

MALTA

ATT Nru. XIV ta' l-1994

ATT mahruġ b'ligi mill-Parlament ta' Malta.

ATT biex jirregola t-tmexxija tal-kummerċ ta' investiment u biex jipprovdi ghal hwejjeġ li huma anċillari ghalih jew li ghandhom x'jaqsmu mieghu.

ACT No. XIV of 1994

AN ACT enacted by the Parliament of Malta.

AN ACT to regulate the carrying on of investment business and to make provision for matters ancillary thereto or connected therewith.

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(L.S.)

UGO MIFSUD BONNICI
President

13 ta' Settembru, 1994

ATT Nru. XIV ta' l-1994

ATT biex jirregola t-tmexxija tal-kummerċ ta' investment u biex jipprovdi ghal hwejjeġ li huma anċillari ghalih jew li ghandhom x'jaqsmu mieghu.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorita' ta' l-istess, hareġ b'ligi dan li ġej:-

PRELIMINARI

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1994 dwar **Titolu fil-qosor u** **Servizzi ta' Investment.** **bidu fis-sehh.**

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jkunu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem **ma** Tifsir. **tinhtigx** xort'ohra-

"awtorita' kompetenti" tfisser il-Ministru jew kull persuna oħra li huwa jahtar, b'dan illi sa dak iż-żmien li l-Ministru jagħmel dik il-hatra, kull hteġa li hemm f'dan l-Att li l-Ministru jikkonsulta lill-awtorita' kompetenti għandha tigi interpretata bħala hteġa li l-Ministru jaġixxi wahdu;

"awtorita' regulatorja estera" tfisser awtorita' li f'pajjiż jew territorju barra minn Malta tkun twettaq xi funzjoni li tikkorrispondi għal:

- (a) funzjoni ta' l-awtorita' kompetenti bis-sahha ta' dan l-Att;
- Kap. 215 (b) funzjoni tal-Bank Ċentrali ta' Malta bis-sahha ta' l-Att dwar il-Kummerċ Bankarju;
- Kap. 345 (ċ) funzjoni tal-Kunsill tal-Borża bis-sahha ta' l-Att dwar il-Borża ta' Malta; jew
- Kap. 290 (d) funzjoni tal-Ministru bis-sahha ta' l-Att dwar l-Impriża ta' l-Assigurazzjoni, jew bis-sahha ta' xi wahda mill-ligijiet imsemmija qabel;

"kapital azzjonarju kwalifikanti", tfisser il-kontroll dirett jew indirett f'korp morali li jirrappreżenta għaxra fil-mija jew iżjed tal-kapital azzjonarju mahruġ minn dik l-ghaqda, jew tal-jedd ta' votazzjoni marbut ma' dak il-kapital azzjonarju jew li jirrendi possibbli t-twettiq ta' influwenza sinifikattiva fuq it-tmexxija tal-korp morali;

"detentur ta' liċenza" tfisser persuna li jkollha liċenza;

"dokument" jew "dokumentazzjoni" tinkludi informazzjoni registrata f'kull sura u, relattivament għal informazzjoni registrata f'xi sura li ma tkunx tinqara, riferenzi għall-produzzjoni tagħha jinkludu riferenzi għall-produzzjoni ta' kopja ta' l-informazzjoni f'sura li tinqara;

"ftehim ta' investment" tfisser kull ftehim li l-egħmil jew it-twettiq tiegħu minn xi wahda mill-partijiet jikkostitwixxi servizz ta' investment;

"strument" tfisser kull strument, kuntratt jew jedd li jinsab fit-Tieni Skeda li tinsab ma' dan l-Att u sew jekk mahruġ jew le f'Malta;

"liċenza" tinkludi liċenza għal skema ta' investment kollettiv u liċenza għal servizzi ta' investment;

"liċenza għal servizzi ta' investment" tfisser liċenza biex ikun provdut servizz ta' investment mahruġa taht l-artikolu 6 ta' dan l-Att;

"liċenza għal skema ta' investiment kollettiv" tfisser liċenza għall-hruġ jew għall-holqien ta' unitajiet jew għat-tmexxija ta' attivita' minn skema ta' investiment kollettiv mahruġa taht l-artikolu 6 ta' dan l-Att;

"Ministru" tfisser il-Ministru responsabbli għall-finanzi;

"parteċipanti" tfisser il-persuni li jipparteċipaw fi jew jirċievu, jew li jkunu se jipparteċipaw fi jew ikunu se jirċievu, profitti jew dhul li jinqalghu mill-akkwist, zamma, tmexxija jew disponiment tal-proprjeta' inkluża fi skema ta' investiment kollettiv jew ammonti mhallsa minn dawk il-profitti jew minn dak id-dhul;

"persuna eżentata" tfisser persuna, li għal kull raġuni li tkun, tiġi eżentata minn xi dispożizzjoni jew mid-dispożizzjonijiet kollha ta' l-artikolu 3 ta' dan l-Att;

"preskritt" tfisser preskritt b'regoli jew b'regolamenti maghmula taht dan l-Att;

"reklam" tfisser kull għamla ta' reklamar, sew jekk isir bil-fomm jew bil-miktub, u minghajr preġudizzju għall-mod ġeneriku ta' dak imsemmi qabel, tinkludi reklamar f'pubblikazzjoni, il-wiri ta' avviżi, sinjali, tikketti jew biljetti, permezz ta' ittri, ċirkolari, prospetti, katalogi, listi ta' prezzijiet jew dokumenti ohra, bl-esibizzjoni ta' stampi jew filmati fotografici jew ċinematografici, permezz ta' xandir bis-smiġh jew bit-televizjoni, bit-tqassim ta' reġistrazzjonijiet jew b'kull mod iehor, u riferenzi għal hruġ ta' reklam għandhom jiftehm u bl-istess mod;

"servizz ta' investiment" tfisser kull servizz li jaqa' taht l-Ewwel Skeda li tinsab ma' dan l-Att meta jkun provdut in relazzjoni għal strument;

"skema ta' investiment kollettiv" tfisser kull skema jew arrangament li jkollu bhala l-għan tiegħu jew bhala wiehed mill-għanijiet tiegħu l-investiment kollettiv ta' kapital akkwistat bil-mezz ta' offerta ta' unitajiet biex ikunu sottoskritti, mibjugħa jew mibdula u li jkollu wiehed mill-karatteristiċi li ġejjin-

(a) l-iskema jew l-arrangament jahdem fuq prinċipju ta' riskju mifruġ; jew

(b) il-kontribuzzjonijiet tal-parteċipanti u l-profitti jew id-dhul li minnhom ikunu se jsiru l-hlasijiet lilhom ikunu tqegħdu f' *pool*; jew

(c) fuq it-talba tad-detenturi, l-unitajiet ikunu jew ikunu jistghu jinxtraw lura jew ikunu mifdiya mill-attiv ta' l-iskema jew ta' l-arrangament, b'mod kontinwu jew fi blokki f'intervalli qosra; jew

(d) l-unitajiet huma mahruġa, jew ikunu nhargu, jew ikunu se jinharġu kontinwament jew fi blokki f'intervalli qosra;

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"sussidjarja" ghandha l-istess tifsira bhal dik moghtija lill-kelma bl-artikolu 97 ta' l-Ordinanza dwar Soċjetajiet Kummerċjali;

"unita`" tfisser kull haġa li tirrappreżenta l-jeddijiet u l-interessi tal-partecipanti fi skema ta' investiment kollettiv.

(2) F'dan l-Att u fir-regolamenti kollha maghmulin bis-saħħa tiegħu, fil-każ ta' nuqqas ta' qbil bejn it-test Ingliż u t-test Malti, jipprevali t-test Ingliż.

HTIĠIJET GHALL-HRUĠ TA' LIĊENZI

Htieġa ta' liċenza għal servizzi ta' investiment.

3. (1) Ebda persuna m'għandha ttiprovdi, jew turi lilha nnifisha li ttiprovdi servizz ta' investiment f'Malta jew minn Malta kemm-il darba ma jkollhix liċenza valida għal servizzi ta' investiment.

(2) Ebda korp morali, korp mhux morali jew assoċjazzjoni iffurmati skond jew li jkunu jezistu taht il-ligijiet ta' Malta, ma jistghu jipprovdu, jew juru lilhom infushom li jipprovdu, servizz ta' investiment fi jew minn pajjiż, territorju jew post iehor barra minn Malta jekk ma jkollhomx fil-pussess tagħhom liċenza valida għal servizzi ta' investiment.

Htieġa ta' liċenza għal skemi ta' investiment kollettiv.

4. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu, ebda skema ta' investiment kollettiv m'għandha tohroġ jew tohloq xi unitajiet jew tmexxi xi attivita' ġewwa Malta jew minn Malta kemm-il darba ma jkunx hemm dwarha liċenza valida għal skema ta' investiment kollettiv.

(2) Bla hsara għad-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu, ebda skema ta' investiment kollettiv iffurmata skond jew li tkun tezisti bis-saħħa tal-ligijiet ta' Malta m'għandha tohroġ jew tohloq xi unitajiet jew tmexxi xi attivita' ġewwa pajjiż jew minn pajjiż, territorju jew post iehor barra minn Malta, kemm-il darba ma jkunx hemm dwar dik l-iskema liċenza valida għal skema ta' investiment kollettiv.

(3) Ebda skema għal investiment kollettiv ma tkun prekluziva bid-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu milli tohroġ jew tohloq dawk l-unitajiet jew milli tiehu dawk il-passi li jistgħu jkunu meħtieġa għall-inkorporazzjoni jew, skond il-każ, l-istabbiliment ta' l-iskema jew milli tiehu dawk il-passi li jistgħu jkunu meħtieġa sabiex tkun żgurata l-awtorizzazzjoni ta' l-iskema mill-awtorità kompetenti.

APPLIKAZZJONI, GHOTI U THASSIR TA' LICENZI

5. Applikazzjoni għal liċenza għandha ssir f'dik il-forma u b'dak il mod meħtieġ mill-awtorità kompetenti u għandha wkoll- Applikazzjonijiet għal liċenza.

(a) ikun fiha jew ikollha magħha dak it-tagħrif u dawk il-partikolaritajiet, b'żieda ma' dawk meħtieġa b'dan l-artikolu, li l-awtorità kompetenti tista' teħtieġ, jew kif jista' jkun preskritt;

(b) tkun verifikata b'dak il-mod u sa dak il-limitu meħtieġ mill-awtorità kompetenti, jew kif jista' jkun preskritt;

(c) ikollha l-indirizz f'Malta għan-notifika lill-applikant ta' kull avviż jew dokument ieħor meħtieġ jew li hu awtorizzat li jkun notifikat lilu b'dan l-Att jew tahtu;

(d) fil-każ ta' liċenza għal servizzi ta' investiment, ikollha magħha programm ta' attivitajiet li juri dawk il-hwejjeg li jkunu meħtieġa mill-awtorità kompetenti li jintwerew minn żmien għal żmien;

(e) fil-każ ta' liċenza għal skema ta' investiment kollettiv, tispeċifika x-xorta ta' l-iskema ta' l-investiment kollettiv li jkun; u

(f) ikollha magħha dak id-dritt li jista' jkun preskritt għal liċenza li dwarha tkun saret applikazzjoni.

6. (1) L-awtorità kompetenti tista' tagħti jew tiċhad li tagħti liċenza li dwarha tkun saret applikazzjoni skond dan l-Att:

Iżda l-awtorità kompetenti m'għandhiex-

(a) tagħti liċenza għal servizzi ta' investiment kemm-il darba ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa biex tipprovdi s-servizzi ta' investiment konċernati u li l-applikant ikun se jhars u josserva kull regoli u regolamenti magħmula taht dan l-Att u applikabbli għalih;

Setgħa ta' l-awtorità kompetenti li tiċhad jew tagħti licenzi.

(b) taghti liċenza għal skema ta' investiment kollettiv kemm-il darba ma tkunx sodisfatta li l-iskema ser tkun taqbel f'kull dettal ma' kull regoli u regolamenti magħmula taht dan l-Att u applikabbli għaliha u li d-diretturi, u l-uffiċjali tagħha, jew fil-każ ta' *trust*, it-*trustees* tagħha, ikunu persuni addattati u xierqa biex iwettqu l-funzjonijiet mehtieġa minnhom dwar l-iskema.

(2) Fl-ghoti ta' liċenza l-awtorita' kompetenti tista' tagħmel il-liċenza sugġetta għal dawk il-kondizzjonijiet li jidhrilha xierqa, u meta tkun tat liċenza tista', minn żmien għal żmien, tibdel jew tirrevoka kull kondizzjoni hekk imposta jew, timponi kondizzjonijiet godda.

(3) Meta tkun qed tikkonsidra jekk taghtix jew tiċhadx milli taghti liċenza l-awtorita' kompetenti għandha, b'mod partikolari, tikkunsidra-

- (a) il-harsien tal-pubbliku;
- (b) il-harsien tar-riputazzjoni ta' Malta;
- (c) l-ahjar interessi ekonomiċi ta' Malta; u

(d) fil-każ ta' liċenza għal skema ta' investiment kollettiv, ir-riputazzjoni u kemm ikunu xierqa l-applikant u l-partijiet l-oħra li jkollhom x'jaqsmu ma' l-iskema.

(4) Kull liċenza għandha tispeċifika s-servizz ta' investiment li d-detentur tagħha jkun awtorizzat li jipprovdi jew, skond il-każ, il-klassi ta' l-iskema ta' l-investiment kollettiv li għaliha tirreferi l-liċenza.

(5) Bla hsara għall-generalita' tas-subartikolu (2) ta' dan l-artikolu, il-kondizzjonijiet li għalihom liċenza tista' tkun magħmula sugġetta mill-awtorita' kompetenti jistgħu jkunu magħmula applikabbli, jew jista' jkun preskritt li jkunu applikabbli, għal-

(a) il-liċenzi kollha għal servizzi ta' investiment jew għal liċenzi kollha għal skema ta' investiment kollettiv, skond il-każ;

(b) ċerti kategoriji ta' liċenzi;

(c) il-liċenzi kollha li jkunu mogħtija lil ċerti kategoriji ta' detenturi;

(d) il-liċenzi kollha dwar servizzi jew skemi partikolari, skond il-każ.

(6) Meta l-applikant ghal liċenza ma jkunx notifikat mill-awtorita' kompetenti bid-deċiżjoni tagħha dwar jekk tagħtix jew tiċhadx il-liċenza li dwarha tkun saret applikazzjoni fi żmien sitt xhur minn meta tirċievi applikazzjoni magħmula skond id-dispożizzjonijiet applikabbli ta' dan l-Att, l-applikazzjoni titqies li tkun ġiet miċhuda u d-dispożizzjonijiet ta' dan l-Att għandhom japplikaw bħallikieku l-avviż taċ-ċaħda jkun inghata ma' l-egħluq ta' l-imsemmi żmien.

