents have been approved by a licence holder.

(2) The Competent Authority may, from time to time, issue such guidelines or directives to licence holders as it may consider appropriate in order to set minimum standards and requirements which are to be observed by licence holders when issuing or approving investment advertisements or issuing a prospectus in accordance with subarticle (1) of this article. Such guidelines or directives may also include provision for such exemptions or conditions as may be specified therein and may make different provision for different cases or classes of cases, under such terms and conditions as may be prescribed.

(3) The Competent Authority may impose such conditions, limitations and restrictions on a licence holder with respect to the issue or approval of investment advertisements, as it may consider appropriate."

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

(a) immediately at the end of paragraph (b) of subarticle (1) thereof, there shall be inserted the following words:

“provide for the regulation of the free circulation of units of collective investment schemes and to regulate the management companies of such schemes and to make provisions on capital adequacy requirements.”;

(b) for paragraph (c) of subarticle (1) thereof there shall be substituted the following:

“(c) establish schemes or other arrangements for the compensation of investors in cases where licence holders or any categories thereof as may be specified, are unable to satisfy their obligations towards investors or claims in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed, and to regulate the management and the financing of any such schemes or arrangements and, the contributions and levies to be paid thereto, to set the minimum and maximum levels of compensation payable thereunder and may under such schemes and arrangements distinguish between different classes of investors and, exclude certain classes from compensation, and to make provision for the regulation of and for other aspect related to such schemes or arrangements and may moreover provide that such schemes or arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the Competent Authority and provide for the judicial and legal representation thereof;”;

(c) paragraph (g), (h) and (i) of subarticle (1) thereof shall be renumbered as paragraphs (i), (j) and (k) respectively, and immediately after paragraph (f) thereof there shall be inserted the following new paragraphs (g) and (h):

“(g) regulate the drawing-up, approval, publication and distribution in Malta of prospectuses relating to the offer of transferable securities authorised or otherwise approved, in a country or countries outside Malta and to make provision for the recognition of such prospectuses taking into account Malta’s international commitments;

(h) provide for and regulate the payment by any person, body or scheme, as the case may be, of licence or other fees and such other charges payable to the Competent Authority in respect of any matter provided for, by or under this Act or any rules or regulations made under this article, as may be prescribed;"; and

(d) in paragraph (i) of subarticle (1) thereof, as renumbered, for the words "and on such conditions as may be prescribed;" there shall be substituted the words "subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;";

(e) subarticle (2) thereof shall be renumbered as subarticle (2)(A)";

(f) immediately after subarticle (2)(A), as renumbered, there shall be inserted the following new subarticle:

"(2)(B) Rules or regulations made under this article may make provision for the constitution of common funds for investment purposes in the form of a collective investment scheme by contract or other arrangement in writing and may exempt such funds from the application of any article or provision of the Civil Code under Title V of Part I of Book Second with such modifications and variations as may be established."; and

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

"(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.".

Amendment of
article 13 of the
principal Act.

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

(a) in paragraph (a) in subarticle (1) thereof, for the words "as aforesaid;" there shall be substituted the words "as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 6 of this Act;";

(b) immediately after subarticle (7) thereof, there shall be inserted the following new subarticle (8):

“(8) Without prejudice to the other provisions of this article, a licence holder may be required to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act.”.

148. In paragraph (e) in subarticle (2) of article 15 of the principal Act, for the words “require a licence holder” there shall be substituted the words “require a licence holder or any person who is or was providing, or who appears to be or to have been providing an investment service” and for the words “of the licence holder”, there shall be substituted the words “of the licence holder or such other person.”.

Amendment of
article 15 of the
principal Act.

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

Amendment of
article 17 of the
principal Act.

(a) for subarticle (2) thereof, there shall be substituted the following:

“(2) The competent authority shall exercise powers by virtue of this article:

(a) where the assistance is requested by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta’s international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a Memorandum of Understanding concluded with the Competent Authority.”; and

(b) subarticles (3) and (4) thereof shall be deleted.

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

Amendment of
article 18 of the
principal Act.

(a) in subarticle (1) thereof:

(i) for the words “any fact of which” there shall be substituted the words “any fact or decision of which”;

(ii) paragraphs (b) and (c) thereof shall be renumbered as paragraphs (c) and (d) respectively; and

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

“(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the licence holders in or under this Act; or”;

(b) subarticles (2) and (3) thereof shall be renumbered as subarticles (3) and (4) respectively;

(c) immediately after subarticle (1) thereof there shall be inserted the following subarticle (2);

“(2) An auditor of the licence holder shall report to the Competent Authority any facts or decision as specified in subarticle (1) hereof of any person having close links with such licence holder within the meaning in article 6 of this Act, of which he becomes aware in his capacity as auditor of the licence holder or of the person having such close links.”; and

(d) in subarticle (4) as renumbered, for the words “paragraph (c)” there shall be substituted the words “paragraph (d).”

Amendment of
article 19 of the
principal Act.

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

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) In this article the Financial Services Tribunal means the Tribunal established under article 21 of the Malta Financial Services Authority Act.”;

(b) in subarticle (2) thereof:

(i) paragraphs (a) (b) (c) (d) (e) and (f) shall be renumbered respectively as paragraph (b) (d) (e) (f) (g) and (h);

(ii) immediately before paragraph (b) as renumbered there shall be inserted the following new paragraph (a):

“(a) any notice in terms of subarticle (3) of article 3 of this Act;”;

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

“(b) any failure to inform an applicant within the terms of subarticle (6) of article 6 of this Act;”;

(iv) immediately after paragraph (b) as renumbered there shall be inserted the following new paragraph (c):

“(c) any administrative penalty imposed under subarticle (9) of article 6 of this Act;” and

(v) in paragraph (e) as renumbered, the words “or deemed decision” shall be deleted; and

(c) the proviso to subarticle (3) thereof, shall be deleted.

152. For paragraphs (e), (f), (g) and (h) in subarticle (2) of article 26 of the principal Act, there shall be substituted the following:

*Amendment
of article 26 of
the principal Act.*

“(e) to an auditor where such disclosure would assist the auditor in the exercise of his functions under article 18 of this Act;

(f) to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act, where such information is required by the Bank or the Listing Authority in the exercise of their respective functions in terms of law;

(g) in response to a request from, or for the purpose of assisting, an overseas regulatory authority pursuant to article 17 of this Act;

(h) 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;

(i) in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of a licence holder provided such information does not concern third parties involved in attempts to rescue such licence holder, and to such overseas bodies responsible for the liquidation and bankruptcy of a person holding

a licence or an equivalent authorisation from an overseas regulatory authority or for other similar procedures.”.

Amendment of
article 31 of the
principal Act.

153. For article 31 of the principal Act, there shall be substituted the following:

“Continuance
of foreign
body
corporate.

31. (1) A body corporate, formed, incorporated or registered in a country outside Malta (hereinafter referred to as “foreign body corporate”), and carrying on the business of a collective investment scheme, which is similar in nature to a body corporate as known under the laws of Malta (hereinafter referred to as “local body corporate”), and which would, if it were such a local body corporate qualify to be authorised or recognised as a collective investment scheme under this Act, may, subject to the specific approval and authorisation of the Competent Authority, be continued as a collective investment scheme under this Act and under the applicable laws of Malta.

(2) The continuance of a foreign body corporate shall not take place unless such continuance (or similar process, including conversion) is permitted by the applicable laws of the foreign jurisdiction and is in accordance with such provisions thereof as may bring about such continuance (or similar process).

(3) Continuance may only take place if it is allowed by the statute or equivalent instrument of the foreign body corporate to so continue, and if it is approved in accordance with the procedure, if any, established therein or in the applicable law of the foreign jurisdiction for this purpose.

(4) The continuance of a foreign body corporate as a local body corporate shall be effected by an instrument of continuance containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles or equivalent constitutive document as may be required by this Act or other applicable laws of Malta for the registration of such body corporate in accordance with the type of local body corporate in which it is to be continued, and showing on the face of it that the continuance has been approved as provided in this article.

(5) The delivery of the instrument of continuance to the Registrar of Companies shall, for all purposes of the laws

of Malta, be equivalent to the delivery of a deed of partnership or of a memorandum and articles of a company, as the case may be, as if it were a local body corporate to be registered under this Act; and the Registrar shall treat it accordingly.

(6) Upon the delivery of the instrument of Continuance and its registration under this Act the body corporate shall cease to be a body corporate under the jurisdiction of its previous registration and shall continue its corporate existence under the laws of Malta, and shall retain all its assets, rights and liabilities.

(7) Where continuance as aforesaid entitles or requires the body corporate to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the courts in Malta may, on demand of either party, establish.

(8) (a) A local body corporate carrying on business as a collective investment scheme authorised or otherwise falling within the meaning of this Act, may, subject to the specific approval and authorisation of the Competent Authority, be continued as a foreign body corporate, and the foregoing provisions of this article shall apply *mutatis mutandis*.

(b) A local body corporate shall not cease to be a local body corporate subject to Maltese jurisdiction until the Registrar has received notice in writing of the continuance (or other process) made as aforesaid and unless and until, being satisfied that the requirements of this article have been complied with, the Registrar has registered such continuance and has, in consequence thereof and by virtue of this section, struck the name of the company off the register.

(9) The Minister may, acting on the advice of the Competent Authority, make regulations for the better carrying out of the provisions of this article."

154. The First schedule to the principal Act shall be amended as follows:

Substitution
of First Schedule
to the
principal
Act.

(a) for item 3 thereof there shall be substituted the following:

"3. 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.”; and

(b) in paragraph (a) of item 4 thereof, for the words “in paragraphs 1, 2, 3 or 5 of this Schedule; or” there shall be substituted the words “in paragraphs 1, 2, 3, 5 or 6 of this Schedule; or”; and

(c) immediately after item 5 therein shall be added the following new item 6:

“6. Stockbroking

Carrying on the business of purchasing, selling or otherwise trading instruments quoted on a recognised investment exchange for and on behalf of a third party or parties.”.

Amendment of
Second Schedule
to the Principal
Act.

155. Item 1 in the Second Schedule to the Act shall be amended as follows:

(a) the present subarticle (2) thereof, shall be renumbered subarticle (3) thereof; and

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

“(2) Certificates or other instruments which create or acknowledge indebtedness and which upon issue confer the right to claim the debt created or acknowledged thereby at some time in the future, subject to the condition that the claim thereunder may be reduced to below the value or price of the certificates or instruments at the time of issue.”.

PART VIII

AMENDMENT OF THE BANKING ACT, CAP. 371

Amendment of the
Banking Act, Cap.
371.

156. (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) This Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

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

(a) in subarticle (1) thereof:

(i) in the definition "bank" or "credit institution", immediately after the word "banking" there shall be inserted the words ", and unless otherwise stated, shall include an electronic money institution";

(ii) in the definition of "banking directive", for the words "issued by a competent authority" there shall be substituted the words "issued by the competent authority to regulate credit institutions, to the exclusion of electronic money institutions";

(iii) in the definition of "branch", for the word "bank", there shall be substituted the words "credit institution";

(iv) for the definition "business of banking" there shall be substituted the following:

" "business of banking" means the business of a person who as set out in subarticle (2) accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money";

(v) immediately after the definition "Central Bank" there shall be inserted the following:

"close links" refers to a situation in which two or more persons are linked:

(a) by participation, through direct ownership or by way of control of twenty per centum or more of the voting rights or capital of a body corporate; or

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act ; or

(c) permanently to one and the same person through a control relationship;”;

(vi) in the definition “company” for the words “has complied with the provisions of any law which may from time to time be in force in relation thereto” there shall be substituted the words “would qualify to be so registered or incorporated under the laws of Malta”;

(vii) for the definition “control” there shall be substituted the following:

““control” is the power to determine in any manner the financial and operating policies of a body corporate, the power to appoint or remove the majority of the members of the board of directors or equivalent governing body and the power to cast the majority of votes at meetings of the board of directors or equivalent governing body;”;

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

““electronic money” means the monetary value as represented by a claim on the electronic money institution issuing such money which is:

(i) stored on an electronic device; and

(ii) issued on receipt of funds of an amount not less in value than the monetary value issued; and

(iii) accepted as means of payment by undertakings other than that electronic money institution;

"electronic money institution" means any person, other than a credit institution, which issues means of payment in the form of electronic money;

"electronic money institutions directive" means a directive issued by the competent authority to regulate electronic money institutions;";

(ix) immediately after the definition "equity share" there shall inserted the following:

" "Financial Services Tribunal" or "the Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act ;"; and Cap. 330.

(x) the definitions "own funds directive" and "person" shall be deleted;

(b) immediately after the proviso to subarticle (2) thereof, there shall be added the following further proviso:

"Provided further that the receipt of funds by electronic money institutions for the purpose of issuing electronic money shall not constitute the acceptance of deposits or other repayable funds if the funds received are immediately exchanged for electronic money."; and

(c) for subarticle (3) thereof there shall be substituted the following subarticles:

"(3) Save as otherwise expressly provided in this Act, the provisions of this Act, shall apply to electronic money institutions.

(4) The business activities of a credit institution to the exclusion of an electronic money institution, may, besides the business of banking, include any or all of the additional activities listed in the Schedule to this Act as may be determined by the competent authority.