(7) Kull hteġa f'dan l-Att li persuna għandha tkun waħda addattata u xierqa sabiex twettaq ċerti attivitajiet jew funzjonijiet għandha tiffisser bħala hteġa mhux biss li dik il-persuna tkun waħda addattata u xierqa sabiex twettaq dawk l-attivitajiet jew funzjonijiet, iżda wkoll li kull direttur jew ufficjal ta' dik il-persuna, jew fil-każ ta' *trust*, kull *trustee* tagħha, ikun persuna addattata u xierqa li twettaq dawk l-attivitajiet jew funzjonijiet.

(8) Meta detentur ta' liċenza jikser jew jonqos li josserva xi kundizzjoni imposta f'liċenza mogħtija taht dan l-artikolu, l-awtorita' kompetenti tista' timponi piena amministrattiva li ma tkunx ta' aktar minn erbgħin elf lira, mingħajr rikors għal kawża fil-qorti.

7. (1) L-awtorita' kompetenti tista' f'kull żmien thassar jew tissospendi liċenza skond id-dispożizzjonijiet ta' dan l-Att.

Setgħa ta' l-awtorita' kompetenti li thassar jew tissospendi liċenzi.

(2) Fil-każ ta' liċenza għal servizzi ta' investiment, l-awtorita' kompetenti tista' thassar jew tissospendi liċenza-

(a) jekk tikkunsidra li d-detentur tagħha ma jkunx persuna addattata u xierqa biex tipprovdi s-servizz ta' investiment li tkun awtorizzata tipprovdi; jew

(b) jekk tikkunsidra li d-detentur tagħha ma jkunx jissodisfa l-htigiet ta', jew ikun kiser, xi waħda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula bis-saħha tiegħu, jew ikun naqas li jissodisfa jew li jħares xi obbligu jew kondizzjoni li hu jew il-liċenza jkunu sugġetti għalihom bis-saħha ta' dan l-Att jew tahtu; jew

(ċ) jekk l-awtorita' kompetenti tkun inghatat mid-detentur tal-liċenza jew f'ismu tagħrif li jkun falz, mhux preċiż jew qarrieqi; jew

(d) jekk id-detentur tal-liċenza ma jkunx beda jipprovdi s-servizz li jkun awtorizzat jipprovdi fi żmien provdut fil-liċenza jew ikun waqaf milli jipprovdi dak is-servizz; jew

(e) jekk tikkunsidra mehtieg li l-liċenza tkun imħassra jew sospiża biex jithares il-pubbliku jew ir-riputazzjoni ta' Malta; jew

(f) fuq it-talba tad-detentur tal-liċenza.

(3) Fil-każ ta' liċenza għal skema ta' investment kollettiv, l-awtorita' kompetenti tista' thassar jew tissospendi liċenza-

(a) jekk tikkunsidra li d-diretturi, uffiċjali jew *trustees* ta' l-iskema m'humix addattata u xierqa biex iwettqu l-funzjonijiet mehtieġa minnhom għar-rigward ta' l-iskema; jew

(b) jekk tikkunsidra li l-iskema li għaliha tirreferi l-liċenza ma tkunx tissodisfa l-htigiet ta' xi dispożizzjoni ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula bis-saħħa tiegħu, jew ikun hemm ksur ta' xi wahda minn dawk id-dispożizzjonijiet, jew xi obbligu jew kondizzjoni li għalihom l-iskema jew il-liċenza ikunu sugġetti bis-saħħa ta' dan l-Att jew tahtu ma jkunux ġew sodisfatti jew imħarsa; jew

(c) jekk ikun inghata tagħrif lill-awtorita' kompetenti mill-iskema jew l-isimha jew dwarha li jkun falz, mhux preċiż jew qarrieqi; jew

(d) jekk l-iskema ma tkunx bdiet l-attivitajiet li tkun awtorizzata tmexxi fi żmien provdut fil-liċenza jew tkun waqfet milli tmexxi dawk l-attivitajiet; jew

(e) jekk tikkunsidra mehtieg li thassar jew tissospendi l-liċenza biex jithares il-pubbliku jew ir-riputazzjoni ta' Malta; jew

(f) fuq it-talba tal-*manager* jew tat-*trustee* jew tal-kustodju ta' l-iskema, jew ta' l-ekwivalenti tagħhom.

8. (1) Meta l-awtorita' kompetenti jkollha l-ħsieb-

(a) li tibdel xi kondizzjoni li għaliha tkun sugġetta liċenza jew li timponi kondizzjoni magħha; jew

(b) li tiċhad applikazzjoni għal liċenza jew li thassar jew tissospendi liċenza,

Avviż ta' proposta ta'caħda, tibdil, thassir jew sospensjoni ta' liċenzja.

ghandha taghti lill-applikant jew, skond il-każ, lid-detentur tal-liċenzja jew lil *manager* u *trustee* jew il-kustodju ta' skema ta' investiment kollettiv, jew lill-ekwivalenti tagħhom bil-miktub tal-hsieb tagħha li tagħmel hekk fejn taghti r-raġunijiet għad-deċiżjoni li tkun bi hsiebha tiehu.

(2) Kull avviż moghti taht is-subartikolu (1) ta' dan l-artikolu għandu jgħid li min jirċievi l-avviż jista', f'dak iż-żmien xieraq wara li jirċievi n-notifika kif jingħad fl-avviż (li jkun żmien ta' mhux inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin jum), jagħmel rappreżentazzjonijiet bil-miktub lill-awtorita' kompetenti fejn jgħid għaliex m'għandhiex tittiehed id-deċiżjoni proposta u l-awtorita' kompetenti għandha tikkunsidra kull rappreżentazzjoni hekk magħmula qabel ma tasal għal deċiżjoni finali.

(3) L-awtorita' kompetenti għandha tinnotifika d-deċiżjoni finali tagħha bil-miktub lil kull waħda mill-persuni li lilha għandu jingħata avviż taht is-subartikolu (1) ta' dan l-artikolu u, meta dawk il-persuni ma jkunux notifikati mill-awtorita' kompetenti bid-deċiżjoni msemmija fi żmien tmax-il xahar mid-data li fiha l-istess awtorita' tavża bil-miktub lill-istess persuni bil-hsieb tagħha skond kif previst fis-subartikolu (1) ta' dan l-artikolu, għandu jitqies li l-awtorita' kompetenti iddeċidiet li ċaħdet l-applikazzjoni jew li ikkancellat jew issospendiet il-liċenza, skond il-każ.

OBBLIGI TA' DETENTURI TA' LIĊENZA U TA' OHRAJN

9. (1) Id-detentur ta' liċenza għal servizzi ta' investiment u l-*manager* ta' skema ta' investiment kollettiv li tkun ingħatat liċenza taht dan l-Att, jew kull persuna ohra li jkollha r-responsabbilta' għall-amministrazzjoni jew tmexxija ta' kuljum ta' skema bhal dik, għandhom jagħtu lill-awtorita' kompetenti l-partikolaritajiet dwar kull tibdil fit-tagħrif moghti taht dan l-Att malli dak id-detentur, *manager* jew persuna isiru jafu b'dawk it-tibdiliet.

Tibdil fit-tagħrif;
hlas ta'drittijiet.

(2) Kull detentur ta' liċenza għandu jhallas lill-awtorita' kompetenti dak id-dritt kull tant żmien, u f'dak iż-żmien, li jista' minn żmien għal żmien ikun preskritt.

10. (1) Hadd ma għandu jikseb kapital azzjonarju kwalifikanti f'detentur ta' liċenza jew iżid dak il-kapital azzjonarju kwalifikanti li jwassal biex is-sehem tad-drittijiet tal-votazzjoni jew tal-kapital azzjonarju kontrollat minnu fid-detentur ta' liċenza jkun jilhaq jew jaqbez 20 fil-mija, 33 fil-mija jew 50 fil-mija, jew biex id-detentur ta' liċenza isir is-sussidjarju ta' dik il-persuna, kemm-il darba dik il-persuna ma tkunx innotifikat lill-awtorita' kompetenti b'avviż bil-miktub li fih jiddikjara li kellu hsieb jikseb jew iżid dak l-azzjonar, u-

Kif jingħata avviż
ta' kontroll gdid
jew miżjud.

(a) l-awtorita' kompetenti tkun innotifikatha bil-miktub, qabel tmiem iż-żmien ta' tliet xhur li jibdeu għaddejnin minn-notifika ta' dak l-avviż, li m'hemm ebda oġġezzjoni li hija tikseb jew iżżid dak l-azzjonar; jew

(b) dak iż-żmien ikun għadda minghajr ma l-awtorita' kompetenti tkun innotifikatha b'avviż ta' oġġezzjoni; jew

(ċ) l-awtorita' kompetenti tkun innotifikatha b'avviż ta' oġġezzjoni, qabel tmiem iż-żmien imsemmi ta' tlett xhur, liema avviż ikun wara dan ġie irtirat, imhassar jew revokat għal kull raġuni li tkun:

Iżda l-ksib jew iż-żieda fil-kapital azzjonarju kwalifikanti għandhom isehhu fi żmien sena wara l-ġrajja msemmija fil-paragrafu (a), (b) u (ċ) ta' dan is-subartikolu skond il-każ:

B'dan ukoll illi fil-każ previst fil-paragrafu (ċ) imsemmi ta' dan is-subartikolu iż-żmien ta' sena jibda jgħaddi mid-data li fiha l-persuna konċernata tiġi notifikata bl-irtirar, thassir jew revoka ta' l-avviż ta' oġġezzjoni, skond il-każ.

(2) Avviż li jiġi notifikat lill-awtorita' kompetenti bis-sahha tas-subartikolu (1) ta' dan l-artikolu għandu jkun fih dak it-tagħrif li l-awtorita' kompetenti tista' tehtieg u l-awtorita' kompetenti tista', wara li tirċievi dak l-avviż minghand persuna, titolbu permezz ta' avviż bil-miktub sabiex jagħti dak it-tagħrif iktar jew dokumenti oħra hekk kif l-awtorita' kompetenti tista' raġonevolment tehtieg sabiex tiddeċiedi jekk għandhiex tohrog avviż ta' oġġezzjoni.

(3) Meta jenhtiegu iktar tagħrif jew dokumenti oħra minghand persuna b'avviż mahruġ skond is-subartikolu (2) ta' dan l-artikolu, iż-żmien bejn il-hruġ ta' l-avviż u d-dhul tat-tagħrif jew dokumenti għandu jiżdied maż-żmien imsemmi fil-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu.

(4) Kull avviż ta' oġġezzjoni msemmi fil-paragrafu (b) tas-subartikolu (1) ta' dan l-artikolu għandu jsemmi r-raġunijiet għal dik l-oġġezzjoni u għandu jsemmi li min jirċievi l-avviż jista', f'dak iż-żmien raġonevoli wara n-notifika ta' l-avviż li jiġi msemmi fl-istess avviż (u li ma jkunx żmien ta' inqas minn tmienja u erbghin siegħa u mhux iktar minn tletin jum), jikkontestah bil-miktub quddiem l-awtorita' kompetenti billi jagħti r-raġunijiet tiegħu għaliex l-avviż ta' oġġezzjoni għandu jiġi rtirat u l-awtorita' kompetenti għandha tqis kull kontestazzjoni illi hekk issirilha qabel ma tasal għal deċizzjoni finali.

(5) L-awtorita' kompetenti ghandha tinnotifika d-deċiżjoni finali taghha bil-miktub lil min ikun ikkontesta taht is-subartikolu (4) ta' dan l-artikolu u jekk dik id-deċiżjoni ma tiġix notifikata fi żmien tletin jum minn meta jintemm l-aħħar żmien imsemmi fis-subartikolu (4) ta' dan l-artikolu, l-awtorita' kompetenti ghandha titqies li tkun iddeċidiet li m'għandhiex tirtira l-avviż ta' oġġezzjoni taghha.

(6) Kull persuna li tkun bi hsiebha tbiegh jew tiddisponi minn kapital azzjonarju kwalifikanti f'detentur ta' liċenza jew li tnaqqas kapital azzjonarju kwalifikanti li jwassal biex is-sehem tad-drittijiet tal-votazzjoni jew tal-kapital azzjonarju kontrollat minnha fid-detentur tal-liċenza jinżel taht 20 fil-mija, 33 fil-mija jew 50 fil-mija, jew biex id-detentur tal-liċenza ma jibqax aktar is-sussidjarju taghha, ghandha tinnotifika lill-awtorita' kompetenti b'avviż bil-miktub li fih tiddikjara li kellha hsieb tbiegh, tiddisponi jew tnaqqas il-kapital azzjonarju taghha u l-ammont tal-kapital azzjonarju taghha wara dak il-bejgh, disponiment jew tnaqqis.

(7) Detentur ta' liċenza ghandu jinnotifika lill-awtorita' kompetenti b'avviż bil-miktub minnufih wara li jsir jaf b'xi ksib, bejgh jew disponiment ta' tiżmim azzjonarju, jew parti minnu, li jkun propost jew li jkun sar fil-kapital azzjonarju tieghu f'kull ċirkostanza msemmija f'dan l-artikolu.

11. (1) Hadd ma jista', minghajr il-kunsens ta' l-awtorita' kompetenti, johroġ jew iġieghel lil min johroġ xi reklam jew jagħmel xi attivita' ohra ta' promozzjoni:

Kunsens mehtieg
għal reklamar
ta' skemi,
strumenti u
servizzi.

(a) li bihom jistieden persuni biex isiru jew joffru li jsiru parteċipanti fi skema ta' investment kollettiv, jew xi reklam jew attivita' li jkun fihom tagħrif maħsub biex iwassal b'mod dirett jew le lil persuni biex isiru jew joffru li jsiru parteċipanti f'dik l-iskema;

(b) li bihom jistieden persuni biex jissottoskrivu strument jew mod ieħor jakkwistaw jew jiffirmaw strument, jew xi reklam jew attivita' li jkun fihom tagħrif maħsub biex iwassal b'mod dirett jew le lil persuni biex jissottoskrivu strument jew mod ieħor jakkwistaw jew jiffirmaw strument jew joffru li jissottoskrivu strument jew mod ieħor jakkwistaw jew jiffirmaw strument; jew

(ċ) li bihom jistieden persuni biex jixtru jew mod ieħor jakkwistaw servizz ta' investment:

Izda dan is-subartikolu m'ghandux ikun ighodd ghal reklam mahruġ barra minn Malta u li m'huwiex imqassam ġewwa Malta u li m'ghandux x'jaqsam ma' xi skema ta' investiment kollettiv magħmul skond il-liġijiet ta' Malta jew li jkun jeżisti bis-sahha tagħhom.

(2) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu m' ghandhomx jghoddu jekk ir-reklam jinhareġ biss lil:

(a) detenturi ta' liċenza;

(b) persuna li n-negozju ordinarju tagħha jinvolve l-akkwist u t-tnehhija ta' strumenti ta' l-istess għamla bhal strumenti li jkun jirreferi għalihom ir-reklam; jew

(ċ) persuna li n-negozju ordinarju tagħha jinvolve l-akkwist u t-tnehhija ta' proprjeta' ta' l-istess għamla bhall-proprjeta', jew parti sostanzjali tal-proprjeta', li jkun jirreferi għaliha l-iskema ta' investiment kollettiv li jkun hemm fir-reklam.

SETGHAT REGOLATORJI U INVESTIGATTIVI

Setgha tal-Ministru li jagħmel regolamenti.

12. (1) Il-Ministru, li jagħxi fuq il-parir ta' l-awtorita' kompetenti, jista' jagħmel regoli jew regolamenti biex jagħtu effett aħjar lid-dispożizzjonijiet ta' dan l-Att, u bla ħsara għall-ġeneralita' ta' dak li ntqal qabel jista', b'dawk ir-regoli jew regolamenti, b'mod partikolari, jagħmel kull haġa minn dawn li ġejjin-

(a) jemenda t-tifsira ta' "skema għal investiment kollettiv" li tinsab fl-artikolu 2 ta' dan l-Att, kif ukoll it-tifsira ta' "servizz ta' investiment" li tinsab fl-artikolu 2 u l-Ewwel u t-Tieni Skeda li jinsabu ma' dan l-Att;

(b) jirregola servizzi ta' investiment u skemi ta' investiment kollettiv, kif ukoll servizzi provduti u attivitajiet li jitmexxew b'konnessjoni jew in relazzjoni magħhom, jipprovi għal kull haġa kif jidhirlu xieraq, inkluż il-ħolqien u l-eżerċizzju ta' jeddijiet mill-pubbliku jew għall-benefiċċju tal-pubbliku u l-impożizzjoni ta' dmirijiet u obbligi fuq detenturi ta' liċenza jew persuni responsabbli għat-tmexxija jew amministrazzjoni tagħha;

(c) jistabbilixxi skemi jew jaghmel arrangamenti għall-kumpens ta' investituri f'każijiet fejn id-detentur ta' liċenza għal servizzi ta' investiment jew ta' liċenza għal skema ta' investiment kollettiv, jew id-detenturi ta' liċenza għal servizzi ta' investiment dwar skema bhal dik, ma jkunux jistghu jissodisfaw talbiet dwar xi dejn ċivili li jinholq minnhom b'konnessjoni mas-servizz ta' investiment provdut minnhom jew ma' skema kif intqal qabel;

(d) ifassal il-kriterji sabiex jiġi determinat jekk kontroll huwiex wiehed mhux dirett għall-ghanijiet li jiġi stabbilit jekk tkunx hemm azzjonar kwalifikanti;

(e) jirregola l-promozzjoni jew il-bejgh minn persuna jew f'isimha, u b'kull mezz, ta' servizz ta' investiment jew ta' skema ta' investiment kollettiv jew ta' kull strument, inklużi l-kriterji u l-proċeduri għall-ghoti jew irrifjut ta' kunsens mill-awtorita' kompetenti bis-sahha tad-dispożizzjonijiet ta' l-artikolu 11 ta' dan l-Att;

(f) jemenda d-dispożizzjonijiet ta' l-artikolu 18 ta' dan l-Att dwar iċ-ċirkostanzi meta l-udituri jkunu obbligati jikkomunikaw xi tagħrif lill-awtorita' kompetenti, jippreskrivi regoli dwar dak li l-udituri jistghu jikxfu bis-sahha ta' l-artikolu 18 tagħrif li jkollhom, u jistabbilixxi proċeduri ta' sorveljanza u ta' dixxiplina għal udituri għar-rigward ta' dmirijithom skond id-dispożizzjonijiet ta' l-artikolu 18 ta' dan l-Att;

(g) jeżenta lil kull persuna, servizz, strument, skema ta' investiment kollettiv jew reklam minn xi wahda jew iktar minn wahda mid-dispożizzjonijiet ta' dan l-Att u b'dawk il-kondizzjonijiet li jistghu jkunu preskritti;

(h) jippreskrivi kull haġa li għandha jew li tista' tkun preskritta;

(i) jipprovdi għal kull haġa li hi inċidentali jew konnessa ma' dak imsemmi qabel.

(2) Regoli jew regolamenti maghmula taht dan l-artikolu jistghu wkoll jipprovdu sabiex persuna li tkun dahlet, jew offriet li tidhol fi ftehim għal investiment mad-detentur ta' liċenza, tkun tista' thassar il-ftehim jew tirtira l-offerta f'dak iż-żmien u b'dak il-mod li jista' jiġi preskrit, u b'mod partikolari, iżda bla hsara għall-generalita' ta' dak li ntqal qabel, jistghu jipprovdu-

(a) għall-htieġa ta' notifika ta' avviż dwar id-drittijiet li jistghu jiġu eżerċitati taht ir-regoli jew ir-regolamenti;

(b) ghar-radd lura ta' proprjeta' u biex isiru jew jingabru lura hlasijiet meta dawk id-drittijiet ikunu eżerċitati;

(ċ) għal dawk il-hwejjeġ l-oħra li huma inċidentali jew konnessi ma' dak li ntqal qabel.

(3) Regoli jew regolamenti magħmula taht dan l-artikolu jistgħu jsiru suġġetti għal dawk l-eżenzjonijiet jew kondizzjonijiet li jistgħu jkunu speċifikati fihom, jistgħu jipprovdu b'mod differenti għal każijiet differenti, ċirkostanzi jew għanijiet differenti u jistgħu jagħtu lill-awtorita' kompetenti dawk is-setgħat biex jaddattaw ir-regoli jew regolamenti kif jista' jkun speċifikat.

(4) Regoli jew regolamenti magħmula taht dan l-artikolu jistgħu jimponu pieni jew penalitajiet oħra dwar kull ksur jew nuqqas ta' tharis ta' mhux iktar minn multa ta' erbghin elf lira jew prigunerija għal żmien ta' mhux iżjed minn sena, jew dik il-multa u prigunerija flimkien.

Setgħa ta' l-awtorita' kompetenti li titlob tagħrif.

13. (1) L-awtorita' kompetenti tista', b'avviż bil-miktub, tehtieġ-

(i) lil kull persuna li tkun qegħda tippovdi jew li kienet tippovdi, jew li tidher li tkun jew li kienet qed tippovdi, servizz ta' investiment; jew

(ii) skema ta' investiment kollettiv; jew

(iii) lil kull persuna li tkun qegħda tmexxi jew li kienet qegħda tmexxi, jew li tidher li tkun jew li kienet qed tmexxi, attivitajiet dwar skema bhal dik; jew

(iv) lil kull persuna li tkun harġet, jew li tidher li tkun harġet reklam skond ma hemm fid-dispożizzjonijiet tas-subartikolu (1) ta' l-artikolu 11 ta' dan l-Att; jew

(v) lil kull persuna oħra li tkun tidher li għandha tagħrif siewi,

li tagħmel dan li ġej jew xi waħda minnhom:

(a) li tagħti lill-awtorita' kompetenti f'dak iż-żmien u post u f'dik il-forma li tista' tispeċifika, dak it-tagħrif u dokumentazzjoni li tista' tehtieġ dwar xi servizz, skema jew reklam hekk kif intqal qabel;

(b) li tagħti lill-awtorita' kompetenti kull tagħrif jew dokumentazzjoni kif imsemmija verifikati b'dak il-mod li jista' jkun speċifikat;

(ċ) li tidher quddiem l-awtorita' kompetenti, jew quddiem persuna mahtura minnha, f'dak iż-żmien u post li tista' tispeċifika, biex twiegeb mistoqsijiet u taghti taghrif u dokumentazzjoni dwar kull servizz, jew skema jew reklam kif intqal qabel.

(2) L-awtorita' kompetenti tista' taghmel kopji ta' kull dokumenti moghtija jew provduti taht dan l-artikolu.

(3) Meta l-persuna mehtieġa li taghti taghrif jew dokumentazzjoni taht dan l-artikolu ma jkollhiex it-taghrif jew id-dokumentazzjoni rilevanti, din ghandha tghid lill-awtorita' kompetenti fejn, skond l-ahjar taghrif li jkollha, dak it-taghrif jew dik id-dokumentazzjoni tkun, u l-awtorita' kompetenti tista' tehtieġ lil kull persuna, sew jekk indikata kif intqal qabel sew jekk le, li fil-fehma taghha jkollha fil-pussess taghha dak it-taghrif jew dik id-dokumentazzjoni biex taghtihelha.

(4) Dikjarazzjoni maghmula u dokumentazzjoni provduta skond xi wahda mill-htigiet taht dan l-artikolu jistghu jingiebu bhala prova kontra l-persuna li taghmel id-dikjarazzjoni jew li tipprovdi d-dokumentazzjoni kif ukoll kontra kull persuna li ghalha jirreferu.

(5) Id-dispożizzjonijiet ta' dan l-artikolu m'ghandhomx japplikaw ghal taghrif jew dokumentazzjoni li huma privileġġati skond id-dispożizzjonijiet tas-subartikolu (1) ta' l-artikolu 642 tal-Kodici Kriminali.

Kap. 9

(6) Is-setgha li jenhtieġ li jingiebu dokumenti bis-sahha tad-dispożizzjonijiet ta' dan l-artikolu ghandha tkun minghajr preġudizzju ghal kull rahan jew privileġġ li xi hadd jista' jkollu ghar-rigward ta' dawk id-dokumenti.

(7) Meta l-awtorita' kompetenti tkun hatret persuna taht il-paragrafu (ċ) tas-subartikolu (1) ta' dan l-artikolu, dik il-persuna jkollha, sabiex taqdi l-funzjonijiet taghha skond il-hatra taghha, dawk is-setghat kollha moghtija lill-awtorita' kompetenti b'dan l-artikolu u jekk dik il-persuna tehtieġ xi haga dik il-htieġa titqies li tkun saret u li jkollha l-istess sahha u effett bhal htieġa ta' l-awtorita' kompetenti.

14. (1) L-awtorita' kompetenti tista', kull meta jidhrilha mehtieġ jew xieraq, tahtar spettur jew spetturi biex jistharrġu u jirrapportaw dwar l-affarijiet ta' kull persuna jew skema msemija fil-paragrafi (i) sa (iv) tas-subartikolu (1) ta' l-artikolu 13 ta' dan l-Att.

Hatra ta' spetturi.

(2) Spettur mahtur taht is-subartikolu (1) ta' dan l-artikolu-

(a) jista' wkoll, jekk jidhirlu mehtieg jew xieraq ghall-finijiet ta' dak l-istharrig, jistharreg l-affarijiet ta' persuna jew skema msemmija fis-subartikolu (1) ta' dan l-artikolu;

(b) ikollu u jkun jista' jezerċita s-setghat kollha moghtija lill-awtorita' kompetenti bl-artikolu 13 ta' dan l-Att, u kull haġa li jehtieg titqies li tkun u jkollha l-istess sahha u effett bhal hteiga ta' l-awtorita' kompetenti;

(c) jista', u jekk hekk ordnat mill-awtorita' kompetenti ghandu, jaghmel rapporti *interim* u fuq il-konkluzjoni ta' l-istharrig tieghu jaghmel rapport finali lill-imsemmija awtorita'.

(3) L-awtorita' kompetenti jkollha s-setgha tordna li l-ispejjeż kollha ta' investigazzjoni, u li ghandhom x'jaqsmu maghha, li ssir bis-sahha ta' dan l-artikolu ghandhom jithallsu mill-persuni jew mill-iskema involuti.

Setgha li jinharġu direttivi.

15. (1) Bla hsara ghal xi wahda mis-setghat moghtija lilha bl-artikoli 13 u 14 ta' dan l-Att, l-awtorita' kompetenti tista', kull meta jidhirlha xieraq, u sew jekk fuq rapport ta' spettur mahtur taht l-artikolu 14 ta' dan l-Att u sew jekk le, taghti, b'avviż bil-miktub, dawk id-direttivi li jidhirlha xierqa fiċ-ċirkostanzi; u kull persuna jew skema msemmija fis-subartikolu (1) ta' l-artikolu 13 ta' dan l-Att li lilha jinghata l-avviż ghandha tobdi, thares jew xort'ohra taghti effett lil kull direttiva bhal dik fiż-żmien u bil-mod imsemmi fid-direttiva jew f'direttiva ohra wara.

(2) Bla hsara ghall-generalita' tad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, direttiva taht dan l-artikolu tista'-

(a) tehtieg kull haġa li ghandha ssir jew li ma ghandhiex issir, jew timponi kull projbizzjoni, restrizzjoni jew limitazzjoni, jew kull hteiga ohra, u taghti setghat, dwar kull transazzjoni jew ghemil iehor, jew dwar kull attiv, jew dwar kull haġa ohra tkun li tkun;

(b) tehtieg li skema ta' investment kollettiv u l-*manager* ta' dik l-iskema, jew lill-ekwivalenti tieghu, u lil kull persuna ohra li tista' tohrog, tifdi, tbiegh jew tixtri unitajiet fl-iskema, li jieqfu milli johorġu, jifdu, ibieghu jew jixtru unitajiet jew li jaghmlu dawk l-attivitajiet kollha jew xi kombinazzjoni taghhom, hekk kif jista' jkun speċifikat fid-direttiva jew f'direttiva ohra wara;

(c) tehtieg li xi persuna li jkollha funzjonijiet fir-rigward ta' detentur ta' licenza titnehha jew titnehha u tinbidel minn persuna ohra li tkun acċettabbli għall-awtorita' kompetenti;

(d) tehtieg li skema ta' investment kollettiv jew id-diretturi u l-azzjonisti tagħha, jew il-*manager* jew it-*trustee* jew il-kustodju ta' skema, jew lil-ekwivalenti tagħhom, li jxolju l-iskema sa dik id-data u skond dik il-proċedura u dispożizzjonijiet ohra li jistgħu jkunu speċifikati fid-direttiva jew f' direttiva ohra wara;

(e) tehtieg li detentur ta' licenza jieqaf milli jkompli jopera u li jxolji skond il-proċeduri u struzzjonijiet li jistgħu jiġu speċifikati fid-direttiva, li tista' wkoll tippovdi għall-hatra ta' persuna sabiex jiehu pussess u kontroll tad-dokumenti, ta' l-assi, u tal-propjeta' kollha li jappartjenu lil jew li jinsabu fil-pussess jew kontroll tad-detentur ta' licenza.

(3) Is-setgha li jinghataw direttivi taht dan l-artikolu għandha tinkludi s-setgha li tvarja, tibdel, iżzid ma' jew tirtira kull direttiva, kif ukoll is-setgha li tohrog direttivi godda jew direttivi ohra.

(4) Meta l-awtorita' kompetenti tkun tal-fehma illi ċ-ċirkostanzi hekk jitolbu, hija tista' fi kwalunkwe hin tippublika kull direttiva li tkun tat taht kull provvediment ta' dan l-artikolu.

16. (1) Kull uffiċjal, impjegat jew agent ta' l-awtorita' kompetenti, li juri jekk mitlub, evidenza ta' l-awtorita' tiegħu, jista' jidhol f' post okkupat minn persuna li lilha jkun notifikat avviż taht l-artikolu 13 ta' dan l-Att jew li l-affarijiet tagħha jkunu qed jiġu mistharrġa taht l-artikolu 14 ta' dan l-Att, sabiex minn hemm jikseb it-tagħrif jew id-dokumenti mehtieġa b'dak l-avviż, jew xort'ohra għall-finijiet ta' l-istharrġ, u sabiex jeżerċita is-setghat mogħtija bl-imsemmija artikoli. Setgha għal dhul.