(5) The business activities of an electronic money institution shall be restricted to the issuing of electronic money:

Provided that subject to the granting of a licence for the purpose by the competent authority, such activities may also be extended to:

(i) the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit; and

(ii) the storing of data on the electronic device on behalf of other persons or public institutions.”.

Amendment of
article 3 of the
principal Act.

158. (1) Subarticle (1) of article 3 of the principal Act shall be deleted, and subarticles (2), (3) and (4) shall be renumbered as subarticles (1), (2) and (3), respectively.

(2) In subarticle (1), as renumbered, of article 3 of the principal Act, the words “and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act” shall be deleted.

Amendment of
article 4 of the
principal Act.

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

(a) for the word “banks” in subarticles (1) and (3) thereof there shall be substituted, in each case, with the words “credit institutions”;

(b) immediately after the words “make banking directives” in subarticle (2) thereof and the words “Banking directives” in subarticles (3) and (4) thereof, there shall be inserted, in each case, the words “and electronic money institutions directives”;

(c) for the words “or revoke such banking directives.”, in subarticle (2) thereof, there shall be substituted the words “or revoke such directives, and may in electronic money institutions directives provide that any provision contained in any banking directive as may be specified shall also apply to electronic money institutions.”; and

(d) in subarticle (4) of article 4 of the principal Act, for the words “in accordance with article 3(3)” there shall be substituted the words “in accordance with article 3(2)”.

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

(a) in subarticle (1) thereof, immediately after the words "of banking" there shall be inserted the words "or of issuing electronic money" and the words from "in accordance" to the words "from time to time" shall be deleted;

(b) in subarticle (2) thereof, immediately after the words "of banking" there shall be inserted the words "or of accepting deposits or of issuing electronic money";

(c) immediately after subarticle (3) thereof there shall be added the following subarticles:

"(4) The competent authority may waive the application of any or all of the provisions of this Act and of any electronic money institutions directives to electronic money institutions in cases where -

(a) the total business activities of the institution concerning the issue of electronic money generate a total amount of financial liabilities related to outstanding electronic money that does not exceed two million five hundred thousand Maltese liri; or

(b) the electronic money issued by the institution is accepted as a means of payment only by any subsidiaries of the institution which perform operational or other ancillary functions related to electronic money issued or distributed by the institution, any parent company of the institution or any other subsidiaries of that parent company; or

(c) electronic money issued by the institution is accepted as payment only by a limited number of undertakings, which can be clearly distinguished by:

(i) their location in the same premises or other limited local area; or

(ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme:

Provided that the underlying contractual arrangements shall provide that the electronic

storage device at the disposal of holders for the purpose of making payments is subject to a maximum storage amount of not more than sixty Maltese liri.

(5) Electronic money institutions to which the application of any or all of the provisions of this Act and of any electronic money institutions directives has been waived shall report periodically, as the competent authority shall determine, on their activities including the total amount of financial liabilities related to electronic money.”; and

(d) immediately after subarticle (5) there shall be added the following new subarticle (6):

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

Amendment of
article 6 of the
principal Act.

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

(a) in subarticle (1) thereof, immediately after the words “business of banking” there shall be inserted the words “or of issuing electronic money”; and

(b) in subarticle (2) thereof, for the words “such information as shall be prescribed” there shall be substituted the words “such information, and shall conform with such requirements as may be prescribed”, and immediately after the words “banking directive” there shall be inserted the words “and, or, electronic money institutions directive”.

Amendment of
article 7 of the
principal Act.

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

(a) in subarticle (1) thereof:

(i) in paragraph (a) therein, for the words “amount to the value of two million Maltese liri or such other amount as may be determined by the Minister” there shall be substituted

the words "amount to not less than the value of two million Maltese liri or, in the case of an electronic money institution, not less than the value of five hundred thousand Maltese liri";

(ii) for the word "bank" in paragraphs (b) and (c) therein, there shall be substituted in each case the words "credit institution";

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

"(d) the competent authority is satisfied that, where there are close links between that company and another person or persons, such links do not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of that company under the provisions of this Act or any banking directive;" and

(iv) immediately at the end thereof there shall be added the following provisions:

"Provided that in respect of subarticles (1)(a), (b) and (c), if the applicant is a credit institution authorised in another country, it has its head office in the same country where it is registered and, or licensed:

Provided further that in respect of subarticle (1)(d), the company shall, after being licensed under this Act, inform the competent authority forthwith of any change in circumstances concerning the application of the said subarticle (1)(d) and shall further provide the competent authority with information necessary to monitor compliance with the conditions referred to in the said subarticle (1)(d) on a continuous basis.";

(b) in subarticle (2) thereof for the word "bank" and banks wherever they appear, there shall be substituted the word "credit institution" and "credit institutions" respectively;

(c) in subarticle (4) thereof for the word "may" there shall be substituted the word "shall", and for the words "grant a licence." in paragraph (c) therein there shall be substituted the words "grant a licence:" and immediately at the end of the subarticle there shall be added the following words:

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

(d) immediately after subarticle (5) thereof there shall be added the following subarticle (6):

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

(e) immediately after subarticle (6) thereof there shall be added the following subarticle (7):

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

Addition of new article 7A to the principal Act.

163. Immediately after article 7 of the principal Act there shall be added the following new article 7A:

"Right of redemption.

7A. (1) A holder of electronic money may, during the period of its validity, require the issuing electronic money institution to redeem any outstanding amount at par value in coins and bank notes or by transfer to an account free of charges other than those strictly necessary to carry out that operation.

(2) The issuing electronic money institution shall clearly indicate to the holder the conditions of redemption, and may further establish a minimum threshold for redemption; provided that the threshold shall not exceed five Maltese liri.".

Amendment of article 8 of the principal Act.

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

(a) subarticles (5) and (11) thereof shall be deleted and subarticles (6) to (10) shall be renumbered as subarticles (5) to (9) respectively;

(b) for the words "Registrar of Commercial Partnerships" in subarticle (6) as renumbered, there shall be substituted the words "Registrar of Companies";

(c) for subarticle (7) as renumbered, there shall be substituted the following:

“(7) The competent authority may by Banking Directive provide that the provisions of articles 20 to 24 shall apply to representative offices in Malta in the same manner as they apply to credit institutions.”;

(d) in subarticle (8) as renumbered for the words “The Minister may after consulting the competent authority, by regulations” there shall be substituted the words “The competent authority may by banking directive”, for the words “Minister consider” there shall be substituted the words “competent authority consider” and for the words “from them.” there shall be substituted the words “from them and may impose on such companies such annual fee as may be determined from time to time.”.

165. Article 9 of the principal Act shall be amended as follows: Amendment of article 9 of the principal Act.

(a) for the word “bank” wherever it appears, there shall be substituted the words “credit institution”; and

(b) immediately after subarticle (7) thereof there shall be added the following subarticle (8):

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

166. For article 10 of the principal Act, there shall be substituted the following: Substitution of article 10 of the principal Act.

“Appeals.” **10.** Any person who is aggrieved by a decision of the competent authority:

- (a) to refuse an application for a licence;
- (b) to impose any condition on the grant of a licence;
- (c) to impose or vary any restriction;
- (d) to revoke a licence;
- (e) to issue a notice under subarticle (3) of article 8 of this Act;

- (f) to close a representative office;
- (g) to impose an administrative penalty under the provisions of article 35A of this Act;
- (h) to issue any notice or make any order under article 13 of this Act;
- (i) to make any order under article 14 of this Act;
- or
- (j) by failure of the competent authority to determine an application for a licence under article 7(5) of this Act,

may appeal against the decision to the Financial Services Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act.”.

Amendment of
article 11 of the
principal Act.

167. In article 11 of the principal Act for the word “bank” wherever it occurs there shall be substituted the words “credit institution”.

Amendment of
article 12 of the
principal Act.

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

- (a) for the words “other than a bank” in subarticle (1) thereof there shall be substituted the words “other than a credit institution, to the exclusion of electronic money institution,”;
- (b) for the word “bank” wherever it occurs in subarticle (2) thereof there shall be substituted the words “credit institution”; and
- (c) for the words “Every bank” in subarticle (3) thereof, there shall be substituted the words “Every credit institution, other than an electronic money institution,”.

Amendment of
article 13 of the
principal Act.

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

- (a) for the word “bank” wherever it occurs, there shall be substituted the words “credit institution”;
- (b) for subarticle (2) thereof, there shall be substituted the following:

(2) If, as a result of an acquisition of shares in a credit institution, the credit institution in which a person proposes to acquire the shareholding would become a subsidiary or be subject to the control of the person acquiring those shares, and such person is 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 subarticle (1), consult with the relevant competent authorities of the country concerned.”;

(c) for the words “on the Malta Stock Exchange” in subarticle (3) thereof there shall be substituted the words “a stock exchange licensed under the Financial Markets Act”;

(d) in subarticle (8) thereof for the words “two months” there shall be substituted the words “three months”, for the words “shall issue a notice” there shall be substituted the words “shall, in view of the need to ensure sound and prudent management of the credit institution concerned, issue a notice”; and in the proviso to subarticle (8) thereof, for the words “refusal notice had been issued in terms of paragraph (c) of this subarticle” there shall be substituted the words “consent had been issued in terms of paragraph (a) of this subarticle.”; and

(e) in subarticle (9) thereof:

(i) for the words “then, without prejudice to any other penalty” there shall be substituted the words “or, alternatively, if after having obtained such consent it subsequently appears to the competent authority that any action taken under subarticles (1) and (5) is operating, or is likely to operate, to the detriment of the prudent and sound management of the credit institution, then, without prejudice to any other penalty”;

(ii) in paragraph (a) therein for the words “from taking the action” there shall be substituted the words “from taking or continuing the action”; and

(iii) in paragraph (d) therein for the words “to receive any payment” there shall be substituted the words “to receive any payment or to exercise any voting rights attaching to the shares acquired”.

Amendment of
article 14 of the
principal Act.

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

(a) in the marginal note thereto, and in subarticle (1) and (3) for the word "bank" there shall be substituted the words "credit institution";

(b) in subarticles (1) and (3) thereof, for the word "controller" there shall be substituted the words "controller or director";

(c) for subarticle (2) thereof, there shall be substituted the following:

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

(a) full particulars of all persons who are controllers or directors of credit institution;

(b) full particulars of any person who is proposed to become a controller or director of the credit institution;

(c) full particulars of any person who is proposed to cease to be a controller or director of the credit institution."; and

(d) in subarticle (4) thereof, for the words "to become a controller of a bank without being or becoming a significant shareholder or qualifying shareholder" there shall be substituted the words "to become a controller or director of a credit institution", for the words "to be a controller" there shall be substituted the words "to be a controller or director", and for the words "from becoming a controller" there shall be substituted the words "from becoming a controller or director".

Substitution of
article 15 of the
principal Act.

171. For article 15 of the principal Act there shall be substituted the following:

"Prohibited
transactions.

15. (1) A credit institution, to the exclusion of an electronic money institution shall not -

(a) grant any credit facility against the security of its own shares or against any other securities issued by the credit institution itself or against any shares or

any other securities of another body corporate in which the credit institution has control;

(b) grant or permit to be outstanding credit facilities or extend other banking services under terms and conditions more favourable than the credit institution would have otherwise applied -

(i) to any one of its directors or their spouses whether jointly or severally, as well as with third parties;

Provided that, in any case where unsecured credit facilities are granted, these shall not in the aggregate exceed the sum of ten thousand Maltese liri;

(ii) to any person in whom or in which the credit institution or any one or more of its directors is interested as a director, partner, manager, agent or member or to any person of whom or of which any one or more of the credit institution's directors is a guarantor;

(iii) to any body of persons in which the credit institution or any one or more of its directors jointly or severally maintains control, not being itself a credit institution or the parent undertaking of the credit institution, a subsidiary of this parent undertaking or a subsidiary of the credit institution;

and where the competent authority has reason to believe that such favourable terms and conditions have been applied, it shall have the power to require the credit institution to rectify the position and if the credit institution fails to take the necessary action to rectify the position as required, the competent authority shall take such measures as it deems appropriate until the position is rectified;

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

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

Provided that:

(i) the limit of fifteen per centum shall apply to any one company or group of connected persons;

(ii) the total amount of such holdings shall not exceed sixty per centum of the credit institution's own funds or of its consolidated own funds, as the case may be;

(iii) where the limits established are exceeded due to unavoidable circumstances, the competent authority shall require the credit institution concerned either to increase its own funds accordingly or to take other equivalent measures over a transition period, not exceeding twelve months, as may be established by the competent authority;

(iv) shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in a credit institution's own name on behalf of others shall not be considered as a significant shareholding for the purposes of the limits established under this paragraph;

(v) the competent authority may not apply the limits established under this paragraph where the total excesses are deducted from the credit institution's own funds as established under article 17, and where both limits are exceeded, the greater of the excess amounts shall be deducted from the own funds;

(vi) where the credit institution is a parent or subsidiary undertaking, compliance with the limits laid down in this paragraph shall be monitored on a consolidated basis;

(e) without the consent of the competent authority acquire or hold shares in another company which is not a credit institution, which exceeds five per centum of that company's issued share capital or any other subsequent acquisition which exceeds the per centum amount approved by the competent authority;

(f) purchase, acquire or otherwise hold any immovable property or any right thereon except as may be reasonably necessary for the purpose of conducting its business or housing or providing amenities for its staff:

Provided that this paragraph shall not prevent a credit institution -

(i) from letting part of any building which is used for the purpose of conducting its business; or

(ii) from securing a debt on any immovable property and, in the event of default in payment of such debt, from acquiring or holding such property, for realisation within twelve months, or any longer period as may be determined by the competent authority;

(iii) in other instances from acquiring immovable property with the prior approval of the competent authority the original cost of which property shall not in the aggregate exceed five per centum of the credit institution's own funds.

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

(3) An electronic money institution shall not:

(a) have any holdings in any body of persons except where such body of persons performs operational or other ancillary functions related to electronic money issued or distributed by the institution concerned;

(b) undertake any of the activities prohibited under subarticle (1)(e) and (f);

(c) exceed the limitations of investments which may be specified in an electronic money institutions directive issued under this Act.”.

Addition of new article 15A to the principal Act.

172. Immediately after article 15, there shall be added the following new article 15A:

“Supervision on a consolidated basis.

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

Addition of new article 16A to the principal Act.

173. Immediately after article 16 of the principal Act, there shall be added the following new article 16A:

“Own funds.

16A. (1) A credit institution shall at all times maintain a level of own funds not less than the amount established in its licence or as may be required by the competent authority from time to time.

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

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

(3) The competent authority shall issue a banking directive as it shall consider appropriate for the regulation of own funds.”.

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

(a) in the marginal note thereto, for the words "Own funds and reserves" there shall be substituted the words "Capital Adequacy";

(b) in paragraph (a) thereof, for the words "a ratio of own funds to risk-weighted assets and off balance sheet items" there shall be substituted the words "a capital adequacy ratio to risk-weighted assets as"; and

(c) for the word "bank" wherever it appears, there shall be substituted the words "a credit institution, to the exclusion of an electronic money institution,".

175. Immediately after article 17 of the principal Act, there shall be added the following new article 17A: Addition of new article 17A to the principal Act.

"Bad and doubtful debts."

17A. The competent authority shall issue a banking directive as it shall consider appropriate for the regulation of provisioning for bad and doubtful debts."

176. In article 18 of the principal Act, for the words "specified assets" there shall be substituted the words "specified liquid assets" and for the word "bank" there shall be substituted the words "credit institution". Amendment of article 18 of the principal Act.

177. Article 19 of the principal Act shall be amended as follows: Amendment of article 19 of the principal Act.

(a) for the word "bank" in subarticles (1) and (3) thereof, there shall be substituted the words "credit institution";

(b) for subarticle (2) thereof there shall be substituted the following:

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

(c) in subarticle (4) thereof the words "and (2)" shall be deleted; and

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

"(5) All statements and other information furnished by any credit institution under subarticles (1) and (2) shall be regarded as secret and confidential except as between that credit institution and the competent authority or the Central Bank as the case may be save that the competent authority shall furnish such information under this article as may be required by the Minister or the Central Bank and shall inform the Minister and the Central Bank if at any time in its opinion there is concern regarding the state of affairs of that credit institution."

Amendment of
article 20 of the
principal Act.

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

(a) in this article, including the marginal note thereto, for the words "bank" and "banks", wherever they occur, there shall be substituted the words "credit institution" and "credit institutions" respectively; and

(b) for subarticle (1) thereof there shall be substituted the following:

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

Amendment of
article 22 of the
principal Act.

179. In article 22 of the principal Act, for the word "bank's" there shall be substituted the words "credit institution's" and for the word "bank" wherever it appears, there shall be substituted the words "credit institution".

Amendment of
article 25 of the
principal Act.

180. Article 25 of the principal Act shall be amended as follows:

(a) subarticles (2) and (3) thereof shall be renumbered as subarticles (6) and (7) respectively;

(b) in subarticle (1) and in subarticles (6) and (7) as renumbered, for the word "bank" wherever it occurs, there shall be substituted the words "credit institution"; and in subarticle (6) as renumbered, for the words "Central Bank", there shall be substituted the words "competent authority"; and

(c) immediately after subarticle (1) there shall be inserted the following subarticles (2) to (5):

"(2) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, disclose information to other foreign competent authorities in so far as the authorities to which the information is disclosed are subject to obligations of professional secrecy which are equivalent to those applying under the law in Malta.

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

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

(5) The competent authority shall further, upon a request in writing, disclose to the Central Bank 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 under the law."

181. In article 26 of the principal Act, for the word "bank" wherever it appears, there shall be substituted the words "credit institutions".

Amendment of article 26 of the principal Act.

182. Article 27 of the principal Act shall be repealed.

Repeal of article 27 of the principal Act.

183. In article 28 of the principal Act, for the word "bank" wherever it occurs there shall be substituted the words "credit institution" and for the word "Banks" in the marginal note thereto, there shall be substituted the words "Credit Institutions".

Amendment of article 28 of the principal Act.

184. Immediately after article 28 of the principal Act, there shall be inserted the following new article 28A:

Addition of new article 28A to the principal Act.

"Depositor protection.

28A. Without prejudice to the powers arising under article 3, the Minister, acting on the advice of the competent

authority, may make regulations to establish schemes or other arrangements with such distinct legal personality or otherwise as may be prescribed, for the protection of depositors in cases where credit institutions are unable to satisfy their obligations towards depositors and to regulate the management and the financing of any such schemes or arrangements for compensation and the contributions and levies to be paid thereto, to set out minimum and maximum levels of compensation, to exclude certain deposits from the application of such schemes or arrangements, and to make provision for any other aspect related to depositor protection schemes including rules on advertising.”.

Amendment of
article 29 of the
principal Act.

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

(a) for the marginal note thereto, there shall be substituted the following:

“Power of competent authority to take control of credit institutions.”;

(b) in subarticle (1) thereof -

(i) the words “, or the Central Bank,”, after the words “it appears to the competent authority” shall be deleted.

(ii) for the words “the Central Bank may -” there shall be substituted the words “the competent authority, after consulting with the Central Bank, may, without prejudice to the provisions of subarticle (2) of article 9”;

(iii) paragraph (e) therein shall be deleted and paragraphs (f) to (h) shall be renumbered as paragraphs (e) to (g);

(iv) for the words “Central Bank” in paragraphs (a) and (d) therein, there shall substituted the words “competent authority”; and

(v) for the word “bank” in paragraphs (a), (b), (c), (d), (e), (f) and (g) as renumbered, there shall be substituted the words “credit institution”;

(c) in subarticles (2) to (8) thereof for the word “bank” wherever it appears, there shall be substituted the words “credit institution” and for the words “Central Bank” there shall be substituted the words “competent authority”; and

(d) in subarticle (9) thereof, for the words "the Central Bank shall inform the competent authority" there shall be substituted the words "the competent authority shall inform the Central Bank".

186. Immediately after article 29 of the principal Act, there shall be added the following new article 29A:

Addition of new article 29A to the principal Act.

"Minister may make regulations.

The Minister may, after consulting the competent authority, make regulations in respect of the winding-up or re-organisation of 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 rules governing the applicability of the proper or applicable law and other issues of conflict of laws."

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

Amendment of article 30 of the principal Act.

(a) for the word "bank" wherever it appears in the article, there shall be substituted the words "credit institution";

(b) paragraph (b) thereof shall be deleted, and paragraph (c) shall be renumbered as paragraph (b) thereof; and

(c) immediately after the words "financial statements drawn up" there shall be inserted the words "and published in such manner as may be specified".

188. (1) For the word "bank" and the word "bank's" in articles 31 to 33 of the principal Act, there shall be substituted the words "credit institution" and "credit institution's" respectively.

Amendment of articles 31 to 33 of the principal Act.

(2) In subarticle (3) of article 31, for the word "contain" there shall be substituted the word "include".

Amendment of
article 34 of the
principal Act.

189. Article 34 of the principal Act shall be amended as follows:

(a) in subarticles (1) to (3) thereof for the word "bank" wherever it appears there shall be substituted the words "credit institution";

(b) in paragraph (a) of subarticle (1) of article 34 of the principal Act, for the words "the provisions of this Act," there shall be substituted the words "the provisions of this or any other Act,"; and

(c) for subarticle (4) thereof there shall be substituted the following new subarticles (4), (5) and (6):

"(4) Officers of the competent authority and of the Central Bank, including past and present officers, shall not disclose information obtained from credit institutions in the course of carrying out supervisory and other duties, which is governed by the obligation of professional secrecy, except 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.

(5) Notwithstanding the provisions of any other law, a credit institution may, if circumstances so warrant, communicate any information which is in its possession and which relates to the affairs of a customer, to other members of the group of companies of which that institution forms part.

(6) For the purposes of subarticle (5) of this article, the term "group of companies" shall include any body corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction, as the case may be, to carry out any activity equivalent to the business of banking or of the issuing of electronic money or any of the activities referred to in the Schedule to the Financial Institutions Act."

Amendment of
article 35 of the
principal Act.

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

(a) for the words "directive or regulation" in paragraph (b) in subarticle (3) thereof, there shall be substituted the words "directive, electronic money institutions directive, regulation or licence condition";

(b) for the words "Tribunal for Financial Services" in the English text paragraph (d) in subarticle (3) and paragraph (d) in subarticle (5) there shall be substituted the words "Financial Services Tribunal";

(c) immediately after subarticle (7) thereof, there shall be added the following new subarticle:

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

191. Immediately after article 35 of the principal Act, there shall be inserted the following new article 35A:

Addition of new article 35A to the principal Act.

"Administrative penalties.

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

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

(a) fails to pay to the competent authority the amount of the penalty within a period of thirty days of the service of the notice, and fails to appeal from the decision of the competent authority to the Financial Services Tribunal; or

(b) appeals to the Financial Service Tribunal and fails within a period of fifteen days from the decision of Tribunal to pay the administrative penalty as confirmed or as reduced by that Tribunal;

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

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

192. Immediately after article 37 of the principal Act, there shall be added the following Schedule:

“SCHEDULE

(Article 2(4))

List of Additional Activities

1. Financial leasing;
2. Money transmission services;
3. Issuing and administering means of payment (credit cards, travellers’ cheques and bankers’ drafts and similar instruments);
4. Guarantees and commitments;
5. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, certificates of deposit, and similar instruments);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
6. Participation in securities issues and the provision of services related to such issues;
7. Advice on undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

8. Money broking;
9. Portfolio management and advice;
10. Safekeeping and administration of securities;
11. Credit reference services;
12. Safe custody services.”.

Part IX

AMENDMENT OF THE INSIDER DEALING ACT, CAP. 375

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

Amendment
of the Insider
Dealing Act,
Cap. 375.

(2) The provisions of this Part of this Act shall come into force on such date as the Minister responsible for finance may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

194. In the long title to the principal Act, for the words “insider dealing”, there shall be substituted the words “insider dealing and market abuse offences”.

Amends
long title
to the
principal
Act.

195. In article 1 of the principal Act, for the words “Insider Dealing Act”, there shall be substituted the words “Insider Dealing and Market Abuse Offences Act”.

Amendment of
article 1 of the Act.

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

Amendment of
article 2 of the
principal Act.

(1) In subarticle (1) thereof:

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

““counsel or procure”, includes entice, encourage, advise, induce or recommend, and their grammatical derivatives shall be construed accordingly;”,

(b) for the definition of “recognised stock exchange”, there shall be substituted the following:

“ “recognised stock exchange” means the Malta Stock Exchange and any other investment exchange recognised as such in terms of the Financial Markets Act;”.

(2) In subarticle (3) thereof, for the words “information of a precise nature”, there shall be substituted the words “information of a precise or specific nature”, and for the words “a significant effect on the price”, there shall be substituted the words “a significant or material effect on the price or value”.

(3) In subarticle (4) thereof, for the words “(whether as principal or agent)”, there shall be substituted the words “(directly or indirectly and whether as principal or agent)”.

Substitution of article 5 of the principal Act.

197. For article 5 of the principal Act, there shall be substituted the following:

“Measures taken by the Central Bank.

5. Nothing in this Act shall be deemed to prohibit officers or employees of the Central Bank of Malta, acting in such capacity, from carrying out any transaction or from taking any measures in pursuance of monetary, exchange rate or public-debt management policies.”.

Addition of new article 9A to the principal Act.

198. Immediately after article 9 of the principal Act, there shall be added the following new article 9A:

Market Abuse Offences.

9A. No person shall

(a) disseminate false, exaggerated or misleading information, spread false rumours, or put into effect simulated or artificial operations or transactions which are intended, or which may or are likely to:

(i) influence the supply, demand or price of security;

(ii) create a false or misleading impression or appearance of an active market or of active dealing in a security, for the purpose of artificially simulating or inducing the purchase or sale of such security by others; or

(b) otherwise manipulate the securities market by the employment of artificial devices, fictitious transaction or other deceptive or manipulative conduct.”.

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

(a) for the words "3, 4, 6 or 7", wherever they appear in the article, there shall be substituted the words "3, 4, 6, 7 or 9A"; and

(b) immediately after subarticle (3) thereof, there shall be inserted the following new subarticle:

"(4) Where under any of the provisions of this Act, a person is prohibited from carrying out any act, he shall be prohibited from doing any such act directly or indirectly, and whether personally or through the use or intermediation of another person."