(2) Meta persuna li tkun uffiċjal, impjegat jew agent ta' l-awtorita' kompetenti jkollha raġuni biżżejjed li tahseb li jekk dak l-avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu kellu jkun notifikat ma jkunx se jithares jew li xi dokumenti li għalih jista' jirreferi jitnehhew, ikunu mbagħbsa jew distrutti, l-imsemmija persuna, tista', wara li turi l-evidenza tagħha, jekk mitluba, tidhol f'kull post imsemmi fis-subartikolu (1) ta' dan l-artikolu sabiex minn hemm tikseb kull tagħrif jew dokumenti speċifikati fl-awtorita', liema tagħrif jew dokumenti setgħu kienu mehtieġa bis-saħħa ta' dak l-avviż li hemm imsemmi fis-subartikolu (1) ta' dan l-artikolu.

(3) Għall-finijiet ta' kull azzjoni li tittiehed taht id-dispożizzjonijiet ta' dan l-artikolu, l-awtorita' kompetenti tista' titlob l-ghajjnuna tal-Kummissarju tal-Pulizija, li jista' għal dan l-ghan jeżerċita dawk is-setghat li huma vestiti fih sabiex ihares milli jsiru reati u sabiex jinfurza l-liġi u l-ordni.

KO-OPERAZZJONI MA' AWTORITA' REGOLATORJA ESTERA

Setghat li jistghu jitwettqu.

17. (1) L-awtorita' kompetenti tista' teżerċita dawn is-setghat li ġejjin fuq talba ta' awtorita' regolatorja estera jew bil-ghan li tghin lil dik l-awtorita':

(a) is-setgha li timponi, tirrevoka jew tibdel il-kundizzjonijiet ta' l-ghoti ta' liċenza skond id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 6 ta' dan l-Att;

(b) is-setgha li thassar jew tissospendi liċenza taht is-subartikolu (1) ta' l-artikolu 7 ta' dan l-Att;

(c) is-setghat ta' inkjesta taht l-artikolu 13 ta' dan l-Att;

(d) is-setgha li jinhatru spetturi taht l-artikolu 14 ta' dan l-Att;

(e) is-setghat ta' intervent taht l-artikolu 15 ta' dan l-Att;

(f) is-setghat ta' dhul taht l-artikolu 16 ta' dan l-Att;

(g) is-setgha li jiġi komunikat lill-awtorita' regolatorja estera tagħrif li l-awtorita' kompetenti jkollha fidejha, sew jekk bħala riżultat ta' l-eżerċizzju ta' xi wahda mis-setghat imsemmija qabel u sew jekk le.

(2) L-awtorita' kompetenti ma għandhiex teżerċita setghat bis-sahha ta' dan l-artikolu kemm-il darba hija ma tkunx sodisfatta li l-ghajjnuna tkun mehtieġa mill-awtorita' regolatorja estera għall-finijiet biss tat-twettieq ta' xi wahda jew iktar minn wahda mill-funzjonijiet regolatorji tagħha.

(3) Meta tiġi biex tiddeċiedi jekk għandhiex teżerċita s-setghat tagħha bis-sahha ta' dan l-artikolu, l-awtorita' kompetenti għandha tqis, b'mod partikolari-

(a) jekk għajjnuna bħal dik tinghatax f'dak il-pajjiż jew territorju lill-awtorita' kompetenti;

(b) jekk il-kaz ikunx jinvolvi xi ksur li jista' jsir tal-liġi, jew ta' xi htieġa oħra, li ma għandhom ebda xebh f'Malta jew li jinvolvi l-eserċizzju ta' ġurisdizzjoni li ma jkollhiex għarfien f'Malta;

(ċ) is-serjeta' tal-kaz u l-importanza tiegħu f'Malta u jekk l-għajjnuna tistax tinkiseb mod iehor;

(d) jekk ikunx xieraq mod iehor fl-interess pubbliku li tinghata l-għajjnuna mehtieġa.

(4) L-awtorita' kompetenti tista' tiċhad li teżerċita xi setgħa bis-saħħa ta' dan l-artikolu kemm-il darba l-awtorita' regolatorja estera ma tintrabatx li tagħmel dik il-kontribuzzjoni għall-ispejjeż tat-twettieq ta' dawk is-setgħat hekk kif l-awtorita' kompetenti tqis li jkun xieraq.

DMIRIJET TAL-UDITURI

18. (1) L-uditur ta' detentur ta' liċenza jkollu d-dmir jirrapporta minnufih lill-awtorita' kompetenti kull fatt li jsir jaf bih fil-kapaċita' tiegħu ta' uditur ta' dak id-detentur ta' liċenza, liema fatt- Dmir tal-uditur li jirrapporta.

(a) x'aktarx iwassal għal kwalifika serja jew rifjut tar-rapport tal-uditur fuq il-kontijiet ta' dak id-detentur ta' liċenza; jew

(b) itellef serjament il-kapaċita' tad-detentur ta' liċenza li jkompli jmexxi bħala *going concern*; jew

(ċ) ikollu x'jaqsam ma' xi haġa oħra li għad tista' tiġi preskritta.

(2) Ebda dmir (maghdud id-dmir ta' segretezza professjonali) li bih jista' jkun marbut l-uditur ta' detentur ta' liċenza, ma għandu jitqies bħala li jkun gie miksir għar-raġuni li huwa jkun wassal *in bona fede* lill-awtorita' kompetenti, sew jekk għax mitlub minnha jew le, xi tagħrif jew fehma fuq xi haġa li l-uditur sar jaf biha minhabba fix-xogħol tiegħu ta' uditur ta' dak id-detentur ta' liċenza u li tkun relevanti għall-funzjonijiet ta' l-awtorita' kompetenti bis-saħħa tad-dispożizzjonijiet ta' dan l-Att jew li tenhtieġ li tiġi komunikata bis-saħħa tas-subartikolu (1) ta' dan l-artikolu.

(3) Il-hwejjeġ preskritti għall-finijiet tal-paragrafu (ċ) tas-subartikolu (1) ta' dan l-artikolu jistgħu jinkludu hwejjeġ li għandhom x'jaqsmu ma' persuni li ma jkunux id-detenturi ta' liċenza.

APPELLI, RIMEDJI, SANZJONIJIET U
KONFIDENZJALITA'

Appelli.

19. (1) F'dan l-artikolu, it-"Tribunal ghal Servizzi Finanzjarji" tfisser it-Tribunal imwaqqaf skond il-provvedimenti ta' l-artikolu 10 ta' l-Att dwar il-Kummeré Bankarju, u "Tribunal" ghandu jiftiehem f'dan is-sens; u l-provvedimenti ta' l-artikolu 10 ta' l-Att dwar il-Kummeré Bankarju ghandhom, hlief meta xi wahda minnhom tkun inkompatibbli ma' xi provvediment ta' dan l-artikolu, japplikaw ghal appelli lit-Tribunal ghal Servizzi Finanzjarji maghmula taht dan l-Att.

(2) Bla hsara ghad-dispożizzjonijiet ta' dan l-artikolu, jista' jsir appell lit-Tribunal dwar-

(a) kull liċenza meqjusa bhala miċhuda taht is-subartikolu (6) ta' l-artikolu 6 ta' dan l-Att;

(b) kull każda, tibdil, thassir jew sospensjoni ta' liċenza taht is-subartikolu (3) ta' l-artikolu 8 ta' dan l-Att;

(c) kull deċiżjoni jew deċiżjoni meqjusa bhala mehuda taht is-subartikolu (5) ta' l-artikolu 10 ta' dan l-Att;

(d) kull deċiżjoni li tirrigwarda reklam taht l-artikolu 11 ta' dan l-Att;

(e) kull direttiva moghtija taht l-artikolu 15 ta' dan l-Att; jew

(f) kull deċiżjoni li ssir dikjarazzjoni pubblika, taht id-dispożizzjonijiet ta' l-artikolu 25 ta' dan l-Att, dwar l-imġieba hażina ta' persuna.

(3) Appell taht dan l-artikolu jista' jsir biss ghar-raġunijiet li ġejjin-

(a) li l-awtorita' kompetenti tkun applikat hażin xi wahda mid-dispożizzjonijiet ta' dan l-Att; jew

(b) li d-deċiżjoni jew id-direttiva ta' l-awtorita' kompetenti tikkostitwixxi abbuż ta' diskrezzjoni u li tkun manifestament ingusta, iżda d-diskrezzjoni ta' l-awtorita' kompetenti ma tistax, ladarba tkun ġiet eżerċitata b'mod xieraq tiġi mistharrġa mit-Tribunal:

Izda meta jsir rikors minn persuna li turi li tkun il-persuna involuta f'caħda meqjusa taht is-subartikolu (6) ta' l-artikolu 6 jew deċiżjoni meqjusa taht is-subartikolu (5) ta' l-artikolu 10, it-Tribunal jista' jordna li l-awtorita' kompetenti tagħti raġunijiet bil-miktub għaċ-ċaħda meqjusa jew għad-deċiżjoni meqjusa tiegħu skond il-każ, fi żmien għaxart ijiem minn meta jsir dak l-ordni, jew f'dak iż-żmien itwal li t-Tribunal jista' jqis li jkun xieraq, u jkunu dawk ir-raġunijiet li jingħataw bil-miktub li jagħmlu l-meritu ta' l-appell wara li jitqiesu d-dispożizzjonijiet tal-paragrafi (a) u (b) ta' dan is-subartikolu.

(4) Appell magħmul taht dan l-artikolu ma jissospendix it-thaddim ta' xi deċiżjoni jew direttiva li minnha jsir l-appell:

Izda deċiżjoni għat-thassir ta' liċenza m'għandhiex tibda ssehh qabel ma jgħaddi ż-żmien li fih ikun jista' jsir appell taht dan l-artikolu u, jekk isir appell matul dak iż-żmien, id-deċiżjoni tibda ssehh fid-data tad-deċiżjoni tat-Tribunal li tiċhad l-appell jew fid-data meta l-appell jiġi deżert:

Izda wkoll, id-deċiżjoni li tinhareg dikjarazzjoni dwar l-imġieba hażina ta' persuna m'għandhiex tiġi pubblikata sakemm iġgħaddi ż-żmien li fih ikun jista' jsir appell bis-saħha ta' dan l-artikolu u, jekk appell isir f'dak iż-żmien, id-dikjarazzjoni m'għandhiex tiġi pubblikata qabel id-data tad-deċiżjoni tat-Tribunal li tiċhad l-appell jew fid-data meta l-appell jiġi deżert.

20. Ftehim ta' investment li jsir-

(a) minn persuna fil-waqt li tkun qed tippovdi servizz ta' investment bi ksur tad-dispożizzjonijiet ta' l-artikolu 3 ta' dan l-Att; jew

(b) mid-detentur ta' liċenza għal servizzi ta' investment jew minn persuna eżentata minhabba xi haġa li tkun intqalet jew saret minn persuna fil-waqt li tkun qed tippovdi servizz ta' investment bi ksur tad-dispożizzjonijiet ta' l-artikolu 3 ta' dan l-Att,

Ċertu ftehim
li ma jistax
ikun eżegwit.

ma jkunx jista' jiġi nfurzat kontra l-parti l-oħra; u dik il-parti l-oħra jkollha l-jedd li tiegħu lura kull flus imħallsa, jew kull proprjeta' oħra trasferita minnha taht il-ftehim, jew meta dik il-proprjeta' ma tkunx tista' hekk tintradd lura, dik il-parti jkollha l-jedd li minflokha tiegħu lura l-valur li kellha meta sar il-ftehim, flimkien ma' kumpens għal kull telf li tkun garrbet minhabba dak il-hlas jew it-trasferiment jew minhabba li ma tkunx tista' tiegħu lura l-proprjeta' trasferita u kull qliegh li jista' jkun sar minhabba li dawk il-flus jew il-proprjeta' l-oħra kienu ġew trasferiti minnha:

Izda meta fuq talba ghal radd lura taht dan l-artikolu, il-qorti tkun sodisfatta li-

(i) f'każ li jaqa' taht il-paragrafu (a) ta' dan l-artikolu, il-persuna hemm imsemmija tkun b'mod raġonevoli hasbet li ma kenitx qed tikser l-imsemmi artikolu 3; jew

(ii) f'każ li jaqa' taht il-paragrafu (b) ta' dan l-artikolu, id-detentur tal-liċenza jew persuna eżentata la kien jaf u lanqas seta' jkun jaf li l-ftehim kien sar bil-mod kif imsemmi f'dak il-paragrafu,

il-qorti tista' tilqa' li ftehim ta' investment li ghalih japplika dan l-artikolu jkun eżegwit u l-flus jew il-proprjeta' mhallsa jew trasferita bis-sahha tieghu jinżammu.

Setgħat tal-qorti f'każ li x'aktarx ikun hemm kontravvenzjoni.

21. (1) Jekk, fuq rikors ta' l-awtorita' kompetenti magħmul lill-Qorti tal-Kummerċ, l-imsemmija qorti tkun sodisfatta-

(a) li jkun jidher b'mod raġonevoli li persuna tkun se tisker xi wahda mid-dispożizzjonijiet ta' l-artikoli 3, 4 jew 11 ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula tahtu, jew li tkun se tikser jew tonqos milli thares xi kundizzjoni, obligazzjoni, hteġa, direttiva jew ordni magħmula jew mogħtija taht xi dispożizzjoni ta' dan l-Att; jew

(b) li persuna tkun kisret dik id-dispożizzjoni jew tkun kisret jew naqset milli thares xi kundizzjoni, obligazzjoni, hteġa, direttiva jew ordni u li jistghu jittiehdu passi sabiex ikun hemm rimedju għall-ksur jew nuqqas,

il-qorti tista' tagħti dawk l-ordnijiet li jidhrilha xierqa biex ma jsirx il-ksur jew, skond il-każ, biex teħtieġ lill-persuna msemmija fil-paragrafu (a) jew (b) ta' dan is-subartikolu, jew lil kull persuna ohra li fil-fehma tal-qorti tkun xjentement imdahhla fil-ksur, biex tiehu dawk il-passi li l-qorti tista' tordna.

(2) Jekk, fuq rikors magħmul bis-sahha tas-subartikolu (1) ta' dan l-artikolu, il-qorti tkun sodisfatta li persuna tkun dahlet fi transazzjoni bi ksur ta' xi wahda mid-dispożizzjonijiet ta' l-artikoli 3, 4 jew 11 ta' dan l-Att, il-qorti tista' tordna lil dik il-persuna u lil kull persuna ohra li tkun tidher lill-qorti li kienet persuna xjentement involuta fil-ksur sabiex jiehdu dawk il-passi hekk kif il-qorti tista' tordna sabiex tirrijintegra lill-partijiet fl-istess qagħda li kienu jinsabu fiha qabel ma tkun saret it-transazzjoni.