200. Immediately after article 10 of the principal Act, there shall be added the following new article 10A: Addition of new article 10A to the principal Act.

"Coordination with other authorities.

10A. For the purpose of securing compliance with this Act, and for preventing, investigating or detecting activities which amount or are likely to amount to insider dealing or market abuse under Maltese or foreign law, the Malta Financial Services Authority shall coordinate its efforts and exchange information and otherwise collaborate with the Listing Authority within the meaning of the Financial Markets Act, with the Registrar of Companies and with other local or foreign supervisory, enforcement or judicial authorities whose functions include the detection, prevention or prosecution of insider dealing or market abuse offences:

Provided that any person or body receiving any information thus exchanged –

(a) shall be subject to the rules governing professional secrecy in relation to such information; and

(b) shall only use the information received for the exercise of their respective functions at law and in the context of judicial or administrative proceedings specifically relating to the exercise of those functions:

Provided further that information exchanged by a competent authority in Malta to a foreign authority by virtue of this article may, with the express consent of the said competent authority, be used for other purposes or forwarded to other competent authorities in that country."

Amendment of
article
11 of the principal
Act.

201. Subarticle (4) of article 11 of the principal Act, shall be deleted.

PART X
AMENDMENT OF FINANCIAL INSTITUTIONS ACT,
CAP. 376

Amendment
of the Financial
Institutions Act,
Cap. 376.

202. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this part referred as "the principal Act".

(2) This Part shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

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

(a) in subarticle (1) thereof:

(i) immediately after the definitions "Central Bank" there shall be inserted the following definitions:

"close links" refers to a situation in which two or more persons are linked:

(a) by participation, through direct ownership or by way of control of twenty per centum or more of the voting rights or capital of a body corporate; or

(b) by control, through the relationship between a parent company and subsidiary company; or

(c) permanently to one and the same person through a control relationship;";

(ii) for the definition "company" there shall be substituted the following:

"company" means a limited liability company constituted in Malta in accordance with the Companies Act or any law which may from time to time be in force,

or a company incorporated outside Malta, provided that such company if not incorporated in Malta would qualify to be so incorporated under the laws of Malta;”;

(iii) in the definition “control” after the words “of a body corporate” there shall be added the words”; the power to appoint or remove the majority of the members of the board of directors or equivalent governing body and the power to cast the majority of votes at a meeting of the board of directors or equivalent body”;

(iv) for the definition “financial institution” there shall be substituted the following:

“ “financial institution” means any person who regularly or habitually acquires holidays or undertakes the carrying out of any activity listed in the Schedule to this Act for the account and at the risk of the person carrying out that activity:

Provided that these activities are not funded through the taking of deposits or other repayable funds from the public as defined in the Banking Act;

Cap. 371.

Provided further that this Act shall not apply to any of the above activities which is regulated under the Investment Services Act;”;

Cap. 370.

(v) in the definition “financial institutions directive” immediately for the words “a competent authority” there shall be substituted the words “the competent authority to regulate financial institutions”;

(vi) immediately after the definition “financial institutions directive” there shall be inserted the following definition:

“ “Financial Services Tribunal” or “Tribunal” means the Financial Services Tribunal established under the Malta Financial Services Authority Act;”;

Cap. 330.

(vii) for the definition “holding company” there shall be substituted the following:

““holding company” or “parent company” has the same meaning as is assigned to the term “parent company” in the Companies Act;”;

(viii) the definition “person” shall be deleted; and

(ix) for the definition “qualifying shareholding” there shall be substituted the following :

““qualifying shareholding” means a direct or indirect equity shareholding of at least ten per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such equity shares are not identical, the highest percentage figure shall be deemed to be the percentage of equity shares held, and “qualifying shareholder” shall be construed accordingly;”;

(b) for subarticles (2) and (3) thereof there shall be substituted the following:

“(2) A person shall not be deemed to be a financial institution by reason of the fact that that person either -

(a) belongs to a group of companies and provides any of the activities listed in the Schedule to this Act to companies which are not banks or financial institutions and which belong to the same group of companies; or

(b) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due:

Provided that where a person is not deemed to be a financial institution by virtue of the provisions of paragraph (a) and (b) above, such person shall, before commencing his activities, request a confirmation from the competent authority that he is deemed to be exempt from the requirement of a licence under article 3 of this Act.”.

204. In subarticle (2) of article 4 of the principal act, immediately after the words "such information" there shall be inserted the words "and shall conform with such conditions".

Amendment of
article 4
of the principal
Act.

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

Amendment of
article 5
of the
principal
Act.

(a) in subarticle (1) thereof:

(i) immediately after paragraph (c) thereof there shall be added the following new paragraph (d):-

"(d) the competent authority is satisfied that, where there are close links between that company and another person or persons, such links do not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of that company under the provisions of this Act or any financial institutions directive;" and

(ii) immediately at the end thereof there shall be added the following proviso:

"Provided that

(i) in respect of paragraphs (a), (b) and (c), if the applicant is a financial institution authorised in another country, it has its head office in the same country where it is registered and, or licensed;

(ii) in respect of paragraph (d) of this subarticle, the company shall, after being licensed under this Act, inform the competent authority forthwith of any change in circumstances concerning the application of the said paragraph (d) and shall be further required to provide the competent authority with information necessary to monitor compliance with the conditions referred to in the said paragraph (d) on a continuous basis.";

(b) in subarticle (3) thereof, immediately after the words "under this Act" there shall be added the words "and where it refuses an application it shall inform the applicant in writing with the reasons for the refusal"; and

(c) immediately after subarticle (5) thereof there shall be added the following subarticle (6):

“(6) A company, after being licensed under the Act, shall not allow its own funds to fall below the amount established in its licence or as may be required by the competent authority from time to time, unless such a reduction is of a temporary nature and is effected after having obtained the prior approval of the competent authority.”.

Amendment of
article 6 of the
Principal Act.

206. Immediately after subarticle (6) of article 6 of the principal Act there shall be added the following subarticle (7):

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

Amendment of
article 7 of the
principal Act.

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

(a) in subarticle (2) thereof the words from “and the competent authority” to the words “at a final decision” shall be deleted; and

(b) subarticle (4) thereof shall be deleted.

Addition of
new article
7A to the
principal
Act.

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

“Changes in
information.

7A. A financial institution licensed under this Act shall provide the competent authority with particulars of any changes in the information provided under this Act as soon as such financial institution becomes aware of such change.”.

Addition of
new article
8A to the
principal Act.

209. Immediately after article 8 of the principal Act, there shall be inserted the following new article 8A.

“Agency
Arrange-
ments.

8A. (1) No company licensed under this Act shall enter into agency arrangements, with third parties, unless it has obtained the prior written approval of the competent authority; and a person who is appointed as agent of a company licensed under this Act shall only act as agent:

(i) in respect of those activities for which the financial institution to which he will act as agent, is licensed under this Act;

(ii) to not more than one person licensed under this Act.

(2) In granting its approval under subarticle (1), the competent authority may:

(a) subject the company licensed under this Act and the person who will be appointed as agent to such conditions as it may deem appropriate and having granted its approval it may from time to time, vary or revoke such approval or any condition so imposed or impose new conditions;

(b) subject the person who will be appointed as agent to any of the obligations imposed on the company licensed under this Act.

(3) The competent authority may grant or refuse to grant the approval applied for under this Article and if it refuses to grant approval it shall inform the licensed financial institution in writing of the reasons for the refusal:

Provided that the competent authority shall refuse to grant its approval for the establishment of an agency agreement where the competent authority is:

(a) of the opinion that the agency agreement would give the licensed financial institution a competitive advantage on other licensed financial institutions which could give rise to an obstacle to the maintenance of effective competition and choice; or

(b) of the opinion that the activities to be performed by the agent could be performed by the licensed financial institution through its head office, or a branch or subsidiary; or

(c) not satisfied that the person who will be appointed as agent is competent to provide the activities which will form part of the agency agreement.

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

Amendment of
article 9
of the principal
Act.

(a) in subarticle (1) thereof for the words from "without obtaining the prior consent" to the end of the subarticle there shall be substituted the words:

"without obtaining the prior consent of the competent authority or, alternatively, if after having obtained such

consent it subsequently appears to the competent authority that any of these actions is operating, or is likely to operate, to the detriment of the prudent and sound management of the financial institution, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

- (i) restraining the person or financial institution from taking or continuing the action;
 - (ii) declaring the action to be void and of no effect;
 - (iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;
 - (iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;
 - (v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraphs (a) and (b) of this subarticle.”;
- (b) subarticles (2), (3) and (4) shall be renumbered as subarticles (3), (4) and (5) respectively;
- (c) immediately after subarticle (1) thereof, there shall be inserted the following subarticle (2):
- “(2) If, as a result of an acquisition of shares in a financial institution, the financial institution in which a person proposes to acquire the shareholding would become a subsidiary or be subject to the control of the person acquiring those shares, it shall be within the discretion of the competent authority to consider any request made by such person for the consent of the competent authority under the provisions of this article to constitute a request to apply for a licence to conduct the business of a financial institution under the provisions of this Act.”; and

(d) for subarticle (5) thereof as renumbered there shall be substituted the following subarticle (5):

“(5) (a) A financial institution shall notify to the competent authority full particulars of any person who is proposed to become a controller or director of the financial institution or any person who is proposed to cease to be a controller or director of the financial institution.

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

211. For paragraph (b) of subarticle (1) of article 10 of the principal Act there shall be substituted the following:

*Amendment of
article 10 of the
principal Act.*

“(b) grant or permit to be outstanding credit facilities or extend other services under terms and conditions more favourable than the financial institution would have otherwise applied -

(i) to any one of its directors or their spouses whether jointly or severally as well as with third parties:

Provided that, in any case where unsecured credit facilities are granted, these shall not in the aggregate exceed the sum of ten thousand Maltese liri;

(ii) to any person in whom or in which the financial institution or any one or more of its directors is interested as a director, partner, manager, agent or member or to any person of whom or of which any one or more of the financial institution's directors is a guarantor;

(iii) to any body of persons in which the financial institution or any one or more of its directors jointly or severally maintains control, not being itself a financial institution or the parent undertaking of the financial institution, a subsidiary of this parent undertaking or a subsidiary of the financial institution;

and where the competent authority has reason to believe that such favourable terms and conditions have been applied, it shall have

the power to require the financial institution to rectify the position and if the financial institution fails to take the necessary action to rectify the position as required, the competent authority shall take such measures as it deems appropriate until the position is rectified.”.

Amendment of
article 12 of the
principal Act.

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

(a) subarticle (1) thereof shall be deleted and subarticle (2) and (3) thereof shall be renumbered respectively as subarticle (1) and (2) thereof; and

(b) in subarticle (1) thereof as renumbered, the words “and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act” shall be deleted.

Amendment of
article 14 of the
principal Act.

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

(a) in subarticle (1) thereof, immediately after the words “A financial institution shall submit”, there shall be inserted the words “to the competent authority”;

(b) in subarticle (3) thereof, immediately after the word “branches”, there shall be inserted the words “, agencies or offices”;

(c) subarticles (4) to (12) thereof shall be renumbered as subarticles (5) to (13) respectively;

(d) immediately after subarticle (3) thereof, there shall be inserted the following new subarticle:

“(4) A financial institution shall submit to the Central Bank such information as the Central Bank may require in the discharge of its duties and the Central Bank may enquire into and ask for clarifications of any information so submitted.”;

(e) in subarticle (5) as renumbered -

(i) for the words “(1) of this” there shall be substituted the words “(1) and (4) of this”;

(ii) immediately after the words “and the competent authority” there shall be inserted the words “or the Central Bank, as the case may be,”;

(iii) the enumeration "(a)" before the first paragraph after the words "save that:-" shall be deleted; and

(iv) paragraph (b) shall be deleted; and

(f) in subarticle (10), (11) and (12) as renumbered for the words "(5)" wherever it appears there shall be substituted the word "(6)".

214. In paragraph (a) of subarticle (2) of article 15 of the principal Act, for the word "(11)" there shall be substituted the word "(12)". Amendment of article 15 of the principal Act.

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

(a) for subarticle (1) thereof, there shall be substituted the following:

"(1) If, whether from any report made under section 14 or section 15 of this Act or otherwise, it appears to the competent authority, that any of the circumstances indicated in subsection (2) of section 6 of this Act apply, the competent authority, after consulting with the Central Bank, may, without prejudice to the powers to impose restrictions or revoke a licence under the provisions of subarticle (2) of article 6 -

(a) require the financial institution forthwith to take such steps as the competent authority may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to advise the financial institution in the proper conduct of its business;

(c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;

(d) appoint a competent person to assume control of the business of the financial institution and either to carry on that business or to carry out such other function or functions in respect of such business or part thereof, as the competent authority may direct;

(e) require the financial institution to wind up its business or to wind up its business in Malta;

(f) fix the remuneration to be paid by the financial institution to any competent person appointed under this subarticle."; and

(b) for the words "the Central Bank shall inform the competent authority" in subarticle (2) thereof there shall be substituted the words "the competent authority shall inform the Central Bank".

Amendment of
article 18 of the
principal Act.

216. In subarticle (6) of article 18 of the principal Act, immediately after the words "financial institution or a branch" there shall be inserted the words "or office".

Amendment of
article 20 of the
principal Act.

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

(a) subarticles (2) and (3) thereof shall be renumbered as subarticles (6) and (7) respectively;

(b) immediately after subarticle (1) thereof there shall be inserted the following subarticles (2) to (5):

"(2) The competent authority may further, on the basis of international agreements, or upon reciprocity agreements, disclose information to other foreign competent authorities insofar as the authorities to which the information is disclosed are subject to obligations of professional secrecy which are equivalent to those applying under the law in Malta.

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

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

(5) The competent authority shall further, upon a request in writing, disclose to the Central Bank 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 under the law."; and

(c) in subarticle (6) as renumbered for the words "of the Central Bank" there shall be substituted the words "of the competent authority".

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

"Appeals. 21. Any person who is aggrieved by a decision of the competent authority -

- (a) under subarticle (2) of article 3;
- (b) to refuse an application for a licence;
- (c) to impose any condition of the licence;
- (d) to impose or vary any restriction;
- (e) to revoke a licence;
- (f) to make any order under article 9 of this Act;
- (g) to make a public statement, under the provisions of article 25A of this Act, as to a person's misconduct;
- (h) to impose an administrative penalty under the provisions of article 23 of this Act; or
- (i) by the failure of the competent authority to determine an application for a licence under subarticle (5) of article 5 of the Act,

may appeal against the decision to the Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act."

219. Immediately after subarticle (2) of article 22 of the principal Act, there shall be added the following subarticles: Amendment of article 22 of the principal Act.

"(3) The Minister may by regulations under this subarticle prescribe the penalties to which a person guilty of an offence against this Act shall be liable and may in particular by such regulations:

- (a) prescribe different penalties for different offences against this Act;

(b) prescribe different penalties calculated in accordance with the duration of the offence:

Provided that such penalties shall not be more than that of imprisonment for a term of more than two years or a fine (*multa*) of more than two hundred thousand Maltese liri or both such fine and imprisonment.

(4) The Minister may by regulations under this subsection prescribe administrative penalties that may be imposed by the competent authority recoverable as a civil debt against the offender in lieu of criminal proceedings, such administrative penalties shall not be greater than forty thousand Maltese liri in respect of any one offence.

(5) No criminal proceedings for an offence against this Act shall be commenced without the consent of the Attorney General.

(6) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law."

Substitution of
article 23 of the
principal Act.

220. For article 23 of the principal Act there shall be substituted the following:

"Adminis-
trative
penalties.

23. (1) Where the competent authority decides to impose an administrative penalty on a person in lieu of criminal proceedings, no proceedings in respect of the same offence may be brought against the same person before a court of criminal jurisdiction and the competent authority shall notify such decision by notice in writing served on the person on whom the administrative penalty is so imposed.

(2) Where within 30 days of service of a notice as is referred to in subarticle (1) of this article, the person on whom the notice is served has not paid the administrative penalty or has not appealed against the decision of the competent authority before the Tribunal as provided in article 21 of this Act, or where within fifteen days of the decision of the Tribunal such person has not paid the administrative penalty as confirmed or reduced by the Tribunal, then the competent authority may with respect to the recovery of the amount due to it as administrative penalty serve a copy of the notice or of the decision of the Tribunal, as the case may be, on the person by whom the administrative penalty is due, by means of a judicial Act, and such notice or decision, as the

case may be, shall thereupon constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure.”.

Cap. 12.

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

(a) subarticle (4) thereof shall be renumbered as subarticle (7) thereof; and

(b) immediately after subarticle (3) thereof then shall be inserted the following sub articles (4) to (6):

“(4) Officers of the competent authority and of the Central Bank, including past and present officers, shall not disclose information obtained from financial institutions in the course of carrying out supervisory and other duties, which is governed by the obligation of professional secrecy, except 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.

(5) Notwithstanding the provisions of any other law, a financial institution may, if circumstances so warrant, communicate any information which is in its possession and which relates to the affairs of a customer, to other members of the group of companies of which that financial institution forms part.

(6) For the purposes of subarticle (5) of this article, the term “group of companies” shall include any body corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction to carry out any activity equivalent to the business of banking or of the issuing of electronic money or any of the activities referred to in the Schedule to this Act.”.

222. (1) (a) Any partnership constituted in Malta in accordance with the Companies Act or any partnership registered or incorporated outside Malta which was in possession of a licence of a financial institution on the commencement of this Part shall retain its status as a partnership and continue to operate as a licensed financial institution under the principal Act provided that if control of that partnership is acquired by a person other than the person who controlled it on the commencement of this Part, such partnership shall change its

Transitory Provision.

status to one of a company within such period of takeover as the competent authority may determine.

(b) Any reference in the principal Act to a share or shareholding of a company shall, when applied to a commercial partnership, include a reference to the interest of a partner in such partnership and any reference to director of a company shall, when applied to a commercial partnership include a reference to a partner in such partnership.

(2) Any person who before the coming into force of this Part provided services as described in subarticle (2) of article 2 of the principal Act as substitute by this Part shall within one month of the coming into force of this Part or such further period as the competent Authority may notify inform the said competent authority of the services provided by him and seek confirmation that he is exempt from the requirement of a licence under the principal Act, and the provisions of the principal Act as to appeals from a decision of the competent authority shall apply to decisions under this subarticle.

PART XI

AMENDMENT OF THE PROFESSIONAL SECRECY ACT, CAP. 377.

Amendment of the
Professional
Secrecy Act,
Cap. 377.

223. (1) This Part amends and shall be read and construed as one with the Professional Secrecy Act, hereinafter referred to as "the principal Act".

(2) The provisions of this Part shall come into force on such date as the Minister responsible for Finance may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions or different purposes of this Part.

Insertion of
new articles
6A and 6B
to the principal
Act.

224. Immediately after article 6 of the principal Act, there shall be inserted the following new articles 6A and 6B:

"Permitted
disclosures.

"6A. No offence shall be committed against section 257 of the Criminal Code or this Act by -

(a) a person disclosing in good faith secret information in the course of and for the purpose of

obtaining advice or directions from the body regulating his profession;

(b) a person disclosing in good faith secret information to a public authority or before a court or tribunal to the extent that is proportionate and reasonably required for the specific purpose of:-

(i) defending himself against any claim with regard to professional work in connection with which the secret information has been obtained by him; or

(ii) initiating and maintaining judicial proceedings seeking the recovery of fees or other sums due to him or the enforcement of other lawful claims or interests;

(c) saving the provisions of article 642 (1) of the Criminal Code or article 588 (1) of the Code of Organization and Civil Procedure, a person, who in good faith discloses secret information to a competent public authority in Malta in the reasonable belief that such disclosure is reasonably necessary for the purpose of preventing, revealing, detecting or prosecuting the commission of acts that amount or are likely to amount to a criminal offence, or to prevent a miscarriage of justice. Cap. 9.
Cap. 12.

"Obligation to disclose.

6B. Saving the provisions of article 642 (1) of the Criminal Code and of article 588 (1) of the Code of Organization and Civil Procedure, a person shall disclose information otherwise covered by professional secrecy when required to do so: Cap. 9.
Cap. 12.

(a) by a competent law enforcement or regulatory authority investigating a criminal offence or a breach of duty;

(b) by a magistrate in the cause and for the purposes of *in genere* proceedings; and

(c) by a court of criminal jurisdiction in the course of a prosecution for a criminal offence."

Amendment of
article 8 of the
principal Act.

225. In article 8 of the principal Act, for the words “unless there is an express statutory requirement”, there shall be substituted the words “unless there is statutory requirement”.

Amendment of
article 9 of the
principal Act.

226. In article 9 of the principal Act, for the words “A court may” there shall be substituted the words “Saving the provisions of article 642 (1) of the Criminal Code and of article 588 (1) of the Code of Organization and Civil Procedure, a court may” and for the words “for which that provision was enacted”, there shall be substituted the words “for which that provision was enacted, or for the specific purpose of preventing, disclosing or detecting the commission of acts that amount or are likely to amount to a criminal offence”.

PART XII

AMENDMENT OF THE CONTROLLED COMPANIES (PROCEDURE FOR LIQUIDATION) ACT, CAP. 383

Amendment of
Controlled
Companies
(Procedure for
Liquidation)
Act,
Cap. 383.

227. (1) This Part amends the Controlled Companies (Procedure for Liquidation) Act, hereinafter in this Part referred to as the principal Act,

(2) This Part shall be read and construed as one with the principal Act, and shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of
article 2 of the
principal Act.

228. Article 2 of the Principal Act shall be amended as follows:

(a) immediately before the definition “controlled asset” there shall be inserted the following definitions:

Cap 204.

“Central Bank” means the Central Bank of Malta established by the Central Bank of Malta Act;

Cap 371.

“Competent Authority” means the Competent Authority nominated by the Minister under and for the purposes of the Banking Act;”;

(b) in the definition “controlled asset” for the words “Central Bank of Malta” there shall be substituted the words “Competent Authority”; and

(c) in the definition “Controller” for the words “Central Bank of Malta” there shall be substituted the words “Competent Authority”.

Amendment of
article 3 and 4
of the
principal Act.

229. In articles 3 and 4 of the principal Act for the words “the Central Bank of Malta” wherever they appear there shall be substituted the words “the Competent Authority after consultation with the Central Bank”.

Transitory
provision.

230. The provisions of the principal Act as amended by this Act shall continue to apply to controlled assets and to Controllers referred to in the principal Act as in force immediately before the coming into force of this Part notwithstanding the amendments made to the Principal Act by this Part, and any order made by the Central Bank of Malta under the Principal Act as in force

immediately before the coming into force of this Part as well as any action taken or omitted to be taken pursuant thereto, shall continue to have effect and validity as if such order were made by the Competent Authority under the Principal Act as amended by this Part.

PART XIII

AMENDMENT OF THE COMPANIES ACT, CAP. 386

231. (1) This Part amends the Companies Act, hereinafter in this part referred to as "the principal Act". Amendment of the Companies Act, Cap. 386.

(2) This Part shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

232. For subarticles (1) and (2) of article 225 of the principal Act, there shall be substituted the following: Amendment of article 225 of the principal Act.

"(1) The Minister shall appoint an individual to be the Official Receiver for the purposes of this Act and may at any time terminate any such appointment or designation.

(2) The Minister may authorise in writing any individual to assist the Official Receiver, conferring on any such person all or any of the powers of the Official Receiver under this Act or any regulations made thereunder."

233. For subarticle (2) of article 260 of the principal Act, there shall be substituted the following: Amendment of article 260 of the principal Act.

"(2) The Official Receiver shall take part in the examination, and for that purpose may be assisted by an advocate."

234. Article 425 of the principal Act shall be amended as follows: Amendment of article 425 of the principal Act.

(a) subarticle (4) thereof shall be renumbered as subarticle (5); and

(b) immediately after subarticle (3) thereof, there shall be inserted a new subarticle (4) as follows:

"(4) The Minister may make detailed regulations –

(a) for the purpose of allowing a body corporate, formed and incorporated or registered in a country other than Malta, which is similar in nature to a company as known under the laws of Malta, to be continued as a company under this Act and under the applicable laws of Malta, and

(b) for the purpose of allowing the continuance of a company registered under this Act as a body corporate incorporated or registered under the laws of a country other than Malta;

Such regulations may establish requirements in relation to the procedures to be followed and the documentation, undertakings and information to be supplied to the Registrar for the purpose of carrying out any such continuance, and the rules may further authorise the Registrar to issue guidelines stipulating such further conditions and requirements as the Minister may deem appropriate, and different regulations and guidelines may be issued for different categories or classes of cases.”.

PART XIV AMENDMENT OF THE INSURANCE BUSINESS ACT, CAP. 403

Amendment of
the Insurance
Business Act,
Cap. 403.

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

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish and different dates may be so established for different provisions or different purposes of this part.

Amendment of
Article 2 of the
principal Act.

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

- (a) the definition of “affiliated insurance” shall be deleted;
- (b) for the definition of “branch” there shall be substituted the following:

“ “branch” means premises of the company, other than its head office, from which the business of insurance is carried on;”;

(c) for the definition of "establishment" there shall be substituted the following:

" "establishment" means the head office, agency, or branch of an undertaking and includes any permanent presence of an undertaking in Malta, even if that presence does not take the form of a branch or agency but consists merely of an office managed by the undertaking's own staff or by an independent person who has express or implied authority to act for the undertaking;"

(d) for the definition of "insurance manager" there shall be substituted the following:

" "insurance manager" means a person authorised as such under article 13 of this Act whose activities consist of accepting an appointment from:

(a) an insurer to manage any part of its business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such insurer, and, in this context, "management" includes authority to enter into contracts of insurance on behalf of the insurer under the terms of the appointment; and

(b) an insurance broker authorised under the Insurance Brokers and Other Intermediaries Act, to manage any part of its business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such insurance broker;"

(e) immediately after the definition of "long term business" there shall be added the following new definition:

" "Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership or of affiliation to or relationship with any international global or regional organisation 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;"

(f) immediately after the definition of "Money Laundering" there shall be added the following new definition:

" "Mutual Association" shall be construed in accordance with subarticle (3) of article 6 of this Act;" and

(g) the definition of "Protection and Indemnity Club" shall be deleted.