(3) Jekk, fuq rikors magħmul taht is-subartikolu (1) ta' dan l-artikolu, il-Qorti tkun ukoll sodisfatta li-

(a) xi persuna ghamlet qligh b'rizultat tal-ksur;
jew

(b) investitur ikun garrab telf jew xort'ohra
jkun effettwat hazin minhabba dak il-ksur,

il-qorti tista' tordna lill-persuna responsabbli għall-ksur li thallas fil-qorti dik is-somma li jidhrilha li tkun għusta meta tqis l-ammont tal-profitt, telf jew effett hazin kif intqal qabel, u tordna li dik is-somma tithallas kif tordna l-qorti lill-persuni li jkunu għamlu negozju li mhabba fih ikunu nqalghu profitti jew ikun iġġarrab telf jew effetti hżiena kif intqal qabel.

(4) Għall-finijiet ta' dan l-artikolu l-qorti tista' tordna lil kull persuna li tipproduci dawk il-kontijiet u li tagħti dak it-tagħrif, li jkunu verifikati b'dak il-mod, kif il-qorti jidhrilha xieraq.

(5) Id-dispożizzjonijiet ta' dan l-artikolu huma bla hsara għal kull jedd ta' kull persuna aggravata li tipprocedi direttament dwar xi dritt li dik il-persuna jista' xort'ohra jkollha indipendentement mill-awtorita' kompetenti.

22. (1) Persuna li tikser jew li tonqos li thares xi wahda ^{Reati.} mid-dispożizzjonijiet ta' l-artikoli 3, 4, 9, 10, 11, 13, 15 jew 26 ta' dan l-Att jew ta' l-artikolu 13 kif applikat bl-artikolu 14, jew ta' l-artikoli 13, 14 jew 15 kif applikati bl-artikolu 17, jew ta' kull ordni tal-qorti magħmul taht l-artikolu 21 jew ta' kull regola jew regolament magħmul taht l-artikoli 12 jew 31 ta' dan l-Att, jew tikser jew tonqos li thares xi kondizzjoni, obligu, htieġa, direttiva jew ordni magħmul jew mogħti taht xi wahda mid-dispożizzjonijiet ta' dan l-Att, tkun hatja ta' reat.

(2) Kull persuna li għall-finijiet ta', jew b'segwitu ta', xi wahda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula bis-sahha tiegħu, jew ta' xi kundizzjoni, obligazzjoni, htieġa, direttiva jew ordni magħmul jew mogħti kif intqal qabel, tagħti tagħrif jew tagħmel dikjarazzjoni li tkun taf li ma tkunx preċiża jew li tkun falza jew qarrieqa b'mod materjali, jew bi traskuraġni tagħti tagħrif jew tagħmel dikjarazzjoni li ma tkunx preċiża jew li tkun falza jew qarrieqa b'mod materjali, tkun hatja ta' reat.

(3) Kull persuna li xjentement tiehu sehem fit-tmexxija ta' xi servizz ta' investment jew ta' xi attivita' minn skema ta' investment kollettiv bi hsieb qarrieqi jew għal għan qarrieqi, tkun hatja ta' reat.

(4) Kull persuna li b'xi dikjarazzjoni, weghda jew tbassira li tkun taf li tkun tiżgwida, qarrieqa jew falza, jew b'xi habi diżonest ta' fatti materjali, jew billi taghmel bi traskuraġni (sew jekk b'mod diżonest jew xort'ohra) xi dikjarazzjoni, weghda jew tbassira li tkun tiżgwida, qarrieqa jew falza, tipperswadi jew tipprowa tipperswadi lil xi persuna ohra biex taghmel jew toffrilha biex taghmel ftehim ta' investment, tkun hatja ta' reat.

(5) Kull persuna li bil-hsieb li ma tinqabadx li tkun ghamlet reat taht dan l-Att tnehhi, tiddistruggi, taħbi jew b'mod qarrieqi tibdel xi ktieb, dokument jew xi karta ohra, tkun hatja ta' reat.

(6) Kull persuna li xjentement tfixkel persuna milli teżerċita d-dmirijiet taghha moghtija lilha b'dan l-Att tkun hatja ta' reat.

Pieni.

23. Persuna hatja ta' reat taht l-artikolu 22 ta' dan l-Att tehel, meta tinsab hatja, multa ta' mhux iżjed minn mitejn elf lira jew ghal prigunerija ghal żmien ta' mhux iżjed minn erba' snin, jew dik il-multa u prigunerija flimkien, kemm-il darba dik il-piena ta' multa jew prigunerija ma tkunx imposta taht is-subartikolu (4) ta' l-artikolu 12 ta' dan l-Att.

Proċedimenti
kriminali.

24. (1) Ebda proċedimenti ghal reat taht dan l-Att ma jinbdew minghajr il-kunsens ta' l-Avukat Ġenerali.

(2) Id-dispożizzjonijiet ta' dan l-Att m'għandhomx jolqtu xi proċedimenti kriminali li jistghu jkunu kompetenti taht xi liġi ohra.

Dikjarazzjoni
pubblika dwar
l-imġieba hażina
ta' persuna.

25. (1) Jekk l-awtorita' kompetenti jkun jidhrilha li persuna li jkollha jew kellha liċenza tkun kisret xi wahda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regoli u regolamenti maghmula taht dan l-Att jew li kisret jew naqset milli thares xi kundizzjoni, obligazzjoni, htieġa, direttiva jew ordni maghmula jew moghtija taht xi wahda mid-dispożizzjonijiet ta' dan l-Att, l-awtorita' kompetenti tista' tippubblika dikjarazzjoni li tkun tghid dan.

(2) Qabel ma tippubblika dikjarazzjoni taht is-subartikolu (1) ta' dan l-artikolu, l-awtorita' kompetenti għandha taghti lill-persuna involuta avviż bil-miktub tad-dikjarazzjoni proposta u tar-raġunijiet li wassluha biex taghmel dan.

(3) Meta r-raġunijiet imsemmija fl-avviż għandhom x'jaqsmu b'mod speċifiku ma' hwejjeġ li-

(a) jirreferu ghal persuna msemmija fl-avviż li ma tkunx il-persuna indirizzata fl-avviż; u

(b) huma lil-fehma ta' l-awtorita' kompetenti ta' preġudizzju għal dik il-persuna f'xi kariga jew impieg li jkollha,

l-awtorita' kompetenti għandha, kemm-il darba ma tqisx li ma jkunx prattiku li timxi b'dak il-mod, tinnotifika kopja ta' l-avviż lil dik il-persuna l-oħra.

(4) Avviż li jiġi notifikat lil persuna bis-sahha tad-dispożizzjonijiet ta' dan l-artikolu għandu jkun fih ukoll tagħrif dwar il-jedd ta' appell li dik il-persuna jkollha bis-sahha ta' l-artikolu 19 u tad-dispożizzjonijiet tas-subartikolu (5) ta' dan l-artikolu.

(5) Bla hsara għad-dispożizzjonijiet tas-subartikolu (4) ta' l-artikolu 19, ma' tmiem żmien xahar mid-data tan-notifika ta' l-avviż taht is-subartikolu (2), jew ta' kopja ta' l-avviż taht is-subartikolu (3) ta' dan l-artikolu, skond liema tiġi l-iktar tard, l-awtorita' kompetenti tista' tippubblika d-dikjarazzjoni proposta u, wara li tiġi pubblikata, għandha tibgħat kopja lil dik il-persuna u lil kull persuna li tkun giet notifikata kopja ta' l-avviż taht is-subartikolu (3) ta' dan l-artikolu.

(6) Il-provvedimenti ta' dan l-artikolu ma jnaqqsux jew b'xi mod iehor jippreġudikaw is-setgħat mogħtija lill-awtorita' kompetenti taht is-subartikolu (4) ta' l-artikolu 15 ta' dan l-Att.

26. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, tagħrif miksub minn xi persuna għall-finijiet, jew b'segwitu ta', xi wahda mid-dispożizzjonijiet ta' dan l-Att, jew ta' xi regoli jew regolamenti magħmula tahtu, fil-qadi ta' xi funzjonijiet taht xi wahda mill-imsemmija dispożizzjonijiet, jew minn awtorita' regolatorja estera, jitqies bhala konfidenzjali u protett bid-dmir ta' segretezza professjonali, u m'għandux ikun mikxuf lil xi persuna oħra, li ma tkunx persuna li tista' legittimament tikseb dak it-tagħrif għall-finijiet, jew b'segwitu ta', id-dispożizzjonijiet ta' dan l-Att, hlief bil-kunsens tal-persuna li mingħandha tkun kisbet it-tagħrif, kemm-il darba dak it-tagħrif ikollu x'jaqsam biss ma' dik il-persuna. Konfidenzjalita'.

(2) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ma jtellifx il-kxif ta' tagħrif-

(a) sabiex jinbdew, jew xort'oħra għall-finijiet ta', proċedimenti kriminali jew ta' xi proċedimenti mill-awtorita' kompetenti quddiem xi qorti taht dan l-Att;

(b) għall-fini li jippermetti jew jassisti lill-awtorita' kompetenti fl-eżerċizzju jew il-qadi ta' xi funzjoni tagħha taht dan l-Att;

(c) meta dan ikun sar maghruf lill-pubbliku minhabba li jkun inkixef taht ċirkostanzi li fihom, jew ghal xi ghan taghhom, il-kxif ma jkunx prekluz b'dan l-artikolu;

(d) f'sommarju jew f'gabra ta' taghrif maghmul b'mod li ma jkunx jista' jwassal li tkun aċċertata l-identita' tal-persuna li ghalha jirreferi;

(e) lil udituri meta l-awtorita' kompetenti tqis li dak il-kxif kellu jghin lill-udituri fit-twettieq tal-funzjonijiet taghhom taht l-artikolu 18 ta' dan l-Att;

(f) f'dawk iċ-ċirkostanzi u taht dawk il-kondizzjonijiet li jistghu jkunu preskritti;

(g) b'risposta ghal talba minn, jew bil-ghan li tinghata ghajnuna lil, awtorita' regolatorja estera bis-sahha ta' l-artikolu 17 ta' dan l-Att, kemm-il darba:

(i) l-awtorita' kompetenti tkun sodisfatta li l-awtorita' regolatorja estera tkun suggetta ghal dmir ta' segretezza professjonali li tkun mill-anqas daqs id-dmir ta' segretezza professjonali li l-awtorita' kompetenti hija suggetta ghalha taht il-ligijiet ta' Malta; u

(ii) l-awtorita' kompetenti tikseb dikjarazzjoni bil-miktub mill-awtorita' regolatorja estera li tuza t-taghrif biss ghall-ghanijiet li ntalbet ghalhom u li ser izzomm dak it-taghrif bhala wiehed konfidenzjali u ma twasslu lil hadd li ma jkunx impjegat mill-awtorita' regolatorja estera u li ma jkunx suggett ghal dmir ta' segretezza professjonali dwar dak it-taghrif;

(h) lill-Kunsill tal-Borża ta' Malta u lill-Bank Ċentrali ta' Malta, meta l-awtorita' kompetenti tqis li dak il-kxif ighin lill-Kunsill u lill-Bank fit-twettiq tal-funzjonijiet rispettivi taghhom.

MIXXELLANJI

Eskluzjoni ta' responsabbilta'.

27. Kull membru, uffiċjal jew impjegat ta' l-awtorita' kompetenti, u kull persuna oħra mahtura biex taqdi funzjoni taht dan l-Att, jew taht xi regoli jew regolamenti maghmula bis-sahha tieghu, ma jkunx responsabbli ghal danni ghal xi haġa li tkun saret jew li naqset milli ssir fil-qadi jew f'dak li kien jidher li jkun il-qadi ta' xi funzjonijiet taht dan l-Att, jew ta' xi regoli jew regolamenti kif intqal qabel, kemm-il darba l-ghemil jew in-nuqqas ma jintweriex li jkun sar jew naqas milli jsir *in mala fede*.

28. Avviż jcw dokument iehor li ghandu jinghata jew li ghandu jkun notifikat taht dan l-Att, jew xi regoli jew regolamenti maghmula bis-sahha tieghu, ghandu jitqies li jkun inghata jew li jkun notifikat kif imiss lil persuna jekk-

Avviżi, eċċ.

(a) ikun konsenjat lilha; jew

(b) ikun thalla fl-indirizz moghti minnha lill-awtorita' kompetenti, jew fl-indirizz l-ahhar maghruf taghha; jew

(c) ikun intbaghtilha bil-posta jew bit-*telefax* f'xi wiehed mill-imsemmija indirizzi; jew

(d) fil-każ ta' korp ta' persuni, sew jekk morali jew le jew ta' skema jew ta' *trust*, jekk ikun inghata jew ikun notifikat b'wiehed mill-mezzi msemmija qabel jew lil segretarju, skrivan, *manager*, *trustee* jew lil ekwivalenti taghhom, jew lil xi membru tal-korp amministrattiv jew lil rappreżentant mahtur.

29. L-Att dwar il-Kontroll fuq il-Kambju m'ghandux japplika ghal transazzjonijiet li jsiru mid-detenturi ta' liċenza (jew mill-kumpaniji jew *trusts* ta' dawk id-detenturi ta' liċenza bhalma huma skemi ta' investimenti kollettiv) ma' persuni li ma jkunux residenti f'Malta ghall-ghanijiet ta' l-Att imsemmi:

Applikazzjoni ta' l-Att dwar il-Kontroll fuq il-Kambju. Kap.233

Iżda d-detentur ta' liċenza li ma jkunx residenti f'Malta ghall-finijiet ta' l-imsemmi Att ikun eżenti mid-dipożizzjonijiet ta' l-Att imsemmi dwar kull passi li jistghu jittiehdu kif hemm provdut fis-subartikolu (3) ta' l-artikolu 4 ta' dan l-Att, jew ghall-finijiet li d-detentur ta' liċenza jiġi jistabbilixxi ruhu f'Malta.

30. (1) L-uffiċjali u l-impjegati mhux Maltin ta' detentur ta' liċenza u d-detentur ta' liċenza huma eżenti mid-dispożizzjonijiet ta' l-Att dwar is-Sigurta' Soċjali, dwar hlas li jsir jew li jiġi attribwit lil dawk l-uffiċjali u l-impjegati mid-detentur ta' liċenza ghal servizzi moghtija b'mod esklussiv fil-kwalita' ta' *manager* jew fit-twettieq ta' funzjoni li tehtieg kompetenza speċjalizzata li mhux dejjem wiehed jista' jsibha f'Malta.

Eżenzjonijiet mis-sigurta' soċjali u mid-dazju ta' l-importazzjoni ghal detenturi ta' liċenza u impjegati mhux Maltin.

(2) Sabiex tinkiseb l-eżenzjoni msemmija fis-subartikolu (1) ta' dan l-artikolu, id-detentur ta' liċenza ghandu japplika lid-Dipartiment ghas-Sigurta' Soċjali filwaqt li jsemmi min ikunu l-uffiċjali u l-impjegati involuti flimkien ma' l-ghoti ta' kull prova li d-dipartiment jista' jehtieg li l-kondizzjonijiet ta' dak is-subartikolu jkunu ġew sodisfatti.