Amendment of
article 3 of the
principal Act.

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

(a) in subarticle (2) thereof, the words "Such body shall be appointed for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such appointment by Order in the Gazette." shall be deleted; and

(b) subarticle (3) thereof shall be deleted.

Amendment of
article 4 of the
principal Act.

238. For subarticle (2) of article 4 the principal Act there shall be substituted the following:

"(2) When considering whether to grant or refuse to grant an authorisation under this Act, the Competent Authority shall, in particular, have regard to:-

(a) the protection of insured persons, policy holders and the general public;

(b) the protection of the reputation of Malta, taking into account Malta's international commitments; and

(c) the promotion of competition and choice."

Amendment of
article 5 of the
principal Act.

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

(a) in subarticle (4) thereof:

(i) for the words "class 14 or 15." there shall be substituted the words "class 14, 15 or 17."; and

(ii) immediately at the end thereof there shall be added the following proviso:

"Provided that the risk included in class 17 shall be deemed to be an ancillary risk of class 18 if the conditions of subarticle (5) of this article are satisfied and where the main risk relates solely to the assistance provided to persons in difficulty while travelling or away from their home or permanent residence, and the risk included in class 17 shall also be deemed an ancillary risk where it concerns disputes or risks arising out of or in connection with, the use of seagoing vessels and the conditions of the said subarticle are satisfied.";

(b) subarticles (5) and (6) shall be renumbered as subarticles (6) and (7) respectively, and immediately after subarticle (4) there shall be inserted the following new subarticle (5):

“(5) The conditions referred to in subarticle (4) are the following:

(a) that the risks to be insured are connected with the principal risk;

(b) that these risks concern the object which is covered under the principal risk; and

(c) that they are covered by the contract insuring the principal risk.”;

(c) for subarticle (6) thereof as renumbered there shall be substituted the following:

“(6) The Minister may, after consultation with the Competent Authority, make rules or regulations determining the class or classes of long term business and the class or classes or part classes of general business that may be effected and carried out under this Act.”; and

(d) immediately after subarticle (7) as renumbered there shall be added the following new subarticle (8):

“(8) The Competent Authority may, by an Insurance Directive made for the purposes of this article, provide that general business contracts of insurance of a kind specified in the Directive contain such conditions or include such requirements or arrangements as may be determined by the Directive.”.

240. For subarticle (3) of article 6 of the principal Act there shall be substituted the following: Amendment of article 6 of the principal Act.

“(3) Subarticles (1) and (2) of this article shall not apply to a Mutual Association if such mutual association satisfies such requirements as may be set out in an Insurance Directive made for the purpose.”.

241. The words “or affiliated insurance” in subarticle (8) of article 7 of the principal Act shall be deleted. Amendment to article 7 of the principal Act.

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

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered there shall be added the following subarticles:

“(2) Where close links exist between a company applying for authorisation and any other person, the Competent Authority shall:-

(a) only issue an authorisation if it considers that such close links do not prevent it from effectively exercising its supervisory functions; and

(b) refuse to issue such authorisation if it considers that the laws, regulations or administrative provisions of any country, other than Malta, governing any person with whom the company has close links, or their enforcement, prevent it from effectively exercising its supervisory functions.

(3) The Competent Authority may, from time to time, by means of an Insurance Directive issued under this Act define the circumstances in which close links are to be regarded as existing between a company and any other person.”.

Amendment
of article 9
of the principal
Act.

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

(a) in subarticle (1), paragraph (b) shall be deleted and paragraph (c) shall be renumbered as paragraph (b) thereof;

(b) subarticle (2) shall be renumbered as subarticle (3) thereof; and

(c) immediately after subarticle (1) thereof there shall be added the following new subarticle:

“(2) Without prejudice to the provisions of subarticle (3) of this article, the provisions of this article shall not apply to a company which holds an authorisation to carry on both long term business and general business under the principal Act as in force immediately before the coming into force of subarticle (1) of this article until such time as the Minister may by Order in the Gazette establish.”.

Amendment of
article 10 of the
principal Act.

244. The words “or affiliated insurance” in paragraph (b) of subarticle (1) of article 10 of the principal Act shall be deleted.

245. In subarticle (2) of article 11 of the principal Act, for the words "as defined in section 2 of this Act, the requirements referred to therein are those set out in the following provisions of this subsection", there shall be substituted the words "the business of insurance shall be carried out from such branch by a person fulfilling the following requirements of this subarticle".

Amendment of
article 11
of the principal
Act.

246. For paragraph (b) of subarticle (5) of article 16 of the principal Act, there shall be substituted the following:

Amendment of
article 16 of
the principal Act.

"(b) a company whose head office is in Malta, if it carries on business solely in, or from a country outside Malta, and the business is restricted to reinsurance."

247. In subarticle (6) of article 17 of the principal Act, the words "or affiliated insurance" shall be deleted.

Amendment of
article 17 of
the principal Act.

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

Amendment of
article 20 of the
principal Act.

(a) in subarticle (1) thereof paragraphs (a) and (b) therein appearing immediately after the words "a copy of its financial statements drawn up -" shall be renumbered as paragraphs (i) and (ii) respectively;

(b) immediately after subarticle (1) thereof there shall be added the following subarticle (1A):

"(1A) In each of the cases referred to in paragraphs (i) and (ii) in subarticle (1) of this article the company shall provide a copy of its audited financial statements to any person applying for such copy:

Provided that the company may charge such reasonable fees not exceeding the administrative costs incurred in producing such copy."; and

(c) subarticle (4) thereof shall be deleted and subarticle (5) thereof shall be renumbered as subarticle (4) thereof.

249. In subarticle (7) of article 23 of the principal Act, the words "or affiliated insurance" shall be deleted.

Amendment
of article 23
of the principal
Act.

250. Article 24 of the principal Act shall be amended as follows:

Amendment
of article 24 of
the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered there shall be added the following subarticles (2) and (3):

“(2) For the purposes of subarticle (1) of this article, any matter which relates to and may have a serious adverse effect includes any matter which:

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

(b) gravely impairs the company's ability to continue as a going concern; or

(c) may be prescribed by the Minister.

(3) An auditor or actuary, as the case may be, of an authorised company shall likewise have a duty to report to the Competent Authority any facts and decisions which relate to or have a serious adverse effect upon the insured, the policyholder or any other interested person, relating to the company, or of the branch in Malta of a company whose head office is outside Malta, of which he becomes aware in his capacity as auditor of or actuary to a company having close links, within the meaning of article 8 of this Act.”.

Amendment
of article 26 of
the principal Act.

251. For paragraph (h) of article 26 of the principal Act there shall be substituted the following:

“(h) the authorised company is likely to become unable to meet its obligations or can no longer be relied upon to fulfil or satisfy its obligations towards insureds, policyholders, creditors or other interested persons; or

(i) close links within the meaning of article 8 of this Act, exist between the authorised company and another person, and the Competent Authority is prevented from exercising its supervisory functions effectively either by reason of those close links or by reason of any law, regulation or administrative provision of a country outside Malta governing that other person, or by reason of difficulty in their enforcement.”.

Amendment of
article 28 of
of the principal
Act.

252. Immediately after subarticle (3) of article 28 of the principal Act, there shall be added the following new subarticles:

“(4) The Competent Authority may, where it feels is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any of the following:

- (a) the suspension, revocation or restriction of an authorisation;
- (b) any action taken in terms of this article;
- (c) the carrying out of business of insurance in an unsatisfactory manner and the persons carrying out such business;
- (d) any other practice or matter which may be detrimental to the interest of insureds, policyholders, creditors or other interested persons;
- (e) the commission of an offence against this Act;
- (f) the imposition by the Competent Authority of an administrative penalty.

(5) The Competent Authority may require the company concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the Competent Authority in the same manner as an administrative penalty imposed under this Act.”.

253. In paragraph (a) of subarticle (1) of article 29 of the principal Act, immediately after the words “is authorised to carry on;” there shall be inserted the words “or with respect to any person with whom the company has close links within the meaning of article 8 of this Act”.

*Amendment
of article 29 of
the principal Act.*

254. The words “or affiliated insurance” in article 37 of the principal Act shall be deleted.

*Amendment
of article 37
of the principal
Act.*

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

*Amendment of
article 38 of the
principal Act.*

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

- (i) in paragraph (a) thereof, for the words “acquire a qualifying shareholding”, there shall be substituted the words “acquire, directly or indirectly, a qualifying shareholding”;

- (ii) in paragraph (b) thereof, for the words “increase an existing holding”, there shall be substituted the words “increase, directly or indirectly, an existing holding”;

- (iii) in paragraph (c) thereof, for the words “increase a qualifying shareholding”, there shall be substituted the words “increase, directly or indirectly, a qualifying shareholding”;

(iv) in paragraphs (d) and (e) thereof, for the words "reduce a qualifying shareholding", there shall be substituted the words "reduce, directly or indirectly, a qualifying shareholding"; and

(v) in paragraph (f) thereof, for the words "divest itself of", there shall be substituted the words "divest itself, directly or indirectly, of".

(b) subarticle (2) thereof shall be deleted;

(c) in subarticle (7) thereof, for the words "to the Competent Authority with such notification" there shall be substituted the words "to the Competent Authority with such notification; and the Competent Authority upon a notification by a person intending to take any action set out in paragraphs (a) to (c) of subarticle (1) hereof, when, determining what action to take in accordance with this article, upon such notification, determine whether such person is a fit and proper person.";

(d) in subarticle (8) thereof:

(i) for the words "two months" there shall be substituted the words "three months";

(ii) in paragraph (b) therein, for the words "may deem appropriate," there shall be substituted the words "may deem appropriate; or"; and

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

"(c) refusing consent to the taking of the action,";

(e) subarticle (9) thereof shall be amended as follows:

(i) in paragraph (a) therein, for the words "from taking the action" there shall be substituted the words "from taking, or continuing with, the action", and

(ii) in paragraph (d) therein immediately after the words "the right to receive any payment" there shall be inserted the words "or to exercise any voting rights attaching to the shares acquired"; and

(f) immediately after subarticle (10) thereof there shall be added the following subarticle:

“(11) Without prejudice to any other provision of this Act, where the influence exercised by any person holding a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an authorised company, the Competent Authority may exercise any of its powers under this Act, including the power to issue directives as it may deem reasonable in the circumstances.”.

256. For subarticle (3) of article 39 of the principal Act, there shall be substituted the following:

“(3) Paragraph (b) of subarticle (2) of this article shall not apply to a company if its business is restricted to reinsurance.”.

257. Immediately after subarticle (5) of article 41 of the principal Act there shall be inserted the following new subarticle:-

Amendment of
article 41
of the principal
Act.

“(6) The Minister may, after consultation with the Competent Authority, make regulations in respect of the winding-up or re-organisation of companies whose head office is in Malta, including their branches, if any, and of branches of companies whose head office is outside of 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 set-off 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 such companies or of branches thereof; the publication of decisions relating to such winding-up or re-organisation procedures; the establishment of rules governing the applicability of the proper or applicable law and other issues of conflict of laws.”.

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

Amendment
of article 43
of the principal
Act.

(a) for the marginal note thereto there shall be substituted the following:

“Changes in documentation or information.”;

(b) for subarticle (2) thereof there shall be substituted the following:

“(2) Without prejudice to article 38 of this Act, a company whose head office is in Malta authorised under this Act shall -

(a) before making any addition or alteration to the memorandum or articles of association or other instrument constituting the company, submit in writing to the Competent Authority particulars of the proposed addition or alteration for its prior consent; and no such addition or alteration shall be made or shall be registered, or shall take effect, whether it is registered or not, unless and until the Competent Authority has signified its consent in writing; and

(b) inform the Competent Authority of the names of the persons holding a qualifying shareholding in the company and the percentage of such holding; and the Competent Authority may, by an Insurance Directive made for the purposes of this article, determine the form, manner and content of the information to be forwarded to it and the date by which such information shall be forwarded shall also be established by that Directive.”; and

(c) immediately after subarticle (2) thereof there shall be added the following subarticle (3):

“(3) Without prejudice to the foregoing provisions of this article, an authorised company shall notify the Competent Authority on a continuous basis, with any change or circumstances which may give rise to the existence of close links within the meaning of article 8 of this Act.”.

260. In article 49 of the principal Act, for the words "There shall be established a fund to be known", there shall be substituted the words "There shall be established a fund, with such legal personality or otherwise, as may be prescribed, to be known".

Amendment of
article 49 of the
principal Act.

261. For article 53 of the principal Act there shall be substituted the following:

Amendment of
article 53 of the
principal Act.

"Exemptions
from income
tax.

53. All contributions made to the Protection and Compensation Fund and any income of any funds belonging to the Fund shall be exempted from any liability for the payment of income tax under any law for the time being in force."

262. Article 54 of the principal Act shall be amended as follows:

Amendment of
article 54 of
the principal
Act.