(3) Il-hwejjeg u effetti personali ta' ufficjal jew impjegat mhux Malti ta' detentur ta' licenza li jigu minnu importati għewwa Malta, mhux aktar tard minn sitt xhur minn meta jigi joqghod hawn għall-ewwel darba, ikunu eżenti mid-dazju ta' importazzjoni:

Izda d-dazju għandu jithallas fuq kull haġa li tkun giet impurtata mingħajr hlas ta' ebda dazju u li tigi wara mibjugħa, assenjata jew mod iehor trasferita lil persuna li tkun residenti f' Malta.

(4) L-ghamara, it-tagħmir u materjal iehor meħtieġ minn detentur ta' licenza u importat għewwa Malta għall-użu u għal hteġa tad-detentur ikun eżenti mid-dazju ta' importazzjoni:

Izda d-dazju għandu jithallas fuq kull haġa li tigi importata mingħajr hlas ta' ebda dazju u li tigi wara mibjugħa, assenjata jew mod iehor trasferita lil persuna li tkun residenti f' Malta.

(5) Għall-finijiet ta' dan l-artikolu, "mhux Malti" tfisser individwu li mhuwiex ċittadin ta' Malta, li jkun intbagħat Malta minn barra jew li jkun gie ingaġġat direttament minn barra sabiex huwa jigi mpjegat minn detentur ta' licenza, li xogħolu f' Malta huwa wiehed ta' xorta temporanja u li jkun żamm il-qofol ta' l-interess ekonomiku tiegħu barra minn Malta.

Setgħa tal-
Ministru
li jagħmel
arranġamenti
transitorji.

31. Il-Ministru jista', filwaqt li jaġixxi bil-parir ta' l-awtorita' kompetenti, b'regoli jew regolamenti jagħmel dispożizzjonijiet transitorji għal dawk il-persuni li, fid-data tad-dhul fis-seħh ta' dan l-Att, kienu qegħdin jipprovdu servizz ta' investment jew li kienu jeżistu bhala skema ta' investment kollettiv u, bla hsara għall-generalita' ta' dak imsemmi qabel, huwa jista', b'dawk ir-regoli jew regolamenti, b'mod partikolari:

(a) jippreskrivi żmien li matulu dawk il-persuni għandhom japplikaw għal licenza li tinhargilhom bis-saħħa ta' dan l-Att;

(b) jippermetti lil dik il-persuna li tkompli tipprovdi dak is-servizz ta' investment fil-limitu sa dak iż-żmien mogħti, sakemm licenza għal servizzi ta' investment tingħatalu jew tinċahadlu jew sakemm jintemm iż-żmien stabbilit fir-regoli jew regolamenti, skond liema jkun l-iqsar żmien, u bil-kundizzjoni li dik il-persuna tkun applikat għal licenza ta' servizzi ta' investment skond id-dispożizzjonijiet ta' dan l-Att fiż-żmien imsemmi fil-paragrafu (a) ta' dan l-artikolu;

(ċ) jippermetti lil dik il-persuna li tkompli għaddejja bl-attivitajiet ta' skema ta' investiment kollektiv, inkluż il-hruġ jew il-holqien ta' unitajiet, sal-limitu ta' l-attivitajiet sa dak iż-żmien imwettqin sa meta tinghatalu jew tincahadlu skema ta' investiment kollektiv jew sakemm jintemm iż-żmien stabbilit fir-regoli jew fir-regolamenti, skond liema jkun l-iqsar żmien, u bil-kundizzjoni li dik il-persuna tkun applikat biex tinhargilha liċenza għal servizzi ta' investiment skond id-dispożizzjonijiet ta' dan l-Att fi-żmien imsemmi fil-paragrafu (a) ta' dan l-artikolu.

32. Il-ligijiet speċifikati fl-ewwel kolonna tat-Tielet Skeda li tinsab ma' dan l-Att għandhom isehhu skond l-emendi li jidhru fit-tieni kolonna ta' dik l-Iskeda. Emendi ta' ligijiet speċifikati fit-Tielet Skeda.

SKEDI
L-EWWEL SKEDA

(Artikolu 2)

Servizzi

1. Negozju bhala Prinċipal jew Aġent
Xiri, bejgh, sottoskrizzjoni jew *underwriting* ta' strumenti bhala prinċipal jew bhala aġent.
2. Arrangamenti biex isir Negozju
Arrangamenti biex persuna ohra tixtri, tbiegh, tissottoskrivi jew taghmel *underwriting* ta' strumenti.
3. Tmexxija u Amministrazzjoni
Xoghol bhala *manager*, amministratur, segretarju jew registratur dwar xi strument, jew dwar xi skema jew arrangament li jinvolti strument, jew dwar xi wiehed mill-attivi jew investimenti rappreżentati minn jew li xort'ohra ghandhom x'jaqsmu ma' strument, jew dwar skema ta' investiment kollettiv.
4. *Trustee*, Kustodju jew Detentur *Nominee*
 - (a) Xoghol bhala *trustee*, kustodju jew detentur *nominee* ta' strument, jew ta' attivi rappreżentati minn jew li xort'ohra ghandhom x'jaqsmu ma' strument, meta il-persuna li taghmel ix-xoghol bhala *trustee*, kustodju jew detentur *nominee* taghmel dan bhala parti mill-ghoti ta' xi wiehed mis-servizzi ta' investiment stipulati fil-paragrafi 1, 2, 3 jew 5 ta' din l-Iskeda; jew
 - (b) Tiżmim ta' strument jew l-attivi rappreżentati minn jew li xort'ohra ghandhom x'jaqsmu ma' strument bhala *nominee*, meta il-persuna li taghmel ix-xoghol bhala *nominee* taghmel dan f'isem persuna ohra li taghti servizz ta' investiment stipulat f'din l-Iskeda, jew f'isem klijent ta' din il-persuna, u dan it-tiżmim bhala *nominee* isir ghar-rigward ta' dan is-servizz ta' investiment; jew
 - (c) Xoghol bhala *trustee* jew kustodju ghar-rigward ta' skema ta' investiment kollettiv.
5. Pariri fuq Investiment
L-ghoti, jew li toffri li taghti jew li tiftiehem li taghti, lil persuni fil-kwalita' taghhom ta' investituri jew investituri potenzjali:

- parir fuq dak li jaghmlu meta jixtru, ibieghu, jissottoskrivu jew jaghmlu *underwriting* ta' strument sabiex jiksbu, jiddisponu minn, jaghmlu *underwriting* fuq, jew jikkonvertu strument; jew

- parir dwar skema jew arrangament li jinvolvu strument.

IT-TIENI SKEDA

(Artikolu 2)

Strumenti

1. (1) Titoli, inkluzi azzjonijiet u *stock* f'kapital ta' kumpannija, *debentures*, *debenture stock*, *loan stock*, *certificates of deposit*, *bonds*, *notes* u kull strumenti ohra li johlqu jew jirrikonoxxu debitu.

(2) Is-subartikolu (1) ta' hawn fuq ma japplikax ghal:

(a) xi strument li jirrikonoxxi jew johloq debitu ghall-konsiderazzjoni pagabbli taht kuntratt ghall-provvista ta' oggetti jew servizzi, jew ghal flus mislufa biex tithallas l-imsemmija konsiderazzjoni;

(b) cekk jew kambjala ohra, *draft* tal-bank jew ittra ta' kreditu; jew

(c) karta tal-flus, prospett li juri bilanċ f'kont kurrenti, ta' depożitu jew ta' tiffidil jew (minhabba xi obbligu finanzjarju li jkun jinsab fiha) ghal kiri jew disponiment iehor ta' proprjeta', jew poloz ta' assigurazzjoni.

2. Unitajiet fi skema ta' investment kollettiv.

3. *Warrants*, *options*, ċertifikati jew strumenti ohra, inkluż kull *record* sew jekk f'forma ta' dokument sew jekk le, li jaghti l-jedd lid-detentur tieghu biex jissottoskrivi ghal, jakkwista, ibiegh jew xort'ohra jiddisponi minn, jaghmel *underwriting* ta' jew jikkonverti xi strument jew interess f'xi strument li jaqa' taht din l-Iskeda, jew ghal xi flus.

4. Ċertifikati jew strumenti ohra li jaghtu drittijiet ta' proprjeta' dwar xi strument li jaqa' taht din l-Iskeda.

5. *Futures* u kuntratti ta' kambju barrani li jsiru ghal finijiet ta' investment jew kambju miksub jew miżmum ghal skopijiet ta' investment.

6. Drittijiet taht kuntratt ghal differenzi jew taht xi kuntratt iehor li l-ghan tieghu jew l-ghan mahsub tieghu huwa li jiżgura profitt jew jevita telf b'riferenza ghal varjazzjoni fil-valur jew fil-prezz ta' proprjeta' ta' kull deskrizzjoni jew f'indici jew f'fattur iehor mahsub ghal dak l-ghan fil-kuntratt.

IT-TIELET SKEDA

(Artikolu 32)

Emendi

L-Ewwel Kolonna

Att dwar il-Bank
Ċentrali ta' Malta, Kap.
204

Att dwar il-Borża ta'
Malta, Kap. 345.

It-Tieni Kolonna

L-artikolu 55 ghandu jithassar u
kull riferenza ghal dak l-artikolu fl-
Att, jew f'kull Att iehor, ghandha
tithassar.

(1) L-artikolu 2 ghandu jiġi
emendat kif ġej:

(a) billi tidhol din it-
tifsira li ġejja wara t-tifsira
ta' "titoli" u qabel it-tifsira
ta' "tribunal":

" "titoli kwotati" tfisser
titoli li jkunu ddahhlu ghall-
kummerċ tal-Borża skond il-
htigijiet ta' l-elenku, hekk kif
jista' jiġi stabbilit fil-liġijiet
sussidjarji"; u

(b) billi fit-tifsira ta'
"stockbroker" minflok il-
kelma "titoli" ghandhom
jidhlu l-kliem "titoli kwotati".

(2) L-artikolu 3 ghandu jiġi
emendat kif ġej:

(a) fil-paragrafu (a)
tas-subartikolu (3) minflok
il-kelma "titoli" ghandhom
jidhlu l-kliem "titoli kwotati";

(b) is-subparagrafu
(i) tal-paragrafu (b) tas-
subartikolu (3) ghandu
jithassar u minflok jidhol
dan is-subparagrafu ġdid li
ġej:

L-Ewwel Kolonna

It-Tieni Kolonna

"(i) ikun il-post
esklussiv f'Malta ghan-
negozju ta' titoli kwotati; u";
u

(c) minnufih wara l-
proviso li hemm ghas-
subartikolu (3) ghandu
jizdied dan il-proviso gdid li
gej:

" Izda wkoll unitajiet kif
imfissra fl-Att ta' l-1994
dwar Servizzi ta' Investment
ta' skema ta' investment
kollettiv li jkollha licenza
taht dak l-Att, sew jekk ikunu
titoli kwotati jew le, jistghu
jigu negozjati f'postijiet barra
mill-Borża u b'mod li ma
jkunx permezz tal-facilitajiet
provdui mill-Borża, mill-
manager ta' l-iskema jew
flimkien mieghu jew persuna
li tagixxi f'ismu u bl-
awtorita` tieghu".

(3) Fl-artikolu 9, il-proviso li
hemm ghas-subartikolu (1) ghandu
jithassar.

(4) L-artikolu 11 ghandu jigi
emendat billi jidhol il-kliem
"imwettaq minnu f'titoli li jkunu
kwotati" minflok il-kliem "imwettaq
minnu mhux fil-Borża f'titoli li ma
jkunux kwotati".

(5) L-artikolu 34 ghandu jigi
emendat billi jidhol il-kliem "minn
stockbrokers licenzjati f'titoli
elenkati." minflok il-kliem "minn
stockbrokers licenzjati f'titoli
elenkati u titoli mhux elenkati."

L-Ewwel Kolonna

It-Tieni Kolonna

(6) L-artikoli 33, 35 u 36 ghandhom jithassru, u kull referenza fl-Att, jew f'kull Att iehor li jkun, ghal dawn l-artikoli ghandha tithassar.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 303 ta' l-20 ta' Lulju, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

ARRANGEMENT OF ACT

Preliminary

1. Short title and commencement
2. Interpretation

Licensing requirements

3. Requirement of licence for investment services
4. Requirement of licence for collective investment schemes

Application, grant, revocation, etc. of licences

5. Applications for a licence
6. Power of the competent authority to refuse or grant licence
7. Power of the competent authority to cancel or suspend licences
8. Notification of proposed refusal, variation, cancellation or suspension of a licence

Obligations of licence holders and others

9. Changes in information; payment of fees
10. Notification of new or increased control
11. Consent required for advertisement of schemes, instruments and services

Regulatory and investigatory powers

12. Minister's power to make regulations
13. Power of competent authority to require information
14. Appointment of inspectors
15. Power to issue directives
16. Right of entry

Co-operation with overseas regulatory authority

17. Powers exercisable

Duty of auditors

18. Auditor's duty to report

Appeals, Remedies, Sanctions and Confidentiality

19. Appeals
 20. Unenforceability of certain agreements
 21. Powers of the court in the case of a likely contravention
 22. Offences
 23. Penalties
 24. Criminal proceedings
 25. Public statement as to person's misconduct
 26. Confidentiality

Miscellaneous

27. Exclusion of liability
 28. Notices, etc.
 29. Application of Exchange Control Act
 30. Social security and import duty exemptions in respect of licence holders and expatriate staff
 31. Minister's power to make transitional arrangements
 32. Amendments of enactments specified in Third Schedule

Schedules

- First Schedule (Section 2) - Services
 Second Schedule (Section 2) - Instruments
 Third Schedule (Section 32) - Amendments

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XIV of 1994

AN ACT to regulate the carrying on of investment business and to make provision for matters ancillary thereto or connected therewith.

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:

PRELIMINARY

Short title and
commencement.

1. (1) This Act may be cited as the Investment Services Act, 1994.

(2) 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.

2. (1) In this Act, unless the context otherwise requires- Interpretation.

"advertisement" means any form of advertising, whether done verbally or in writing, and, without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or showcards, by means of letters, circulars, prospectuses, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings or in any other manner, and references to the issue of an advertisement shall be construed accordingly;

"collective investment scheme" means any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has any of the following characteristics-

(a) the scheme or arrangement operates according to the principle of risk spreading; or

(b) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or

(c) at the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or

(d) units are, or have been, or will be issued continuously or in blocks at short intervals;

"collective investment scheme licence" means a licence for the issue or creation of units or the carrying on of an activity by a collective investment scheme issued under section 6 of this Act;

"competent authority" means the Minister or such other person as he shall appoint, provided that until such time as the Minister makes such appointment, any requirement in this Act that the Minister consult the competent authority shall be interpreted as a requirement that the Minister act alone;

"document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"exempted person" means a person who for any reason is exempted from any or all of the provisions of section 3 of this Act;

"instrument" means any instrument, contract or right falling within the Second Schedule to this Act and whether or not issued in Malta;

"investment agreement" means any agreement the making or performance of which by either party constitutes an investment service;

"investment service" means any service falling within the First Schedule to this Act when provided in relation to an instrument;

"investment services licence" means a licence to provide an investment service under section 6 of this Act;

"licence" means a collective investment scheme licence or an investment services licence;

"licence holder" means a person who holds a licence;

"Minister" means the Minister responsible for finance;

"overseas regulatory authority" means an authority which in a country or territory outside Malta exercises any function corresponding to:

(a) a function of the competent authority under this Act;

(b) a function of the Central Bank of Malta under the Banking Act ; Cap. 215

(c) a function of the Council of the Stock Exchange under the Malta Stock Exchange Act ; or Cap. 345

(d) a function of the Minister under the Insurance Business Act , or under any of the abovementioned enactments. Cap. 290

"participants" means the persons who participate in or receive, or are to participate in or receive, profits or income arising from the acquisition, holding, management or disposal of the property comprised in a collective investment scheme or sums paid out of such profits or income;

"prescribed" means prescribed by rules or regulations made under this Act;

"qualifying shareholding" means a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate;

"subsidiary" has the same meaning as that given to the term by section 97 of the Commercial Partnerships Ordinance ; Cap. 168

"unit" means any representation of the rights and interests of participants in a collective investment scheme.

(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

LICENSING REQUIREMENTS

Requirement of licence for investment services.

3. (1) No person shall provide, or hold himself out as providing, an investment service in or from within Malta unless he is in possession of a valid investment services licence.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing an investment service in or from within a country, territory or other place outside Malta unless it is in possession of a valid investment services licence.

Requirement of licence for collective investment schemes.

4. (1) Subject to the provisions of subsection (3) of this section, no collective investment scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid collective investment scheme licence.

(2) Subject to the provisions of subsection (3) of this section, no collective investment scheme formed in accordance with or existing under the laws of Malta shall issue or create any units or carry on any activity in or from within a country, territory or other place outside Malta unless there is in respect of it a valid collective investment scheme licence.

(3) No collective investment scheme shall be precluded by the provisions of subsection (1) of this section from issuing or creating such units or from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the scheme or from taking such steps as may be necessary for securing the authorisation of the scheme by the competent authority.

APPLICATION, GRANT, REVOCATION, ETC. OF LICENCES

Application for a licence.

5. An application for a licence shall be made in the form and manner required by the competent authority and shall furthermore-

(a) contain or be accompanied by such information and particulars, in addition to those required by this section, as the competent authority may require or as may be prescribed;

(b) be verified in the manner and to the extent required by the competent authority, or as may be prescribed;

(c) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on him by or under this Act;

(d) in the case of an investment services licence, be accompanied by a programme of operations setting out such matters as may be required to be set out by the competent authority from time to time;

(e) in the case of a collective investment scheme licence, specify the nature of the collective investment scheme concerned; and

(f) be accompanied by such fee as may be prescribed in respect of the licence applied for.

6. (1) The competent authority may grant or refuse to grant a licence applied for under this Act:

Power of competent authority to refuse or grant licence.

Provided that the competent authority shall not-

(a) grant an investment services licence unless it is satisfied that the applicant is a fit and proper person to provide the investment services concerned and that the applicant will comply with and observe any rules and regulations made under this Act and applicable to him;

(b) grant a collective investment scheme licence unless it is satisfied that the scheme will comply in all respects with any rules and regulations made under this Act and applicable to it and that its directors, and officers, or in the case of a trust, its trustees, are fit and proper persons to carry out the functions required of them in connection with the scheme.

(2) In granting a licence the competent authority may subject it to such conditions as it may deem appropriate, and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(3) When considering whether to grant or refuse to grant a licence the competent authority shall, in particular, have regard to-

- (a) the protection of the public;
- (b) the protection of the reputation of Malta;
- (c) the best economic interests of Malta; and

(d) in the case of a collective investment scheme licence, the reputation and suitability of the applicant and all other parties connected with the scheme.

(4) Every licence shall specify the investment service which the holder thereof has been authorised to provide or, as the case may require, the class of collective investment scheme to which the licence relates.

(5) Without prejudice to the generality of subsection (2) of this section, the conditions to which the competent authority shall subject a licence may be made applicable, or be prescribed to be applicable, to-

- (a) all investment services licences or all collective investment scheme licences, as the case may be;
- (b) certain categories of licences;
- (c) all licences granted to certain categories of holders;
- (d) all licences in relation to particular services or schemes, as the case may be.

(6) Where the applicant for a licence has not been notified by the competent authority of its decision whether to grant

or refuse to grant the licence applied for within twelve months from the receipt of an application made in compliance with the applicable provisions of this Act, the application shall be deemed to have been refused and the provisions of this Act shall apply as if notice of such refusal had been given on the expiration of the period aforesaid.

(7) Any requirement in this Act that a person be a fit and proper person to carry out certain activities or functions shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any director or officer of such person, and, in the case of a trust, each one of its trustees, be a fit and proper person to carry out such activities or functions.

(8) Where a licence holder contravenes or fails to comply with any of the conditions imposed in a licence issued under this section, the competent authority may without recourse to a court hearing impose an administrative penalty which may not exceed forty thousand liri.

7. (1) The competent authority may at any time cancel or suspend a licence in accordance with the provisions of this Act. Power of competent authority to cancel or suspend licences.
- (2) In the case of an investment services licence, the competent authority may cancel or suspend a licence-
- (a) if it considers that the holder thereof is not a fit and proper person to provide the investment service he is authorised to provide; or
 - (b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any rules or regulations made thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the licence is subject by virtue of or under this Act; or
 - (c) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading; or

(d) if the licence holder has not commenced to provide the service he has been authorised to provide within the time provided for in the licence or has ceased to provide such service; or

(e) if it considers it desirable to cancel or suspend the licence for the protection of the public or the reputation of Malta; or

(f) at the request of the licence holder.

(3) In the case of a collective investment scheme licence, the competent authority may cancel or suspend a licence-

(a) if it considers that the directors, officers or trustees of the scheme are not fit and proper persons to carry out the functions required of them in connection with the scheme; or

(b) if it considers that the scheme to which the licence refers does not fulfil the requirements of any provision of this Act or of any rules or regulations made thereunder, or there has been a contravention of any such provision as aforesaid, or an obligation or condition to which the scheme or the licence is subject by virtue of or under this Act has not been satisfied or complied with; or

(c) if information has been furnished to the competent authority by or on behalf of or in relation to the scheme which is false, inaccurate or misleading; or

(d) if the scheme has not commenced the activities which it was authorised to carry on within the time provided for in the licence or has ceased to carry on such activities; or

(e) if it considers it desirable to cancel or suspend the licence for the protection of the public or the reputation of Malta; or

(f) at the request of the manager or trustee or custodian of the scheme, or their equivalent.

8. (1) Where the competent authority proposes-

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

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

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

it shall give the applicant or, as the case may be, the licence holder or the manager and trustee or custodian of a collective investment scheme, or their equivalent, notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under subsection (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 competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall notify its final decision in writing to any of the persons to whom notice is to be given under subsection (1) of this section and, where the said persons have not been notified by the competent authority of that decision within twelve months from the date on which the said authority notifies in writing the said persons of its intention as stated in subsection (1) of this section, the competent authority shall be deemed to have refused the application or cancelled or suspended the licence, as the case may be.

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

9. (1) The holder of an investment services licence and the manager of a collective investment scheme which has been licensed under this Act, or any other person having responsibility for the day to day administration or management of such a scheme, shall provide the competent authority with particulars of any changes in the information provided under this Act as soon as such holder, manager or person becomes aware of such changes.

Changes in information; payment of fees.

(2) Every holder of a licence shall pay to the competent authority such periodic fee, and within such time, as may from time to time be prescribed.

Notification of new or increased control.

10. (1) No person shall acquire a qualifying shareholding in a licence holder or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the licence holder reaches or exceeds 20 per cent, 33 per cent or 50 per cent, or so that the licence holder becomes the subsidiary of such person, unless such person has served on the competent authority a written notice stating that he intends to acquire or increase such shareholding, and-

(a) the competent authority has, before the end of the period of three months beginning with the service of that notice, notified him in writing that there is no objection to his acquiring or increasing such shareholding; or

(b) that period has elapsed without the competent authority having served on him a notice of objection; or

(c) the competent authority has, before the end of the said period of three months served a notice of objection which has subsequently been withdrawn, cancelled or quashed for any reason:

Provided that the acquisition or increase of the qualifying shareholding takes place within one year following the event mentioned in paragraph (a), (b) or (c) of this subsection as the case may be:

Provided also that in the case envisaged in the aforesaid paragraph (c) of this subsection the aforesaid period of one year shall commence to run from the date that the person concerned has been notified of the withdrawal, cancellation or quashing of the notice of objection, as the case may be.

(2) A notice served on the competent authority under subsection (1) of this section shall contain such information as the competent authority may direct and the competent authority may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the competent authority may reasonably require for deciding whether to serve a notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2) of this section, the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in paragraph (a) of subsection (1) of this section.

(4) Every notice of objection mentioned in paragraph (b) of subsection (1) of this section shall state the reasons for such objection and 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 competent authority giving reasons why the notice of objection should be withdrawn; and the competent authority shall consider any representations so made before arriving at a final decision.

(5) The competent authority shall notify its final decision in writing to the person who makes representation under subsection (4) of this section and if such decision is not notified within thirty days of the expiry of the deadline referred to in the said subsection (4) of this section, the competent authority shall be deemed to have decided not to withdraw its notice of objection.

(6) Any person who proposes to sell or dispose of a qualifying shareholding in a licence holder or to reduce his qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the licence holder would fall below 20 per cent, 33 per cent or 50 per cent, or so that the licence holder would cease to be his subsidiary, must inform the competent authority in writing stating his intention to sell, dispose of or reduce his shareholding and stating the size of his shareholding following such sale, disposal or reduction.

(7) Immediately on becoming aware of any proposed or actual acquisition or disposal of part or all of a shareholding in its share capital in any of the circumstances dealt with in this section a licence holder shall inform the competent authority in writing.

Consent required for advertisement of schemes, instruments and services.

11. (1) No person shall, without the consent of the competent authority, issue or cause to be issued any advertisement or undertake any other promotional activity inviting persons:

(a) to become or offer to become participants in a collective investment scheme, or any advertisement or activity containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme;

(b) to subscribe for or otherwise acquire or underwrite an instrument, or any advertisement or activity containing information calculated to lead directly or indirectly to persons subscribing for or otherwise acquiring or underwriting or offering to subscribe for or otherwise acquire or underwrite an instrument; or

(c) to purchase or otherwise procure an investment service:

Provided that this subsection shall not apply to any advertisement issued outside Malta and which is not distributed in Malta and does not relate to a collective investment scheme formed in accordance with or existing under the laws of Malta.

(2) The provisions of subsection (1) of this section shall not apply if the advertisement is issued solely to:

(a) licence holders;

(b) a person whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instruments to which the advertisement relates; or

(c) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the collective investment scheme in the advertisement relates.

REGULATORY AND INVESTIGATORY POWERS

12. (1) The Minister, acting on the advice of the competent authority, may make rules or regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such rules or regulations, in particular, do any of the following-

Minister's power to make regulations.

(a) amend the definition of "collective investment scheme" contained in section 2 of this Act, as well as the definition of "investment service" contained in section 2 and the First and Second Schedules to this Act;

(b) regulate investment services and collective investment schemes, as well as services provided and activities carried on in conjunction therewith or in relation thereto, providing for any matter he may deem expedient including the creation and exercise of rights by or for the benefit of the public and the imposition of duties and obligations on the holders of a licence or persons responsible for the management or administration thereof;

(c) establish schemes or make arrangements for the compensation of investors in cases where the holder of an investment services licence or a collective investment scheme licence, or the holders of an investment services licence in relation to such a scheme, are unable to satisfy claims in respect of any civil liability incurred by them in connection with the investment service provided by them or with a scheme as aforesaid;

(d) define the criteria for determining whether a holding is an indirect holding for the purposes of determining whether a qualifying shareholding exists;

(e) regulate the promotion or sale by or on behalf of any person, and by any means, of an investment service or of a collective investment scheme or of any instrument, including the criteria and procedures for the granting or refusing of consent by the competent authority pursuant to the provisions of section 11 of this Act;

(f) amend the provisions of section 18 of this Act on the circumstances in which auditors are obliged to communicate information to the competent authority, to prescribe rules governing the disclosure by auditors of information pursuant to section 18 and to establish supervisory and disciplinary procedures for auditors in respect of their duties under the provisions of section 18 of this Act;

(g) exempt any person, service, instrument, collective investment scheme, or advertisement from any one or more of the provisions of this Act and on such conditions as may be prescribed;

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

(i) provide for any matter incidental to or connected with any of the above.

(2) Rules or regulations made under this section may also contain provision for enabling a person who has entered, or offered to enter, into an investment agreement with the holder of a licence 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) for requiring the service of notice with respect to the rights exercisable under the rules or regulations;

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

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

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

(4) Rules or regulations made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of forty thousand liri or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

- 13.** (1) The competent authority may, by notice in writing, require-
- Power of competent authority to require information.
- (i) any person who is or was providing, or who appears to be or to have been providing, an investment service; or
 - (ii) a collective investment scheme; or
 - (iii) any person who is or was carrying on, or who appears to be or have been carrying on activities in connection with such a scheme; or
 - (iv) any person who has issued, or appears to have issued an advertisement falling within the provisions of subsection (1) of section 11 of this Act; or
 - (v) any other person who appears to be in possession of relevant information,

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 with respect to any such service, scheme or advertisement as aforesaid;

(b) to furnish to the competent authority any information or documentation aforesaid 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 information and documentation with respect to any such service, scheme or advertisement as aforesaid.

(2) The competent authority may take copies of any documents furnished or provided under this section.

(3) Where the person required to provide information or documentation under this section does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this section may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this section shall not apply to information or documentation which is privileged in accordance with the provisions of subsection (1) of section 642 of the Criminal Code.

(6) The power to require the production of documentation under the provisions of this section shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under paragraph (c) of subsection (1) of this section, 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 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.

14. (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 or scheme referred to in paragraphs (i) to (iv) of subsection (1) of section 13 of this Act. Appointment of inspectors.

(2) An inspector appointed under subsection (1) of this section-

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any person or scheme mentioned in subsection (1) of this section;

(b) shall have and may exercise all the powers conferred on the competent authority by section 13 of this Act, 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 said authority.

(3) The competent authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this section be paid by the persons or scheme concerned.

15. (1) Without prejudice to any of the powers conferred on it by sections 13 and 14 of this Act, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under section 14 of this Act or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person or scheme as is referred to in subsection (1) of section 13 of this Act to whom or to which the 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. Power to issue directives.

(2) Without prejudice to the generality of the foregoing provisions of this section, a directive under this section 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 a collective investment scheme and the manager of such a scheme, or his equivalent, and any other person who may issue, redeem, sell or purchase units in the scheme, to cease the issue, redemption, sale, or purchase of units or all or any combination of those activities, as may be specified in the directive or further directive;

(c) require that any person having functions in relation to the holder of a licence be removed or removed and replaced by another person acceptable to the competent authority;

(d) require a collective investment scheme or its directors and shareholders, or the manager or trustee or custodian of a scheme, or their equivalent, to wind it up by such date and in accordance with such procedure and other provisions as may be specified in the directive or further directive.