(a) in paragraph (a) therein, the words "or affiliated insurance" shall be deleted; and

(b) for the words "irrevocable written undertaking" in subparagraph (i) of paragraph (b) therein, there shall be substituted the words "written undertaking or any form of guarantee."

263. Article 55 of the principal Act shall be amended as follows:

Amendment of
article 55 of
the principal
Act.

(a) in the Maltese text, for paragraph (f) of subarticle (1) thereof, there shall be substituted the following:

"(f) is-setgha ghad-dhul biex tikseb informazzjoni u dokumentazzjoni taht l-artikolu 31 ta' dan l-Att;"

(b) for subarticle (2) thereof, there shall be substituted the following:

"(2) The Competent Authority shall exercise powers by virtue of this article:

(a) where the assistance is requested by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta's international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request under a Memorandum of Understanding concluded with the Competent Authority.”; and

(c) subarticles (3) and (4) thereof shall be deleted and subarticle (5) shall be renumbered as subarticle (3) thereof.

Amendment of
Article 57 of
the principal
Act.

264. Article 57 of the principal Act shall be amended as follows:-

(a) for subarticle (1) thereof, there shall be substituted the following:

Cap. 330.

“(1) For the purpose of this Act, the term “Financial Services Tribunal” means the tribunal referred to in article 21 of the Malta Financial Services Authority Act, and the term “Tribunal” shall be construed accordingly:

Provided that for the purpose of proceedings arising under this Act the members appointed under subarticle (4) of article 21 of the Malta Financial Services Authority Act, shall be substituted by persons to be appointed by the Minister under this Act and who, in his opinion, possess the necessary expertise and experience in the business of insurance; and the provisions of subarticles (5) to (7) of article 21 of the said Act shall apply to the persons appointed pursuant to this proviso in the same manner and to the same extent as they apply to the members mentioned in subarticle (2) of article 21 of the said Act.”; and

(b) in subarticle (4) thereof for the words “article 10 of the Banking Act” there shall be substituted the words “article 21 of the Malta Financial Services Authority Act”, for the words “subarticle (15) of the said article 10” there shall be substituted the words “subarticle (13) of the said article 21” and for the words “the provisions of the Banking Act” there shall be substituted the words “the provisions of the Malta Financial Services Authority Act.”.

265. Article 59 of the principal Act shall be amended as follows: Amendment of article 59 of the principal Act.

(a) in paragraph (a) of subarticle (1) thereof, for the words "with any of the provisions of this Act; or" there shall be substituted the words "with any of the provisions of this Act or of any other Act; or";

(b) subarticles (2), (3) and (4) thereof, shall be renumbered as (4), (5) and (6) respectively;

(c) immediately after subarticle (1) thereof, there shall be added the following new subarticles:

"(2) Subject to the provisions of subarticle (3) of this article, information obtained by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any rules or regulations made thereunder, or of any Insurance Directive, or in the discharge of any functions under any of the said provisions, or from an overseas regulatory authority, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, not being a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, or of any rules and regulations made thereunder or of any Insurance Directive except with the consent of the person from whom the information was obtained, provided the information relates solely to that person.

(3) The provisions of subarticle (2) of this article shall not preclude the disclosure of information-

(a) 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) with a view to enabling or assisting the Competent Authority in the performance or discharge of any of its functions under this Act;

(c) which has been made available to the public by virtue of being disclosed on any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

(d) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained;

(e) to an auditor where such disclosure would assist the auditor in the exercise of his functions under articles 21 and 24 of this Act;

(f) to an actuary where such disclosure would assist the actuary in the exercise of his functions under article 23 of this Act;

(g) to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act, where such information is required by the Bank or the Listing Authority in the exercise of their respective functions in terms of law;

(h) in response to a request from, or for the purpose of assisting, an overseas regulatory authority pursuant to article 55 of this Act;

(i) 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 deception, prevention of prosecution of criminal offences;

(j) in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an authorised company provided such information does not concern third parties involved in attempts to rescue such company, 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 or for other similar procedures.”

Amendment
of article 62
of the principal
Act.

266. Article 62 of the principal Act shall be amended as follows:

(a) for the words “restricted to affiliated insurance” in the marginal note thereto there shall be substituted the words “of insurance, insurance manager or insurance broker;”

(b) for the words “to a private company” in subarticle (1) thereof, there shall be substituted the words “to a company”;

(c) for the words “business restricted to affiliated insurance” wherever they appear, there shall be substituted the words “business of insurance”; and

(d) immediately after subarticle (2) thereof, there shall be added the following subarticle:

“(3) (a) the provisions of the foregoing subarticles of this article shall also apply, mutatis mutandis to -

(i) companies authorised to act as an insurance manager; and

(ii) companies enrolled to carry on the business of insurance broking under the Insurance Brokers and Other Intermediaries Act, and accordingly references in this article to "authorised" and to "business of insurance" shall be deemed to include references to "enrolled" and "business of insurance broking" respectively;

(b) in this subarticle reference to the "company" shall include reference to a "partnership en commandite or to a similar or equivalent body corporate the capital of which is divided into shares."

267. Immediately after subarticle (2) of article 64 of the principal Act, there shall be added the following subarticles:

Amendment
of article 64
of the principal
Act.

"(3) The Minister may, after consulting the Competent Authority, make regulations exempting any person or any class or classes or part classes of business of insurance, from all or any of the provisions of this Act or of any rules or regulations made thereunder, subject to such conditions or requirements including the requirement of other forms of authorisation and notification procedures as may be prescribed.

(4) Rules or regulations made under this article may make such exemptions, conditions or modifications as may be specified therein in respect of different cases, circumstances or purposes and may give the Competent Authority such power of adaptation of the rules and regulations as may be specified therein.

(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or restrictions arising from Malta's international commitments."

268. The First Schedule to the principal Act shall be amended as follows:

Amendment
of First
Schedule to
the principal
Act.

(a) in the definition of "insurance agent" in item 2 thereof for the words "by a member of Lloyd's" there shall be substituted the words "by or on behalf of a member of Lloyd's";

(b) in the definition of "binding authority agreement" in item 2.1 thereof for the words "between a member of Lloyd's" there shall be substituted the words "between a member of Lloyd's or a person acting on its behalf"; and

(c) in items 3 and 4 thereof for the words "of section 8" wherever they appear, there shall be substituted the words "of subarticle (1) of article 8".

Amendment of
Fourth Schedule
to the principal
Act.

269. The Fourth Schedule to the principal Act shall be amended as follows:

(a) for item 3.5 there shall be substituted the following:

"3.5 The company's own funds, whether in Maltese Liri or in other currencies acceptable to the Competent Authority are, at all times, not less than such amount appropriate for the kind of business to be carried on by the company as may be determined by an Insurance Directive made for the purpose under this Act, and such own funds shall at all times be unencumbered.";

(b) for the words "Sections 8 to 12" in item 4.1 thereof, there shall be substituted the words "Subarticle (1) of article 8" and articles 9 to 12"; and

(c) for the words "may, in lieu of requirements set out in paragraph 5 in this Part of this Schedule; elect to effect a fidelity bond" in item 5.2 thereof, there shall be substituted the words "shall effect a fidelity bond".

PART XV

AMENDMENT OF THE INSURANCE BROKERS AND OTHER INTERMEDIARIES ACT, CAP. 404

Amendment
of the Insurance
Brokers and Other
Intermediaries
Act, Cap. 404.

270. (1) This Part amends the Insurance Brokers and Other Intermediaries Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Amendment of
article 2 of the
principal Act.

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

(a) the definition of "affiliated insurance" therein shall be deleted;

(b) for the definition of "branch" therein, there shall be substituted the following:

" "branch" means premises of the company, other than its head office, from which the business of insurance broking or such other activities of other insurance intermediaries as may be prescribed are carried out;"

(c) immediately after the definition of "Insurance Intermediaries Directive" there shall be added the following new definition:

" "insurance manager" has the same meaning as assigned to it by subarticle (1) of article 2 of the Insurance Business Act;"

(d) immediately after the definition of "local company", there shall be added the following new definition:

" "Malta's international commitments" has the same meaning as assigned to it by subarticle (1) of article 2 of the Insurance Business Act;" and

(e) in the definition of "own funds" therein for the words "determine the components" there shall be substituted the words "determine the amounts and the components".

272. Subarticle (5) of article 3 of the principal Act shall be renumbered as subarticle (7) thereof and immediately after subarticle (4) of the said article 3, there shall be inserted the following new subarticles (5) and (6):-

Amendments of article 3 of the principal Act.

"(5) Rules or regulations made under this article may make such exemptions, conditions or modifications as may be specified therein in respect of different cases, circumstances or purposes and may give the Competent Authority such power of adaptation of the rules and regulations as may be specified therein.

(6) The exercise of any of the powers assigned under this article shall be subject to any obligations or restrictions arising from Malta's international commitments."

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

Amendments of article 8 of the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof;

(b) for paragraph (b) in subarticle (1) thereof as renumbered there shall be substituted the following:

“(b) the company’s own funds, whether in Maltese Liri or in other currencies acceptable to the Competent Authority are at all times, not less than such amount appropriate for the kind of business to be carried on by the company as may be determined by an Insurance Intermediaries Directive made for the purpose under this Act; and such own funds shall at all times be unencumbered;”;

(c) immediately after subarticle (1) thereof as renumbered there shall be added the following subarticles:

“(2) Where close links exist between a company applying to be enrolled in the Brokers’ List and any other person, the Competent Authority shall:-

(a) only grant the enrolment if it considers that such close links do not prevent it from effectively exercising its supervisory functions; and

(b) refuse to grant such enrolment if it considers that the laws, regulations or administrative provisions in any country other than Malta governing any person with whom the company has close links or their enforcement, prevent it from effectively exercising its supervisory functions.

(3) The Competent Authority may from time to time by means of an Insurance Intermediaries Directive issued under this Act define the circumstances in which close links are to be regarded as existing between a company and any other person.”.

Amendment of
article 10
of the principal
Act.

274. Article 10 of the principal Act shall be amended as follows:

(a) immediately after paragraph (b) of subarticle (1) thereof, there shall be added the following proviso:

“Provided that a company carrying on business as an insurance broker restricted to contracts of insurance relating to risks situated outside of Malta may, either in lieu of or in addition to opening a branch in Malta, appoint an insurance manager authorised under the Insurance Business Act; to manage such business; and so long as the insurance manager

holds such appointment the business of insurance broking must be under the management of a registered insurance broker.”; and

(b) in subarticle (2) thereof, for the words “the requirements referred to therein are those set out in the following provisions of this subarticle -” there shall be substituted the words “the business of insurance broking or the insurance intermediaries activities shall be carried out from such branch by a person who satisfies the following requirements -”.

275. In subarticle (5) of article 13 of the principal Act, for the words “for the refusal.”, there shall be substituted the words “for the refusal:” and immediately at the end thereof there shall be added the following proviso:

Amendment of
article 13 of
the principal
Act.

“Provided that, in each case, the Competent Authority may take such measures as it may deem necessary for the protection of the interest of the public.”.

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

Amendment of
article 15 of
the principal
Act.

(a) for the marginal note thereto there shall be substituted the following:

“Opening of branches and appointment of insurance manager by enrolled local companies.”; and

(b) immediately after subarticle (3) thereof, there shall be added the following subarticle:

“(4) A local company enrolled as aforesaid and carrying on business as insurance broker, restricted to contracts of insurance relating to risks situated outside of Malta, may appoint an insurance manager authorised under the Insurance Business Act to manage such business; and so long as the insurance manager holds such appointment the business of insurance broking must be under the management of a registered insurance broker.”.

277. In paragraph (m) in article 16 of the principal Act, for the words “in an unprofessional manner.”, there shall be substituted the words “in an unprofessional manner; or ”, and immediately, after the said paragraph (m) there shall be added the following new paragraph (n):-

Amendment of
article 16 of
the principal
Act.

“(n) the Competent Authority is prevented from exercising its supervisory functions effectively because of the existence of close links as may be defined by means of Insurance Intermediaries Directives made under this Act.”.

Amendment of article 17 of the principal Act.

278. In subarticle (4) of article 17 of the principal Act, for the words “and any official copies thereof.” there shall be substituted the words “and any official copies thereof; and in each case, the Competent Authority may take such other measure as it may deem necessary to safeguard the interests of insureds, policyholders, creditors or other interested persons.”.

Insertion of article 18A in the principal Act.

279. Immediately before article 19 of the principal Act, there shall be inserted the following new article 18 A:

“Power of the Competent Authority to protect the public interest.

18A. In any of the cases in which the Competent Authority may strike off the Brokers List the name of an enrolled company under article 16 of this Act, the Competent Authority may, either in lieu of, or in addition to such striking off, and without prejudice to such striking off proceed in any one or more of the following manners -

(a) require the company forthwith to take such steps as the Competent Authority may consider necessary to rectify or remedy the matter;

(b) appoint a person to advise the company in the proper conduct of its business;

(c) appoint a person to take charge of the assets of the company, or any portion of them, for the purposes of safeguarding the interests of insureds, policyholders, creditors and shareholders of the company;

(d) appoint a person to assume control of the business of the company either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the Competent Authority may direct;

(e) require the company to dissolve and wind up its business or, in the case of a company whose head office is in a country outside Malta, to wind up its business in Malta;

(f) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the company;

(g) fix the remuneration to be paid by the company to any person appointed under this article;

(h) do such other act or require the doing of such other thing as it may deem appropriate in the circumstances,

and having proceeded in any one or more of the manners aforesaid, the Competent Authority may further proceed in any one or more of such manners, whether in addition thereto, or in substitution thereof.