(e) require a licence holder to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the licence holder.

(3) The power to give directives under this section 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 competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this section.

16. (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 section 13 of this Act or whose affairs are being investigated under section 14 of this Act, for the purpose of obtaining there 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 sections. Right of entry.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in subsection (1) of this section 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 person may, on producing, if required, evidence of his authority, enter any premises referred to in subsection (1) of this section for the purpose of obtaining there 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 subsection (1) of this section.

(3) For the purposes of any action taken under the provisions of this section, 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 for the prevention of offences and the enforcement of law and order.

CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITY

17. (1) The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority: Powers exercisable.

(a) the power to impose, revoke or vary conditions on the grant of a licence pursuant to the provisions of subsection (2) of section 6 of this Act;

(b) the power to cancel or suspend a licence under subsection (1) of section 7 of this Act;

(c) the powers of inquiry under section 13 of this Act;

(d) the power to appoint inspectors under section 14 of this Act;

(e) the powers of intervention under section 15 of this Act;

(f) the powers of entry under section 16 of this Act;

(g) 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 powers by virtue of this section 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 section, 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.

(4) The competent authority may decline to exercise powers under this section unless the overseas regulatory authority undertakes to make such contribution towards the costs of their exercise as the competent authority considers appropriate.

DUTY OF AUDITORS

18. (1) An auditor of the holder of a licence shall have the duty to report immediately to the competent authority any fact of which he becomes aware in his capacity as auditor of such licence holder which-

Auditor's duty to report.

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

(b) gravely impairs the licence holder's ability to continue as a going concern; or

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

(2) No duty (including the duty of professional secrecy) to which an auditor of the holder of a licence may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that licence holder and which is relevant to any functions of the competent authority under the provisions of this Act or is required to be communicated by virtue of subsection (1) of this section.

(3) The matters prescribed for the purposes of paragraph (c) of subsection (1) of this section may include matters related to persons other than the licence holder.

APPEALS, REMEDIES, SANCTIONS AND CONFIDENTIALITY

19. (1) In this section, the "Financial Services Tribunal" means the Tribunal established in terms of section 10 of the Banking Act, and "Tribunal" shall be construed accordingly; and the provisions of section 10 of the Banking Act shall, except in so far as any of them is incompatible with the provisions of this section, apply to appeals made to the Financial Services Tribunal under this Act.

Appeals.

(2) Subject to the provisions of this section, an appeal shall lie to the Tribunal with respect to:

(a) any deemed refusal of a licence under subsection (6) of section 6 of this Act;

(b) any refusal, variation, cancellation or suspension of a licence under subsection (3) of section 8 of this Act;

(c) any decision or deemed decision under subsection (5) of section 10 of this Act;

(d) any decision concerning an advertisement under section 11 of this Act;

(e) any directive given under section 15 of this Act; or

(f) any decision to make a public statement, under the provisions of section 25 of this Act, as to a person's misconduct.

(3) An appeal under this section shall lie only on any of the following grounds:-

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

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

Provided that upon application by a person who shows that he is the person concerned by a deemed refusal under subsection (6) of section 6 or a deemed decision under subsection (5) of section 10, the Tribunal may order that the competent authority give written reasons for its deemed refusal or deemed

decision as the case may be, within ten days of the making of such order, or within such longer period as the Tribunal may think fit, and such written reasons shall be the object of the appeal having regard to the provisions of paragraphs (a) and (b) of this subsection.

(4) An appeal made under this section shall not suspend the operation of any decision or directive from which the appeal is made:

Provided that a decision to cancel a licence shall not become operative until the expiration of the period within which an appeal lies under this section 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 section 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.

20. An investment agreement which is entered into -

Unenforceability of certain agreements.

(a) by a person in the course of providing an investment service in contravention of the provisions of section 3 of this Act; or

(b) by the holder of an investment services licence or by an exempted person in consequence of anything said or done by a person in the course of providing an investment service in contravention of the provisions of section 3 of this Act,

shall be unenforceable against the other party; and such other party shall be entitled to recover any money paid, or other property transferred by him under the agreement, or where such property cannot be so recovered, such party 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:

Provided that where on demand for a recovery under this section, the court is satisfied that-

(i) in a case falling under paragraph (a) of this section, the person therein mentioned reasonably believed he was not contravening the provisions of the said section 3; or

(ii) in a case falling under paragraph (b) of this section, the licence holder or exempted person neither knew nor ought to have known that the agreement was entered into as mentioned in that paragraph,

it may allow an investment agreement to which this section applies to be enforced and the money or property paid or transferred thereunder to be retained.

Powers of the court in the case of a likely contravention.

21. (1) If, on an application by the competent authority made to the Commercial Court, the said court is satisfied -

(a) that there is reasonable likelihood that a person will contravene any of the provisions of sections 3, 4 or 11 of this Act or of any rules and regulations made under it, or will contravene or fail to comply with any condition, obligation, requirement, 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, 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 subsection, 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 subsection (1) of this section, the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of sections 3, 4 or 11 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 an application made under subsection (1) of this section, 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 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 section 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.

(5) The provisions of this section 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.

Offences.

22. (1) Any person who contravenes or fails to comply with any of the provisions of sections 3, 4, 9, 10, 11, 13, 15, or 26 of this Act or of section 13 as applied by section 14 or of sections 13, 14 or 15 as applied by section 17, or of any court order made under section 21 or of any rules or regulations made under sections 12 or 31 of this Act, or contravenes or fails to comply with any condition, obligation, requirement, 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 rules or regulations made thereunder, or any condition, obligation, requirement, directive 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 investment service or of any activity by a collective investment scheme with a fraudulent intent or for a fraudulent purpose, 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 an investment agreement, 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.

23. A person guilty of an offence under the provisions of section 22 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, unless such fine or term of imprisonment is otherwise imposed under subsection (4) of section 12 of this Act. Penalties.

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

(2) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

25. (1) If it appears to the competent authority that a person who holds or who held a licence has contravened any of the provisions of this Act or of any rules and regulations made under this Act 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 competent authority may publish a statement to that effect. Public statement as to person's misconduct.

(2) Before publishing a statement under subsection (1) of this section, the competent authority shall give the person concerned written notice of the proposed statement and of the reasons for which it is proposed to act.

(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 competent authority prejudicial to that person in any office or employment,

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

(4) A notice served on a person pursuant to the provisions of this section shall give particulars of the person's right of appeal under section 19 and of the provisions of subsection (5) of this section.

(5) Subject to the provisions of subsection (4) of section 19, upon expiry of one month from the date of service of the notice under subsection (2), or a copy of the notice under subsection (3) of this section, whichever was the later, the competent 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 subsection (3) of this section.

(6) Nothing in this section shall restrict or otherwise prejudice the powers of the competent authority under subsection (4) of section 15 of this Act.

Confidentiality.

26. (1) Subject to the provisions of subsection (2) of this section, 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 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, except with the consent of the person from whom he obtained the information, provided the information relates solely to that person.

(2) The provisions of subsection (1) of this section 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 section;

(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 section 18 of this Act;

(f) in such circumstances and under such conditions as may be prescribed;

(g) in response to a request from, or for the purpose of assisting, an overseas regulatory authority pursuant to section 17 of this Act, provided that:

(i) the competent authority is satisfied that the overseas regulatory authority is subject to a duty of professional secrecy which is at least equivalent to the duty of professional secrecy to which the competent authority is subject under the laws of Malta; and

(ii) the competent authority obtains an undertaking in writing from the overseas regulatory authority that it will use the information only for the purposes for which it was requested and will keep such information confidential and will not communicate it to anyone who is not employed by the overseas regulatory authority and who is not subject to a duty of professional secrecy in respect of the said information;

(h) to the Council of the Malta Stock Exchange and the Central Bank of Malta, where the competent authority considers that such disclosure would assist the Council and the Bank in the exercise of their respective functions.

MISCELLANEOUS

27. Any member, officer or employee of the competent authority, and any other person appointed to perform a function under this Act, or under any rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be

Exclusion of liability.

done in the discharge or purported discharge of any functions under this Act, or any rules or regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith.

Notices, etc.

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

(a) it has been delivered to him; or

(b) it has been left at the address furnished by him to the competent authority, or to his last known address; or

(c) if it has been sent to him by post or by telefax at any of the aforesaid addresses; or

(d) in the case of a body of persons, whether corporate or unincorporate, or of a scheme or of a trust, if it has been given or served in any of the manners aforesaid to or on a secretary, clerk, manager, trustee or their equivalent, or to any member of the governing body or an appointed representative.

Application of
Exchange Control
Act.
Cap. 233

29. The Exchange Control Act shall not apply to transactions carried out by licence holders (or by the companies or trusts of such licence holders as are collective investment schemes) with persons not resident in Malta for the purposes of the said Act:

Provided that a licence holder who is not resident in Malta for the purposes of the said Act shall be exempt from the provisions of the said Act with respect to any steps which may be taken as provided in subsection (3) of section 4 of this Act, or for the purposes of the establishment of the licence holder in Malta.

Social security and
import duty
exemptions in
respect of licence
holders and
expatriate staff.

30. (1) Expatriate officers and employees of any licence holder and the licence holder shall be exempt from the provisions of the Social Security Act, in respect of remuneration paid or attributed to such officers and employees by the licence holder for services rendered exclusively in a managerial capacity or in a function requiring special expertise which is not generally available in Malta.

(2) In order to obtain the exemption provided for by subsection (1) of this section, the licence holder shall apply to the Department for Social Security identifying the officers and employees concerned together with such proof as the department may require that the conditions of that subsection are satisfied.

(3) Personal belongings and effects of an expatriate officer or employee of a licence holder imported by him into Malta, not later than six months from his first taking up residence, shall be exempt from customs duty:

Provided that duty shall become payable on anything imported free of duty and subsequently sold, assigned or otherwise transferred to a person resident in Malta.

(4) Furniture, equipment and other material required by a licence holder and imported into Malta for its own use and purpose shall be exempt from customs duty:

Provided that duty shall become payable on anything imported free of duty and subsequently sold, assigned or otherwise transferred to a person resident in Malta.

(5) For the purposes of this section, "expatriate" means an individual who is not a national of Malta, who has been posted to Malta from abroad or recruited directly from abroad in order to be employed by a licence holder, whose mission in Malta is of a temporary nature and who has maintained the centre of his economic interests outside Malta.

31. The Minister, acting on the advice of the competent authority, may by rules or regulations make transitional provisions for those persons who, on the date of the coming into force of this Act, were providing an investment service or were in existence as a collective investment scheme and, without prejudice to the generality of the foregoing, may, by such rules or regulations, in particular,

Minister's power to make transitional arrangements.

(a) prescribe a period within which such persons must apply for a licence under this Act;

(b) allow such person to continue providing such investment service to the extent of the service then provided until such time as an investment services licence is granted to him or refused or until expiry of the deadline provided in the rules or regulations, whichever is the shorter period, and on condition that such person has applied for an investment services licence in accordance with the provisions of this Act within the period referred to in paragraph (a) of this section;

(c) allow such person to continue carrying on the activities of a collective investment scheme, including the issue or creation of units, to the extent of the activities then carried on until such time as a collective investment scheme licence is granted to him or refused or until expiry of the deadline provided in the rules or regulations, whichever is the shorter period, and on condition that such person has applied for an investment services licence in accordance with the provisions of this Act within the period referred to in paragraph (a) of this section.

Amendments of
enactments
specified in Third
Schedule.

32. The enactments specified in the first column of the Third Schedule to this Act shall have effect subject to the amendments set out against them in the second column of that Schedule.

SCHEDULES**FIRST SCHEDULE**

(Section 2)

Services

1. **Dealing as Principal or Agent**

Buying, selling, subscribing for or underwriting instruments as principal or as agent.

2. **Arranging Deals**

Arranging for another person to buy, sell, subscribe for or underwrite instruments.

3. **Management and Administration**

Acting as manager, administrator, secretary or registrar in relation to any instrument, or to any scheme or arrangement involving an instrument, or in relation to any of the assets or investments represented by or otherwise connected with an instrument, or in relation to a collective investment scheme.

4. **Trustee, Custodian or Nominee Services**

(a) Acting as trustee, custodian or nominee holder of an instrument, or of the assets represented by or otherwise connected with an instrument, where the person acting as trustee, custodian or nominee holder is so doing as part of his providing any investment service in paragraphs 1, 2, 3 or 5 of this Schedule; or

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

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

5. Investment Advice

Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors:

- 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 scheme or arrangement involving an instrument.

SECOND SCHEDULE

(Section 2)

Instruments

1. (1) Securities, including shares and stock in the capital of a company, debentures, debenture stock, loan stock, certificates of deposit, bonds, notes and any other instruments creating or acknowledging indebtedness.

(2) Subsection (1) above shall not apply to:
 - (a) 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;
 - (b) a cheque or other bill of exchange, a banker's draft or a letter of credit; or
 - (c) 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.
2. Units in a collective investment scheme.
3. 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 Schedule or for any currency.
4. Certificates or other instruments which confer property rights in respect of any instrument falling within this Schedule.
5. Futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes.

6. 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.

THIRD SCHEDULE

(Section 32)

Amendments

First Column

Second Column:

Central Bank of
Malta Act, Cap. 204

Section 55 shall be deleted and any reference to that section in the Act, or in any other Act, shall be deleted.

Malta Stock Exchange
Act, Cap. 345

- (1) Section 2 shall be amended as follows:
- (a) by the insertion of the following definition after the definition of "quoted company" and before the definition of "related company":
- " "quoted securities" means securities which have been admitted to dealing on the Exchange in accordance with the listing requirements, as may be specified in the bye-laws;" and
- (b) by replacing the word "securities" in the definition of "Stockbroker" with the words "quoted securities".
- (2) Section 3 shall be amended as follows:
- (a) in paragraph (a) of subsection (3) the word "securities" shall be replaced by the words "quoted securities";

First Column

Second Column:

- (b) sub-paragraph (i) of paragraph (b) of subsection (3) shall be deleted and shall be substituted by the following new sub-paragraph:

"(i) shall be the exclusive place in Malta for the trading of quoted securities; and"; and

- (c) immediately after the proviso to subsection (3) there shall be added the following new proviso:

"Provided further that units as defined by the Investment Services Act, 1994, of a collective investment scheme licensed under that Act, whether or not they are quoted securities, may be traded outside the Borza and other than by means of facilities provided by the Exchange, by or with the manager of the scheme or a person acting for him and under his authority."

- (3) In section 9, the proviso to subsection (1) shall be deleted.
- (4) Section 11 shall be amended by substituting the words "carried out by him in securities which are quoted" for the words "carried out by him outside the Exchange in securities which are not quoted".

First Column

Second Column:

- (5) Section 34 shall be amended by substituting the words "by licensed stockbrokers in listed securities." for the words "by licensed stockbrokers in listed and unlisted securities."
 - (6) Sections 33, 35 and 36 shall be repealed, and any reference in the Act, or in any other Act, to these sections shall be deleted.
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Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