(2) Where a person is appointed by the Competent Authority –

(a) under paragraph (b) of subarticle (1) of this article, it shall be the duty of the company to act in accordance with the advice given by such person unless and until the Competent Authority, on representation made to it, directs otherwise;

(b) under paragraph (c) of subarticle (1) of this article, the company shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the company in respect of those assets, whether exercisable by the company in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the company, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(c) under paragraph (d) of subarticle (1) of this article, the company shall submit its business to the control of such person and shall provide him with such facilities as he may require the company to provide him to carry on that business or to carry out the functions assigned to him under the said paragraph; and all the powers, functions and duties of the company, whether exercisable by the company in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the company in all matters, shall be exercisable by and vest in him to the exclusion of any other person;

(d) under paragraph (f) of subarticle (1) of this article, such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(3) In the case of a foreign company, the branches and offices in Malta of that company shall, if the Competent Authority so directs and to the extent it so directs, be deemed to constitute a separate company.”.

Amendment of
article 21 of
the principal
Act.

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

(a) in subarticle (2) thereof, for the words “Protection and Indemnity Club”, and for the words “Club” wherever they appear, there shall be substituted in each case the words “Mutual Association” and “Mutual” respectively; and

(b) in paragraph (b) in subarticle (3) thereof the words “or affiliated insurance” shall be deleted.

Amendment of
article 27 of
the principal
Act.

281. Subarticle (13) of article 27 of the principal Act shall be renumbered as subarticle (15) thereof, and immediately after subarticle (12) of the said article there shall be inserted the following new subarticles (13) and (14):-

“(13) For the purposes of subarticle (12) of this article, any matter which relates to and may have a serious adverse effect is any matter which:-

(a) is likely to lead to a serious qualification, or refusal of, the auditor’s report on the accounts of the company; or

(b) gravely impairs the company’s ability to continue as a going concern; or

(c) may be prescribed by the Minister.

(14) An auditor of an enrolled company shall likewise have a duty to report to the Competent Authority any facts and decisions which relate to or have a serious adverse effect upon the stability and soundness of the company or the integrity of the business of insurance broking in Malta, of which he becomes aware in his capacity as an auditor to a company having close links within the meaning of article 8 of this Act.”.

282. Immediately after subarticle (7) of article 33 of the principal Act there shall be added the following proviso:

Amendment of article 33 of the principal Act.

“Provided that, the Competent Authority may exempt certain categories of employees in certain circumstances as determined by an Insurance Intermediaries Directive made for the purposes of this article.”.

283. For the marginal note to article 35 of the principal Act there shall be substituted the following:

Amendment of article 35 of the principal Act.

“Striking names off the sub-agents company registers or the Sub-agents List.”.

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

Amendment of article 36 of the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof; and

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

“(2) In each case the Competent Authority may take any other measure as it may deem necessary to safeguard the interests of insureds, policy holders, creditors or other interested persons.”.

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

Substitution of article 38 of the principal Act.

“Co-operation in supervisory duties and sharing of information.

38. (1) The Competent Authority may exercise the following powers at the request of or for the purpose of assisting an overseas regulatory authority:-

(a) the power to impose, revoke or vary conditions on the grant of an enrolment pursuant to the provisions of subarticle (4) of article 13 of this Act;

(b) the power to strike off the name of an enrolled company from the Brokers List under article 16 of this Act;

(c) the power to take any action under articles 29, 30 or 31 of the Insurance Business Act, Cap 403, as applicable in accordance with article 49 of this Act;

(d) the power to communicate to the overseas regulatory authority information in its possession, whether such information is the result of any of the above powers or otherwise.

(2) The Competent Authority shall exercise powers by virtue of this article:

(a) where the assistance is requested by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta's international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request under a Memorandum of Understanding concluded with the Competent Authority.

(3) There shall be meetings between an authorised company and the Competent Authority or between an enrolled company, its approved auditor and the Competent Authority, on a bilateral or multilateral basis as circumstances may warrant. Such meetings may be called by any of the parties and shall in each case be chaired by the Competent Authority."

Amendment of
article 39 of
the principal Act.

286. Article 39 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "except for the purpose of ensuring compliance with any of the provisions of this Act." there shall be substituted "except for the purpose of ensuring compliance with any of the provisions of this Act or of any other Act.";

(b) subarticles (2), (3) and (4) thereof shall be renumbered as subarticles (4), (5) and (6) respectively;

(c) immediately after subarticle (1) thereof, there shall be added the following new subarticles:

“(2) Subject to the provisions of subarticle (3) of this article, information by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any rules or regulations made thereunder, or of any Insurance Intermediaries Directive, or in the discharge of any functions under any of the said provisions, or from an overseas regulatory authority shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, not being a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, or of any rules or regulations made thereunder or of any Insurance Intermediaries Directive except with the consent of the person from whom he obtained the information, provided the information relates solely to that person.

(3) The provisions of subarticle (2) of this article shall not preclude the disclosure of information -

(a) 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) with a view to enabling or assisting the Competent Authority in the performance or discharge of any of its functions under this Act;

(c) which has been made available to the public by virtue of being disclosed on any circumstances in which, or for any purposes for which, disclosure is not precluded by this article;

(d) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained;

(e) to an auditor where the Competent Authority considers that such disclosure would assist the auditor in the exercise of his functions under article 27 of this Act;

(f) to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act, where such information is required by the Bank or the Listing Authority in the exercise of their respective functions in terms of law;

(g) in response to a request from or for the purpose of assisting, an overseas regulatory authority pursuant to article 38 of this Act;

(h) 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 deception, prevention or prosecution of criminal offences;

(i) in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an enrolled company provided such information does not concern third parties involved in attempts to rescue such company, and to such overseas bodies responsible for the liquidation and bankruptcy of a person who is enrolled or holds an equivalent authorisation or licence from an overseas regulatory authority or for other similar procedures.”.

Amendment of article 43 of the principal Act.

287. In subarticle (7) of article 43 of the principal Act, the words “situated in Malta” shall be deleted.

Amendment of article 44 of the principal Act.

288. Article 44 of the principal Act shall be amended as follows:

(a) for the marginal note thereto there shall be substituted the following:

“Changes in documentation and information.”;

(b) immediately after subarticle (2) thereof, there shall be added the following subarticle:

“(3) Without prejudice to the foregoing provisions of this article, every enrolled company shall notify the Competent Authority on a continuous basis, with any change or circumstance which may give rise to the existence of close links within the meaning of article 8 of this Act.”.

Amendment of article 45 of the principal Act.

289. (1) For subarticle (1) of article 45 of the principal Act there shall be substituted the following:

“(1) (a) For the purposes of this Act, the term “Financial Services Tribunal” means the tribunal referred to in article 21 of the Malta Financial Services Authority Act, and the term “Tribunal” shall be construed accordingly:

Provided that for the purposes of any appeal made to the Tribunal under this Act the provisions of the proviso to subarticle (1) of article 57 of the Insurance Business Act, shall apply.

Cap. 403

(b) For the purposes of any such appeal, the provisions of section 21 of the Malta Financial Services Authority Act shall, except in so far as any of them are incompatible with the provisions of this action, also apply.”

(2) In subarticle (4) of the same article 45 of the principal Act for the words “in paragraph (h) of subarticle (4) of this article.” there shall be substituted the words “in paragraph (h) of subarticle (2) of this article”.

290. For article 49 of the principal Act there shall be substituted the following:

Substitution of
article 49 of the
principal Act.

“Application
of certain
articles of the
Insurance
Business Act,
Cap. 403, to
enrolled
companies
and to
persons
enrolled in
the Sub-
agents List.

49. (1) Subject to the provisions of subarticle (2) of this article:

(a) the provisions of articles 29 to 31 and of article 38 of the Insurance Business Act (hereinafter in this article referred to as the “the Act”) shall apply to a company enrolled in the Broker List, as if reference in such provisions -

(i) to “authorisation” were a reference to “enrolment in the Brokers List”;

(ii) to “an authorised company” were a reference to “an enrolled company”;

(iii) to “business of insurance” were a reference to “business of insurance broking”;

(iv) to “a company whose head office is in a country outside Malta” were a reference to “a foreign company”; and

(b) articles 29 to 31 of the Act shall apply to a person enrolled in the Sub-agents List as if reference in such provisions:

(i) to “authorisation” were a reference to “enrolment in the Sub-agents List”;

(ii) to “an authorised company” were a reference to “an insurance sub-agent”;

(iii) to “business of insurance” were a reference to “insurance sub-agency activities”.

(2) Subarticle (1) of this article shall apply to an enrolled company or to a person enrolled in the Sub-agents List as if reference in the relevant provisions of the Act to "the Competent Authority" were a reference to "the Competent Authority" under this Act, and references to "Insurance Directive" were references to "Insurance Intermediaries Directives".

PART XVI

MISCELLANEOUS PROVISIONS

References in other laws.

291. (1) Upon the coming into force of Part V of this Act, any reference in any law to the Malta Financial Services Centre, shall be deemed to be a reference to the Malta Financial Services Authority.

(2) Upon the coming into force of Part VI of this Act any reference to the Malta Stock Exchange in any law shall be deemed to be a reference to a recognised stock exchange under the Financial Markets Act and any reference to securities quoted on the Malta Stock Exchange shall be construed accordingly.

(3) The amendments affected by Parts XIV and XV of the Act to the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act and which relate to companies which prior to the coming into its force of the said Parts XIV and XV were authorised to carry on business of affiliated insurance under the Insurance Business Act shall not affect any company authorised so to do under the said Act immediately before the coming into force of the said Parts XIV and XV, until such time as the Minister responsible for Finance may by order in the Gazette establish.

(4) Any reference in any law to a person licensed to act as stockbroker under the Malta Stock Exchange Act shall be construed as a reference to a person licensed to act as stockbroker under the Investment Services Act, and any licence to act as a stockbroker issued under the Malta Stock Exchange Act before the coming into force of the relevant parts of this Act shall continue in force as if such licence were a licence issued under the Investment Services Act.

(5) Upon the coming into force of each of Parts IV to XV of this Act any reference to any law the title of which has by the part coming into force been changed shall be deemed to be a reference to the said law by the title as changed by the Part so brought into force.

(6) Without prejudice to any other law in any reprint of this Act, Parts IV to XV need not be reproduced and it shall be sufficient to reproduce Parts I to III of this Act and the Schedules:

Provided that nothing in this subarticle shall be construed as reducing the validity of anything contained in the parts not so reproduced.

(7) Upon the coming into force of Parts IV to XV of this Act, the long title of this Act shall be "An Act to make provision regulating retirement funds".

SCHEDULES TO PARTS I TO III

SCHEDULE ONE

(Article 43 (3))

Information to be included in the annual report of a Registered Retirement Fund

Statement of assets and liabilities:

Assets:

- Immovable property
- Transferable securities;
- Debt Instruments;
- Other securities;
- Bank balances;
- Other assets; and
- Total assets.

Liabilities:

- Borrowings;
- Other amounts payable; and
- Total liabilities.

Net asset value

Number of shares issued

Net asset value per share

Portfolio Description:

- Transferable securities listed on an official stock exchange;
- Transferable securities transacted on another organized market;

- Other transferable securities;
- Debt Instruments; and

A statement of the principal developments which have occurred in the composition of the portfolio during the reference period.

Statement of changes in the assets and liabilities of the Retirement Fund during the reference period, including the following:

Income:

- Income from investments;
- Other income; and
- Total income.

Charges:

- Management/investment advisor charges;
- Depository's charges;
- Taxes;
- Other charges; and
- Total charges.

Net investment income:

- Appreciation or depreciation of investments;
- Changes in the "capital" account; and
- Any other changes affecting the assets and commitments of the Retirement Fund.

A comparative table covering the last three financial years (where applicable) and including, for each financial year, at the end of the financial year:

- The total net asset value; and
- The net asset value per share.

A 1766

Details, by category of transaction carried out by the pension fund, on financial derivatives (e.g., options, futures, swaps), of the resulting amount of commitments at the year end date.

A summary of the compliance by the fund with its provisions and with the law.

A summary of the compliance by the fund with its memorandum of association and with the law.

Specific Rules for Multiple Compartment Retirement Funds.

The financial reports of multiple compartment pension funds shall contain separate information on each of the compartments, as well as consolidated information on all of those compartments.

SCHEDULE TWO

(Article 2)

1. Buying, selling, subscribing for or underwriting Instruments.
2. Giving or offering to a Retirement Fund or a Scheme:
 - advice on the merits of their purchasing, selling, subscribing for or underwriting an Instrument, or exercising any right conferred by an Instrument to acquire, dispose of, underwrite or convert an Instrument; or
 - advice in relation to a collective investment scheme or arrangement involving an Instrument
3. Managing Investments.

Passed by the House of Representatives at Sitting No. 780 of the 23rd July, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives