

ABBOZZ TA' LIĠI msejjaħ

Att dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji

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

TAQSIMA I

PRELIMINARI

1. (1) It-titolu fil-qosor ta' dan l-Att huwa Att ta' l-2005 dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji. Titolu fil-qosor u bidu fis-sehh.

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jibdew isehhu f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta u dati differenti jistgħu jiġu hekk stabbiliti għal għanijiet differenti ta' dan l-Att.

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

“abbuż fis-suq” tfisser l-użu projbit ta' informazzjoni minn ġewwa kif ukoll il-prattika ta' manipulazzjoni tas-suq;

“l-Awtorità dwar l-Elenku” tfisser l-Awtorità dwar l-Elenku skond l-Artikolu 2 ta' l-Att dwar is-Swieq Finanzjarji; Kap. 345.

“l-awtorità barranija” tfisser l-awtorità amministrattiva wahda mahtura minn Stat Membru jew minn Pajjiż taż-ŻEE li mhux Malta, sabiex tiżgura li d-disposizzjonijiet adottati skond id-Direttiva dwar l-Abbuż fis-Suq jigu applikati;

Kap. 330. “awtorità kompetenti” tfisser l-Awtorità ghas-Servizzi Finanzjarji ta’ Malta mwaqqfa bl-Att dwar Awtorità ghas- Servizzi Finanzjarji ta’ Malta;

Kap. 386. “azzjoni” ghandha l-istess tifsira fir-rigward ta’ kumpanniji mhux inkorporati taht l-Att dwar il-Kumpanniji bhal dik fir-rigward ta’ kumpanniji hekk inkorporati;

“Direttiva dwar is-Servizzi ta’ Investment” tfisser id-Direttiva tal-Kunsill 93/22/KEE ta’ 1-10 ta’ Mejju 1993 dwar servizzi ta’ investment fil-qasam tat-titoli kif emendata minn żmien ghal żmien u kif mibdul bid-Direttiva 2004/39/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta’ April 2004 dwar swieq fi strumenti finanzjarji;

“Direttiva dwar l-Abbuż fis-Suq” tfisser id-Direttiva 2003/6/KE tal-Parlament Ewropew u tal-Kunsill tat-28 ta’ Jannar 2003 dwar *insider dealing* u manipulazzjoni tas-suq u tinkludi kull mizura implimentattiva mahruġa taħtha;

“entità emittenti” tfisser kull persuna li tohroġ strument finanzjarju wiehed jew aktar;

“*exchange* ta’ investimenti rikonnoxuti” tfisser persuna li fir-rigward tagħha l-awtorità kompetenti harget ordni ta’ rikonnoximent skond l-artikolu 4 ta’ l-Att dwar is-Swieq Finanzjarji” ;

“impjegat pubbliku” tfisser -

(a) ufficjal pubbliku;

(b) membru, ufficjal jew impjegat ta’ l-Awtorità ghas-Servizzi Finanzjarji ta’ Malta jew tal-Bank Ċentrali ta’ Malta;

“impriża ta’ investment” ghandu jkollha l-istess tifsira bhal dik mogħtija lilha fl-artikolu 1(2) tad-Direttiva tal-Kunsill 93/22/KEE ta’ 1-10 ta’ Mejju, 1993 dwar is-servizzi ta’ investment fil-qasam tat-titoli;

“informazzjoni minn ġewwa” tfisser informazzjoni ta’ natura preċiża li ma saritx pubblika dwar, direttament jew indirettament,

entità wahda jew aktar emittenti, dwar strument finanzjarju wiehed jew aktar, inkluża informazzjoni dwar offerta ta' *takeover* ghal kumpannija, u li, jekk issir pubblika, aktarx ikollha effett kbir fuq il-prezzijiet ta' dawk l-istrumenti finanzjarji jew fuq il-prezz ta' strumenti finanzjarji derivattivi relatati; li tkun informazzjoni li investitur raġonevoli aktarx juża bhala parti mill-baži tad-deċiżjonijiet tiegħu dwar investimenti.

Għall-iskopijiet ta' din it-tifsira, informazzjoni għandha titqies ta' natura preċiża jekk tkun tindika grupp ta' ċirkostanzi li jeżistu jew li wiehed jista' raġonevolment jistenna li jeżisti jew okkażjoni li sehhet jew li wiehed jista' raġonevolment jistenna li ssehh u jekk tkun speċifika biżżejjed biex twassal għall-konklużjoni dwar l-effett li jista' jkollu dak il-grupp ta' ċirkostanzi jew li tista' jkollha dik l-okkażjoni fuq il-prezzijiet ta' strumenti finanzjarji jew fuq strumenti finanzjarji derivattivi relatati; għal persuni li jridu jwettqu ordnijiet fuq strumenti finanzjarji, informazzjoni minn ġewwa tfisser ukoll informazzjoni mogħtija minn klijent u dwar l-ordnijiet pendenti tal-klijent, ta' natura preċiża, direttament jew indirettament dwar entità wahda jew aktar emittenti jew dwar strument finanzjarju wiehed jew aktar, u li, jekk issir pubblika aktarx ikollha effett sinifikanti fuq il-prezzijiet ta' dawk l-istrumenti finanzjarji jew fuq il-prezz ta' strumenti finanzjarji derivattivi relatati; li tkun informazzjoni li investitur raġonevoli aktarx juża bhala parti mill-baži tad-deċiżjonijiet tiegħu dwar investimenti;

“istituzzjoni ta' kreditu” tfisser kull persuna kif mfissra fl-artikolu 1(1) tad-Direttiva 2000/12/KE tal-Parlament Ewropew u tal-Kunsill u kif emendata minn żmien għal żmien;

“jagħti parir jew jgħin” tinkludi jhajar, jipprokura, jinkuraġġixxi, jgħarraf, iġieghel jew jirrakkomanda, u derivattivi grammatikali tagħhom għandhom jiftiehm f'dan is-sens;

“il-Komunità” tifisser il-Komunità Ewropea stabbilita bit-Trattat ta' Ruma fl-1957 u kif emendat mill-istituzzjonalment u xort' ohra fl-1986 bl-Att Uniku Ewropew, fl-1993 bit-Trattat dwar l-Unjoni Ewropea, fl-1997 bit-Trattat ta' Amsterdam u fl-2001 bit-Trattat ta' Nizza, u kif emendat b'kull ftehim ta' adeżjoni u kif jista' jiġi emendat aktar minn żmien għal żmien;

“kumpannija” tfisser kull kumpannija, korp statutorju jew entità ohra li tohroġ strumenti finanzjarji;

“il-Ministru” tfisser il-Ministru responsabbli għall-finanzi;

“miżuri implimentattivi” tfisser l-atti, ir-regolamenti jew id-direttivi kollha ta’ l-Unjoni Ewropea li jimplimentaw id-Direttiva dwar l-Abbuż fis-Suq u kif emendata minn żmien għal żmien, inklużi d-Direttiva tal-Kummissjoni 2003/124/KE tat-22 ta’ Diċembru 2003, id-Direttiva tal-Kummissjoni 2003/125/KE tat-22 ta’ Diċembru 2003, ir-Regolament tal-Kummissjoni (KE) Nru 2273/2003 tat-22 ta’ Diċembru 2003 u d-Direttiva tal-Kummissjoni 2004/72/KE tad-29 ta’ April 2004;

“offerta ta’ *takeover* għal kumpannija” tfisser offerta magħmula:

(a) lill-azzjonisti kollha ta’ l-ishma fil-kumpannija għall-akkwist ta’ dawk l-ishma jew proporzjon speċifikat minnhom;

(b) lill-azzjonisti kollha, hlief lill-persuna li tagħmel l-offerta u n-*nominees* tagħha, ta’ l-ishma tal-kumpannija għall-akkwist ta’ dawk l-ishma jew ta’ proporzjon speċifikat minnhom;

(ċ) lill-azzjonisti kollha, hlief lill-persuna li tagħmel l-offerta u n-*nominees* tagħha, ta’ klassi partikolari ta’ dawk l-ishma għall-akkwist ta’ dik il-klassi jew ta’ proporzjon speċifikat minnhom; jew

(d) lill-azzjonisti kollha, hlief lill-persuna li tagħmel l-offerta u n-*nominees* tagħha, ta’ klassi partikolari ta’ dawk l-ishma għall-akkwist ta’ dik il-klassi jew ta’ proporzjon speċifikat minnhom;

“persuna li tirraġa operazzjonijiet professjonalment” tfisser impriża ta’ investiment jew istituzzjoni ta’ kreditu;

“persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni fl-entità emittenti” tfisser persuna li:

(a) hija membru tal-korpi amministrattivi, tal-ġestjoni jew superviżorji ta’ l-entità emittenti; jew

(b) *senior executive*, li mhux membru tal-korpi msemmija f’paragrafu (a), b’access regolari għal informazzjoni minn ġewwa dwar, direttament jew indirettament, l-entità emittenti u bis-setgħa li jiehu deċiżjonijiet ta’ ġestjoni li jolqtu l-iżviluppi futuri u l-prospetti kummerċjali ta’ l-entità emittenti;

“persuna assoċjata mill-viċin ma’ persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni f’entità emittenti” tfisser:-

(a) il-mara jew ir-raġel tal-persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni, jew il-mara, ir-raġel, is-sieħba jew is-sieħeb skond il-*common law* meqjus l-istess bhala l-mara jew ir-raġel mil-liġi tad-domicilju ta’ dik il-persuna;

(b) tfal dipendenti tal-persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni, skond il-liġi tad-domicilju ta’ dik il-persuna;

(ċ) qraba ohra tal-persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni, li qasmu l-istess dar ma’ dik il-persuna għall-inqas għal sena fid-data ta’ l-operazzjoni rilevanti; jew

(d) kull persuna legali, *trust* jew soċjetà, li t-twettiq tar-responsabbiltajiet ta’ ġestjoni jaqa’ fuq persuna msemmija f’paragrafu (a), (b) jew (ċ); jew minn persuna li twettaq ir-responsabbiltajiet ta’ ġestjoni f’entità emittenti; jew li hija direttament jew indirettament kontrollata minn dik il-persuna, jew li twaqqfet għall-benefiċċju ta’ dik il-persuna, jew li l-interessi ekonomiċi tagħha huma sostanzjalment l-istess bħal dawk ta’ dik il-persuna;

“prattiċi aċċettati tas-suq” tfisser prattiċi li huma raġonevolment mistennija f’suq finanzjarju jew f’aktar minn wiehed u li huma aċċettati mill-awtorità kompetenti skond il-linji gwida adottati mill-Kummissjoni skond il-proċedura stipulata fl-artikolu 17 (2) tad-Direttiva dwar l-Abbuż fis-Suq;

“Regolament tal-Kummissjoni (KE) Nru 2273/2003” tfisser ir-Regolament tal-Kummissjoni tat-22 ta’ Diċembru 2003 li jimplimenta d-Direttiva dwar l-Abbuż fis-Suq fir-rigward ta’ eżenzjonijiet għal programmi ta’ *buy-back* u ta’ stabbilizzazzjoni ta’ strumenti finanzjarji;

“Stat Membru” għandha tfisser membru tal-Komunità;

“Stat taż-ŻEE” tfisser Stat li huwa parti kontraenti fil-ftehim dwar iż-Żona Ekonomika Ewropea ffirmit f’Oporto fit-2 ta’ Mejju, 1992 kif emendat bil-Protokoll li kien iffirmit fi Brussel fis-17 ta’ Marzu, 1993 u kif emendat minn żmien għal żmien;

“strumenti finanzjarji” ghandha jkollha t-tifsira moghtija lilha fl-artikolu 2 ta’ l-Att dwar is-Swieq Finanzjarji;

“suq regolat” tfisser:

(a) fil-każ ta’ Malta, *exchange* ta’ investment rikonoxxut li jidher fuq l-elenku ta’ swieq regolati mhejji u ppublikat mill-Kummissjoni skond id-Direttiva dwar Servizzi ta’ Investment;

(b) fil-każ ta’ xi Stat Membru jew ta’ Stat taż-ŻEE ieħor, kull entità li tidher fl-elenku ta’ swieq regolati mhejji u ppublikat mill-Kummissjoni skond id-Direttiva dwar Servizzi ta’ Investment.

“Tribunal” tfisser it-Tribunal għal Servizzi Finanzjarji mwaqqaf skond l-artikolu 21 ta’ l-Att dwar is-Servizzi Finanzjarji ta’ Malta.

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

(3) Kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort’ oħra, kliem u espressjonijiet li ntużaw f’dan l-Att għandu jkollhom l-istess tifsir u l-istess interpretazzjoni bħat-tifsir u l-interpretazzjonijiet moghtija lil dawk il-kliem u espressjonijiet fl-Att dwar il-Kumpanniji.

TAQSIMA II

DISPOSIZZJONIJIET ĠENERALI

Għan.

3. L-għan ta’ dan l-Att hu li jħares l-integrità ta’ swieq finanzjarji Maltin u Komunitarji u li jkabbar il-fiduċja ta’ l-investituri f’dawk is-swieq. Għal dan l-għan, dan l-Att jittrasponi u jimplementa d-Direttiva dwar l-Abbuż fis-Suq u l-Mizuri Implimentattivi tagħha, u għalhekk dan l-Att u kull regolament adottat tahtu, għandu jiġi interpretat u applikat skond dan.

Skop.

4. (1) Id-disposizzjonijiet ta’ dan l-Att għandhom japplikaw lil dawk l-istrumenti finanzjarji li ngħataw il-permess li joperaw f’suq regolat f’Malta jew f’xi Stat Membru jew Stat taż-ŻEE ieħor jew li għalihom saret talba għall-operazzjoni f’suq bħal dak. Il-fatt li l-operazzjoni stess ma ssirx f’dan is-suq regolat jew li hija qbil *off-exchange* skond ir-Regolamenti ta’ l-2004 dwar Negozju barra minn *Exchange*, ma jeskludix l-applikazzjoni ta’ dan l-Att lil din l-operazzjoni.

A.L. 286 ta’ l-2004.

(2) L-artikolu 6 ta' dan l-Att ghandu japplika wkoll ghal kull strument finanzjarju minghajr permess li jopera f'suq regolat f'Malta jew fi Stat Membru iehor, izda li l-valur tieghu jiddependi minn strument finanzjarju msemmi fis-subartikolu (1).

(3) Id-disposizzjonijiet ta' dan l-Att ma ghandhomx japplikaw ghal operazzjonijiet mwettqa ghal politika monetarja, ta' rata ta' skambju jew ta' gestjoni pubblika tad-dejn pubbliku ta' Malta, mis-Sistema Ewropea ta' Banek Ċentrali, minn ufficjali jew impjegati tal-Bank Ċentrali ta' Malta, jew minn xi korp ufficjali iehor, jew minn persuna li tagixxi ghalihom.

(4) Id-disposizzjonijiet ta' dan l-Att ma ghandhomx jitqiesu li jipprojbixxu persuna milli taghmel xi haga ghall-iskopijiet ta' l-istabilizzar tal-prezz ta' strumenti finanzjarji jew milli jaghmel negozju fl-azzjonijiet taghha f'programmi ta' *buy-back* sakemm dan isir skond ir-Regolament tal-Kummissjoni (KE) Nru 2273/2003 li jimplimenta l-artikolu 8 tad-Direttiva dwar l-Abbuż fis-Suq.

(5) Id-disposizzjonijiet ta' artikolu 9 ma ghandhomx japplikaw ghal entità li tohrog li ghada ma talbitx jew approvat l-ammissjoni ta' l-istrumenti finanzjarji taghha biex dawn joperaw f'suq regolat f'Malta jew f'xi Stat Membru iehor jew Stat taz-ŻEE.

5. Il-projbizzjonijiet u r-rekwiziti stipulati f'dan l-Att ghandhom japplikaw ghal atti mwettqa:- Ġurisdizzjoni

(a) minn kull persuna f'Malta jew barra minn Malta dwar strumenti finanzjarji li nghataw il-permess li joperaw f'suq regolat f'Malta, inkluż il-permess ghal *exchange* ta' investimenti rikonoxxut fi jew li qed jopera minn Malta jew li ghalihom saret talba ghall-permess ghall-operazzjoni f'dan is-suq; jew

(b) minn kull persuna f'Malta dwar strumenti finanzjarji li nghataw il-permess li joperaw f'suq regolat fi Stat Membru iehor jew fi Stat taz-ŻEE jew li ghalihom saret talba ghall-permess li joperaw f'suq bhal dak.

TAQSIMA III

ABBUŻ FIS-SUQ U MIŻURI PREVENTIVI

6. (1) Ebda persuna ma ghandha tuza informazzjoni minn gewwa ghan-negozju f'xi strument finanzjarju moghti l-permess ghal suq regolat jew b'xi mod iehor takkwista jew tiddisponi, jew tipprova

Użu projbit ta' Informazzjoni minn gewwa.

takkwista jew tiddisponi minn strument finanzjarju bhal dak, għall-użu tagħha stess jew għall-użu ta' terza persuna, direttament jew indirettament, jekk ikollha informazzjoni dwar dan l-istrument finanzjarju minhabba:

- (a) il-fatt li tkun membru tal-korpi amministrattivi, tal-ġestjoni jew supervizorji ta' l-entità emittenti;
- (b) iż-żamma tagħha fil-kapital ta' l-entità emittenti;
- (ċ) l-aċċess tagħha għall-informazzjoni permezz ta' l-impjeg, professjoni jew dmirijiet tagħha; jew
- (d) attivitajiet kriminali tal-persuna msemmija.

(2) Kull persuna li għandha informazzjoni minn ġewwa minhabba xi raġuni elenkata fis-subartikolu (1) (a) sa (d) hija projbta li:

- (a) tikxef informazzjoni minn ġewwa lil xi persuna oħra sakemm dan il-kxif isir fit-twettiq normali ta' l-impjeg, professjoni jew dmirijiet tagħha, jekk taf jew jekk ma tafx, jew jekk għandha raġuni valida li taħseb li dik il-persuna jew persuna oħra se tuża l-informazzjoni għall-iskop ta' *dealing*;
- (b) tirrakkomanda jew ġġieghel persuna oħra, abbażi ta' l-informazzjoni minn ġewwa, li takkwista jew tiddisponi minn strumenti finanzjarji li għandhom x' jaqsmu ma' dik l-informazzjoni;
- (ċ) tagħti pariri jew tghin persuna oħra biex tinnegozja f' suq regolat f' dawk l-istrumenti finanzjarji.

(3) Il-projbizzjonijiet tas-subartikoli (1) u (2) għandhom japplikaw ukoll lil persuna li għandha informazzjoni minn ġewwa anki jekk mhux miksuba permezz taċ-ċirkostanzi elenkati fis-subartikolu (1) (a) sa (d), fejn dik il-persuna kisbet jew irċiviet dik l-informazzjoni direttament jew indirettament, minn persuna oħra meta l-persuna kienet taf li kienet qed tirċievi informazzjoni minn ġewwa jew kellha raġuni valida li taħseb jew setgħet kienet taf li kienet qed tirċievi informazzjoni minn ġewwa.

(4) Meta l-persuna msemmija fis-subartikolu (1) hija persuna legali, il-projbizzjoni stipulata f'dak is-subartikolu għandha tapplika wkoll għall-persuni naturali li jiehdu azzjoni fid-deċizzjoni għat-twettiq ta' l-operazzjoni għall-persuna legal rilevanti.

(5) Dan l-artikolu m' ghandux japplika ghal operazzjonijiet imwettqa fl-eżerċizzju ta' obbligu li jkun inholoq għall-akkwist jew għad-disponiment ta' strumenti finanzjarji fejn dak l-obbligu jirriżulta minn ftehim bħalma hu ftehim li jassenja dritt fuq l-akkwist ta' l-ishma milhuq qabel mal-persuna involuta kellha informazzjoni minn ġewwa.

(6) (a) Fir-rigward ta' derivattivi fuq komoditajiet, informazzjoni minn ġewwa għandha tfisser informazzjoni ta' natura preċiża li ma saritx pubblika dwar, direttament jew indirettament, derivattiva waħda jew aktar minn dawn u li l-utenti tas-swieq fejn jiġu negozjati dawn id-derivattivi jistennew li jirċevuha skond prattici aċċettati tas-suq f'dawk is-swieq.

(b) L-utenti tas-swieq fejn jiġu negozjati derivattivi fuq komoditajiet jitqiesu li jistennew li jirċievu informazzjoni dwar, direttament jew indirettament, derivattiva waħda jew aktar minn dawn li ta' spiss ssir disponibbli lill-utenti ta' dawk is-swieq jew li trid tinkixef skond disposizzjonijiet legali jew regolatorji, regoli tas-suq, kuntratti jew konswetudnijiet fis-suq rilevanti tal-komoditajiet jew fis-suq ta' derivattivi ta' komoditajiet.

(7) Id-disposizzjonijiet ta' dan l-artikolu għandhom japplikaw għal:

(a) kull impjegat pubbliku jew persuna li kienet impjegat pubbliku, li għandha informazzjoni minn ġewwa minhabba l-kariga tagħha jew minhabba dik li kienet il-kariga tagħha bħala impjegat pubbliku; jew

(b) kull persuna li direttament jew indirettament kisbet jew irċiviet informazzjoni minn impjegat pubbliku jew minn xi hadd li kien impjegat pubbliku u li taf, jew li għandha raġuni valida li taħseb, li kellha dik l-informazzjoni minhabba dik il-kariga.

7. Istituzzjonijiet pubbliċi li jxerrdu uffiċjalment statistika li x'aktarx ikollha effett kbir fuq swieq finanzjarji, għandhom ixerrduha b'mod ġust u trasparenti. Kxif xieraq.

8. (1) Ebda persuna ma għandha timmanipula suq regolat permezz ta' tixrid ta' informazzjoni falza, esaġerata jew li tiżgwida, it-tixrid ta' għajdut foloz jew it-twettiq ta' operazzjonijiet jew ordnijiet kif stipulat f'dan l-artikolu. Manipulazzjoni tas-suq.

(2) Persuna titqies li mmanipulat is-suq jew tkun responsabbli għal:

(a) operazzjonijiet jew ordnijiet għan-negozju:–

(i) li jagħtu, jew li aktarx jagħtu, sinjali foloz u li jiżgwidaw dwar il-forniment, talba jew prezz ta' strumenti finanzjarji; jew

(ii) li jiffissaw, minn persuna jew minn persuni li jaġixxu flimkien, il-prezz ta' strument finanzjarju wiehed jew aktar f'livell mhux normali jew artifiċjali:

Iżda ma jitqies li tkun saret ebda manipulazzjoni meta persuna li wettqet l-operazzjonijiet jew li tat l-ordnijiet għan-negozju tistabbilixxi li l-raġunijiet tagħha talli għamlet hekk huma legittimi u li dawh l-operazzjonijiet jew ordnijiet għan-negozju jharsu prattiċi aċċettati tas-suq fis-suq regolat involut;

(b) operazzjonijiet jew ordnijiet għan-negozju li jużaw tekniċi mhux minnhom jew xi forma oħra ta' qerq jew inventiva;

(ċ) tixrid ta' informazzjoni permezz tal-mezzi tax-xandir, inkluż l-Internet, jew permezz ta' xi mezz ieħor, li jagħti, jew li aktarx jagħti, sinjali foloz u li jiżgwidaw dwar strumenti finanzjarji, inkluż it-tixrid ta' għajdut u ta' aħbarijiet foloz jew li jiżgwidaw, meta l-persuna li xerrdet kienet taf, jew setgħet kienet taf, li l-informazzjoni kienet falza jew li tiżgwida.

(3) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (2) ta' hawn qabel, l-azzjonijiet li ġejjin għandhom jitqiesu manipulazzjoni tas-suq:

(a) azzjonijiet ta' persuna, jew ta' persuni jaġixxu flimkien, li jiżguraw pożizzjonijiet dominanti fil-forniment jew fit-talba għal strument finanzjarju bl-effett li jistabbilixxu, direttament jew indirettament, prezzijiet ta' xiri jew ta' bejgħ jew li johlqu xi kundizzjonijiet oħrajn ta' negozju mhux ġusti;

(b) ix-xiri jew il-bejgħ ta' strumenti finanzjarji fl-gheluq tas-suq bl-effett li l-investituri li jaġixxu skond il-prezzijiet ta' l-gheluq jiġu żgwidati;

(ċ) it-tehid ta' vantaġġ ta' aċċess okkażjonali jew regolari lill-mezzi tax-xandir tradizzjonali jew elettronici bit-turija ta' opinjoni dwar strument finanzjarju (jew indirettament dwar l-emittent tiegħu) wara t-tehid ta' pożizzjonijiet minn qabel dwar dak l-istrument finanzjarju u sussegwentement l-iproffittar mill-impatt ta' l-opinjoni murija dwar il-prezz ta' dak l-istrument,

minghajr il-kxif lill-pubbliku, fl-istess hin u b' mod xieraq u effettiv, tal-kunflitt ta' interess; jew

(d) it-twettiq ta' xi attività oħra għall-manipulazzjoni b' mod ieħor tas-suq ta' strumenti finanzjarji bl-użu ta' teknici artifiċjali, operazzjoni mhux minnha jew azzjoni qarrieqa jew manipulattiva inklużi xejriet ta' attività godda li jistgħu jinholqu minn żmien għal żmien li fil-prattika jikkostitwixxu manipulazzjoni tas-suq.

9. (1) Entità li tohroġ għandha jkollha d-dmir li tavża lill-pubbliku ġenerali dwar informazzjoni minn ġewwa li b' mod dirett għandha x'taqsam ma' l-entità emittenti msemmija.

Entitajiet li johroġu strumenti finanzjarji.

(2) Entità li emittenti tista' ddewwem il-kxif pubbliku ta' l-informazzjoni minn ġewwa fuq ir-responsabbiltà tagħha biex l-interessi u l-obbligazzjonijiet relatati tagħha ma jkunux preġudikati.

(3) Kull meta entità emittenti jew persuna li taġixxi għaliha jew f'isimha, tikxef xi informazzjoni minn ġewwa lil xi terza parti fit-twettiq normali ta' l-impjeg, professjoni jew dmirijiet tagħha, din ta' l-aħħar għandha tikxef dik l-informazzjoni lill-pubbliku b' mod totali u effettiv, fil-każ ta' kxif intenzjonali fl-istess hin u fil-każ ta' kxif mhux intenzjonali minnufih:

Iżda d-disposizzjonijiet ta' dan is-subartikolu ma għandhomx japplikaw jekk il-persuna li qed tircievi l-informazzjoni għandha dmir ta' kunfidenzjalità, irrispettivament minn jekk dak id-dmir johroġx mill-igi, jew minn statut ta' assoċazzjoni jew minn kuntratt.

(4) Entitajiet emittenti jew persuna li jaġixxu għalihom jew f'isimhom għandhom jiktbu elenku ta' dawk il-persuni li jahdmu għalihom, b'kuntratt ta' impjeg jew b'xi mod ieħor, u li għandhom aċċess għal informazzjoni minn ġewwa. Entitajiet emittenti u persuni li jaġixxu għalihom jew f'isimhom għandhom jaġġornaw dan l-elenku regolarment u jibagħtuha lill-awtorità kompetenti kif u meta mitlub minn din l-awtorità kompetenti.

10. Kull persuna li twettaq responsabbiltajiet ta' ġestjoni f'entità emittenti strumenti finanzjarji u, fejn japplika, persuni assoċjati magħhom mill-viċin, għandha tavża lill-awtorità kompetenti dwar l-eżistenza ta' operazzjonijiet imwettqa għalihom dwar azzjonijiet ta' l-entità emittenti imsemmija jew dwar derivattivi jew strumenti finanzjarji oħrajn marbutin magħhom.

Dmirijiet ta' persuni li jwettqu responsabbiltajiet ta' ġestjoni fl-entità li tohroġ u persuni assoċjati magħhom mill-viċin.

Dmirijiet ta' impriži ta' investiment u ta' istituzzjonijiet ta' kreditu.

11. Kull persuna li tirraġa operazzjonijiet fi strumenti finanzjarji professjonalment li jkollha suspett raġonevoli li operazzjoni tista' tkun l-użu projbit ta' informazzjoni minn ġewwa jew manipulazzjoni tas-suq, għandha tavża mingħajr dewmien lill-awtorità kompetenti.

Dmirijiet ta' ġurnalisti, riċerkaturi u min ixxerred rakkomandazzjonijiet finanzjarji.

12. Kull persuna li tohloq jew li xxerred riċerka dwar strumenti finanzjarji jew dwar entitajiet li johorġu strumenti finanzjarji u kull persuna li tohloq jew li xxerred informazzjoni oħra li tirrakkomanda jew li tagħti parir ta' strateġija ta' investiment, maħsuba għall-mezzi ta' tqassim jew għall-pubbliku, għandha teżerċita kura raġonevoli biex tara li dik l-informazzjoni tiġi pprezentata kif adatt u għandha tikkief l-interessi tagħha, jew tindika l-kunflitti ta' interess dwar l-istrumenti finanzjarji li għandhom x'jaqsmu ma' dik l-informazzjoni.

Investigazzjonijiet f'abbuż fis-suq.

13. (1) Mingħajr preġudizzju għal xi funzjonijiet oħrajn ta' l-awtorità kompetenti taht dan l-Att jew taht xi liġi oħra, l-awtorità kompetenti għandu jkollha l-funzjoni li tissorvelja kull suq regolat f'Malta u li tikkief okkażjonijiet ta' abbuż fis-suq.

(2) Meta l-awtorità kompetenti jkollha sospetti li jista' jkun hemm ċirkostanzi li jindikaw li l-azzjonijiet ta' persuna huma abbuż fis-suq, skond is-setgħat tagħha taht din it-Taqsima ta' l-Att għandha tara li ssir investigazzjoni bl-iskop li tistabbilixxi jekk l-azzjonijiet imsemmija humiex abbuż fis-suq.

(3) Awtorità barranija tista' titlob li l-awtorità kompetenti tagħmel investigazzjoni f'Malta u tista' titlob ukoll li l-uffiċjali tagħha stess jingħataw il-permess li jibqgħu ma' l-uffiċjali ta' l-awtorità kompetenti tul l-investigazzjoni.

(4) L-awtorità kompetenti tista' tirrifjuta li taġixxi fuq talba magħmula konformament mas-subartikolu (3) biss fejn:-

(a) dik l-investigazzjoni tista' tolgot negattivament is-sovranità, is-sigurtà jew il-politika pubblika ta' Malta;

(b) proċedimenti ġudizzjarji fir-rigward ta' l-azzjonijiet imsemmija u kontra l-istess persuni jkunu nbdew diġà quddiem il-Qrati ta' Malta; jew

(ċ) tkun diġà nġatat sentenza finali mill-Qrati ta' Malta fir-rigward ta' dawk il-persuni għall-istess azzjonijiet f'Malta.

F'kull każ imsemmi hawn qabel, l-awtorità kompetenti għandha tavża lill-awtorità barranija li qed tagħmel it-talba kif xieraq, billi tagħtiha

l-informazzjoni, bl-aktar dettal possibbli, ta' dawk il-proċedimenti jew ta' dik is-sentenza.

(5) Malli tiġi riċevuta talba skond is-subartikolu (3), l-investigazzjoni kollha għandha taqa' taht il-kontroll totali ta' l-awtorità kompetenti u tkun soġġetta għad-disposizzjonijiet ta' dan l-Att u tal-liġijiet ta' Malta.

14. (1) Minghajr preġudizzju għas-setgħat ta' l-awtorità kompetenti mogħtija lilha taht xi liġi oħra, fit-twettiq tal-funzjonijiet tagħha taht dan l-Att, l-awtorità kompetenti għandu jkollha s-setgħa li jkollha aċċess għal kull dokumentazzjoni f'kull forma u li tirċievi kopja tagħha u li titlob dawn id-dokumenti msemmija min għand kull persuna, inklużi:

Setgħa li titlob aċċess għal dokumenti u għal reġistri ta' telefonati.

(a) kull persuna li qed twettaq, wettqet jew li tidher li qed twettaq jew li wettqet operazzjoni jew attività regolata jew projbita minn xi disposizzjoni ta' dan l-Att;

(b) kull persuna li tidher li għandha xi informazzjoni jew dokumentazzjoni rilevanti; jew

(ċ) kull persuna li suċċessivament tkun involuta fl-ġħoti ta' ordnijiet jew f'azzjonijiet ta' l-operazzjonijiet rilevanti, kif ukoll il-prinċipali tagħhom.

(2) L-awtorità kompetenti tista', b'avviz bil-miktub, teħtieġ li persuna msemmija fis-subartikolu (1):

(a) tagħti lill-awtorità kompetenti, fil-hin u fil-post u fil-forma speċifikati minnha, id-dokumentazzjoni kollha li tista' teħtieġ inklużi reġistri li jkun hemm ta' telefonati u reġistri li jkun hemm ta' traffiku tad-*data*; u

(b) tagħti lill-awtorità kompetenti id-dokumentazzjoni kollha hawn qabel imsemmija verifikata bil-mod kif tispeċifika.

F'dawn iż-żewġ każijiet, il-persuna indirizzata għandha thares minnufih it-talba tal-awtorità kompetenti billi tagħti lill-awtorità kompetenti d-dokumentazzjoni kollha li jkollha.

(3) L-awtorità kompetenti tista' tagħmel kopji tad-dokumentazzjoni kollha mogħtija lilha jew li għandha aċċess għaliha taht dan l-artikolu.

(4) Meta l-persuna mehtieġa li taghti d-dokumentazzjoni taht dan l-artikolu ma jkollhiex id-dokumentazzjoni rilevanti, għandha l-obbligazzjoni li tavża mill-ewwel lill-awtorità kompetenti fejn, safejn taf hi, tista' tinstab dik id-dokumentazzjoni, u l-awtorità kompetenti tista' tehtieġ lil kull persuna, kemm jekk indikata kif imsemmi hawn qabel kemm jekk le, li tidher li għandha dak id-dokumentazzjoni, li tipprovdi dik id-dokumentazzjoni.

(5) Kull persuna mitluba li taghti informazzjoni permezz tas-subartikolu (2), b' mod partikolari d-diretturi u l-*managers*, b' kull isem li jkollha, jew kull persuna oħra li jkunu, jew li kienu, responsabbli mill-oprazzjonijiet jew attivitajiet rilevanti għandha tghin u tikkollabora minnufih ma' l-awtorità kompetenti biex tghinha twettaq il-funzjonijiet tagħha, u għandha tiġbor u tibghat mingħajr dewmien l-informazzjoni li l-awtorità kompetenti tista' raġonevolment titlob minn żmien għal żmien.

Setgħa li titlob informazzjoni u għajnuna u li tharrek persuni għal smiegh.

15. (1) Mingħajr preġudizzju għas-setgħat ta' l-awtorità kompetenti mogħtija lilha taht xi liġi oħra, fit-twettiq tal-funzjonijiet u s-setgħat tagħha taht dan l-Att, l-awtorità kompetenti għandu jkollha s-setgħat li titlob informazzjoni dettaljata f' kull forma u li tircievi dikjarazzjonijiet bil-miktub tagħha u li titlob bil-miktub dik l-informazzjoni mingħand kull persuna minnufih. B' mod partikolari, l-awtorità kompetenti tista' tehtieġ li kull persuna msemmija fis-subartikolu (1) ta' l-artikolu 14:

(a) tagħti lill-awtorità kompetenti, fil-hin u fil-post u fil-forma speċifikati minnha, l-informazzjoni li tehtieġ;

(b) tagħti lill-awtorità kompetenti kull informazzjoni fil-forma ta' dikjarazzjoni bil-miktub jew kull informazzjoni verifikata b' mod kif din tista' tispeċifika;

(ċ) tiġi quddiem l-awtorità kompetenti, jew quddiem persuna mahtura minnha bhala spettur taht id-disposizzjonijiet ta' l-artikolu 16, fil-hin u fil-post speċifikati minnha, biex twieġeb mistoqsijiet u tagħti informazzjoni u dokumentazzjoni; u

(d) tagħti lill-awtorità kompetenti kull għajnuna li tehtieġ u li dik il-persuna tista', raġonevolment, tagħti.

(2) Kull persuna mitluba li tagħti informazzjoni permezz tas-subartikolu (1), b' mod partikolari d-diretturi u l-*managers*, b' kull isem li jkollha, jew kull persuna oħra li jkunu, jew li kienu, responsabbli mill-oprazzjonijiet jew attivitajiet rilevanti għandha tghin u tikkollabora minnufih ma' l-awtorità kompetenti biex tghinha twettaq il-funzjonijiet

taghha, u ghandha tiġbor u tibghat minghajr dewmien l-informazzjoni li l-awtorità kompetenti tista' raġonevolment titlob minn żmien għal żmien.

(3) Meta l-persuna mehtieġa li taghti informazzjoni taht dan l-artikolu ma jkollhiex id-dokumentazzjoni mitluba jew informazzjoni rilevanti, ghandha tavża minnufih lill-awtorità kompetenti fejn, sa fejn taf hi, dik id-dokumentazzjoni tista' tinsab, u l-awtorità kompetenti tista' tehtieġ li kull persuna, kemm jekk indikata kif imsemmi hawn u kemm jekk le, li jista' jkollha dik l-informazzjoni, li tipprovdì din l-informazzjoni.

16. (1) (a) Minghajr preġudizzju għas-setgħat ta' l-awtorità kompetenti mogħtija lilha taht xi liġi ohra, fit-twertiq tas-setgħat taht dan l-Att, l-awtorità kompetenti tista' taġixxi direttament jew inkella indirettament billi tahtar spettur jew spetturi li jkunu ufficjali jew impjegati ta' l-awtorità kompetenti jew persuna ohra li l-awtorità kompetenti tqis kompetenti għal dan l-iskop, biex jinvestigaw u jirrapportaw l-affarijiet ta' kull persuna li l-affarijiet jew l-azzjonijiet tagħha jkunu qed jiġu investigati fir-rigward ta' vjolazzjoni possibbli ta' dan l-Att.

Setgħa li tahtar spetturi u li twettaq spezzjonijiet fil-post.

(b) Fil-hatra ta' spettur, l-awtorità kompetenti tista' tistipula li l-investigazzjoni ghandha titwettaq fi żmien speċifiku u ghandha tkun ristretta għall-kwistjonijiet speċifiċi jew generali l-awtorità kompetenti tista' tqis xierqa.

(2) Fit-twertiq tal-funzjonijiet tiegħu, l-ispettur, wara l-prezentazzjoni tal-provi ta' l-awtorità tiegħu, jekk mehtieġa, għandu jkollu s-setgħa:-

(a) li jinvestiga l-affarijiet ta' xi persuna mesmmija fl-artikoli 14 u 15 jekk jahseb li tkun mehtieġa jew rekwiżita għall-iskopijiet ta' investigazzjoni taht dan l-Att;

(b) li jeżercita s-setgħat kollha mogħtija lill-awtorità kompetenti mill-artikoli 14 u 15;

(ċ) li jwettaq spezzjonijiet fuq il-post u għandu jkollu d-dritt ta' aċċess u dhul raġonevoli fl-istabbilimenti ta' l-impriza, fl-uffiċji, fid-dokumentazzjoni u kull informazzjoni mehtieġa jew rekwiżita għall-iskop ta' investigazzjoni taht dan l-Att;

(d) li jidhol fi stabbilimenti okkupati minn persuna bl-iskop li jikseb minn hemm informazzjoni jew dokumenti mehtieġa mill-avviż skond l-artikoli 14 jew 15, jew għall-iskop ta' l-

investigazzjoni, u ta' l-eżerċizzju ta' xi setgħa mogħtija lilu bl-artikoli msemmija:

Iżda meta l-ispettur għandu raġuni biżżejjed li jahseb li jekk tingħata avviż kif imsemmi fl-artikoli 14 jew 15 ma titharisx jew li xi dokumenti msemmija fl-avviż jistgħu jitnehhew, jitbagħhsu jew jinqerdu, l-ispettur jista' jidhol f'xi stabbiliment imsemmi fis-subartikolu (2) bl-iskop li jikseb minn hemm kull informazzjoni jew dokumenti li jkunu setgħu ġew mitluba taħt l-avviż kif imsemmi fl-artikoli 14 jew 15.

(3) Spettur mahtur skond dan l-artikolu għandu:

(i) jkollu s-setgħa li jagħmel rapporti interim u mal-konklużjoni ta' l-investigazzjoni tiegħu huwa għandu jagħmel rapport finali lill-awtorità kompetenti jekk hekk meħtieġ mill-awtorità kompetenti; u

(ii) josserva l-obbligazzjoni tas-segretezza professjonali.

(4) Meta l-awtorità kompetenti taħtar persuna bhala spettur taħt dan l-artikolu, din il-persuna, għall-iskop tat-twettiq tal-funzjonijiet tagħha taħt il-hatra tagħha, għandu jkollha s-setgħat kollha mogħtija lill-awtorità kompetenti b' dan l-artikolu u talba tiegħu għandha titqies bhala rekwiżit ta' l-awtorità kompetenti u din għandu jkollha l-istess effett.

(5) Għall-iskop ta' kull azzjoni mehuda taħt id-disposizzjonijiet ta' dan l-artikolu, l-awtorità kompetenti tista' titlob l-għajjnuna tal-Kummissarju tal-Pulizija, li għal dan l-iskop jista' jeżerċita s-setgħat mogħtija lilu bil-liġi fejn tidhol investigazzjoni ta' reati kriminali.

(6) Fil-każ li jirriżulta li l-persuna investigata kisret d-disposizzjonijiet ta' dan l-Att, l-awtorità kompetenti għandu jkollha s-setgħa li tordna li l-ispejjeż kollha raġonevoli minfuqa f'investigazzjoni skond dan l-artikolu jithallsu minn din il-persuna. Kull ordni bħal din, li għandha tiġi notifikata lill-persuna konċernata b'avviż għall-hlas, għandha:

(a) tkun bil-miktub; u

(b) teħtieġ lill-persuna indirizzata biex thallas l-ispejjeż ta' l-investigazzjoni u l-ispejjeż incidental għaliha qabel it-tmiem ta' dak il-perijodu, li ma jkunx inqas minn erbatax-il jum (14) mid-data tan-notifika ta' l-avviż, kif jista' jiġi speċifikat fl-avviż:

Iżda kull persuna li thossha aggravata b' ordni notifikata lilha skond dan is-subartikolu tista' tappella lit-Tribunal għal Servizzi Finanzjarji kontra d-deċiżjoni ta' l-awtorità kompetenti skond l-artikolu 23 ta' dan l-Att.

17. (1) Minghajr preġudizzju għas-setgħat ta' l-awtorità kompetenti mogħtija lilha taht xi liġi oħra, fl-eżerċizzju u għall-iskop tal-funzjonijiet tagħha taht dan l-Att, u għall-implimentazzjoni aħjar tiegħu, l-awtorità kompetenti għandu jkollha s-setgħa li toħroġ dawk l-ordnijiet b' avviz bil-miktub kif din tqis adatt u kull persuna li tirċievi l-ordni għandha tharisha u tirrendiha effettiva minnufih lil jew fiż-żmien u fil-mod stipulat fl-ordni.

Setgħat li tagħti xi ordnijiet.

(2) Ordni mill-awtorità kompetenti taht dan l-artikolu jista' jeħtieġ li haġa ssir jew li ma ssirx, tista' timponi projbizzjoni, restrizzjoni jew limitazzjoni, jew rekwiżit ieħor, u jagħti setgħat, fir-rigward ta' kull operazzjoni jew att ieħor, jew fuq kull assi, jew fuq kull haġa oħra. Minghajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, ordni tista':

(a) teħtieġ it-twaqqif ta' kull Prattika li hija kontra d-disposizzjonijiet ta' dan l-Att, jew ta' xi regoli jew regolamenti mahruġin tahtu;

(b) teħtieġ is-sospensjoni jew l-interruzzjoni tan-negozu ta' l-istrumenti finanzjarji involuti, inklużi b' mod partikolari sospensjoni jew l-interruzzjoni tan-negozju fl-eżerċizzju tas-setgħat mogħtija lill-awtorità kompetenti bl-artikoli 17 u 18 ta' l-Att dwar is-Swieq Finanzjarji; u

Kap. 345.

(ċ) tirrendi effettiva projbizzjoni ta' attività professjonali, partikolarment fl-eżerċizzju tas-setgħat mogħtija lill-awtorità kompetenti bl-artikolu 7 ta' l-Att dwar Servizzi ta' Investiment, kif dawn japplikaw.

Kap. 370.

(3) Is-setgħa li toħroġ ordnijiet taht dan l-artikolu għandha tinkludi s-setgħa li tvarja, tbiddel, iżżid jew tnaqqas minn dan l-ordni, kif ukoll is-setgħa li toħroġ aktar ordnijiet godda.

(4) Meta taht xi disposizzjonijiet ta' xi ordni mahruġ skond dan l-artikolu, persuna tkun projbita li twettaq att, din il-persuna għandha tkun projbita wkoll milli twettaq dan l-att direttament jew indirettament, personalment kif ukoll permezz ta' l-użu ta' l-intermedjazzjoni ta' persuna oħra.

(5) Għall-informazzjoni ahjar għall-pubbliku, meta l-awtorità kompetenti tkun sodisfatta liċ-ċirkostanzi hekk jehtieġu, tista', f'kull waqt:-

(a) tagħmel pubbliku kull ordni li tkun tat taht xi disposizzjonijiet ta' dan l-artikolu; u, jew

(b) tohroġ dikjarazzjoni pubblika dwar kull kwistjoni li taqa' fil-funzjonijiet jew fis-setgħat tagħha taht dan l-Att.

(6) Persuna li thossha aggravata b'ordni notifikata lilha skond dan l-artikolu tista' tappella quddiem it-Tribunal għal Servizzi Finanzjarji kontra d-deċiżjoni ta' l-awtorità kompetenti skond l-artikolu 23 ta' dan l-Att.

Ordnijiet ta'
Sekwestru.

18. (1) Meta, waqt investigazzjoni taht dan l-Att, fuq informazzjoni li jkun irċieva mill-awtorità kompetenti, l-Avukat Ġenerali jkollu raġuni tajba sabiex jissuspetta li persuna (minn hawn 'il quddiem imsejha "is-suspettat") tista' tkun responsabbli ta' ksur ta' dan l-Att, l-Avukat Ġenerali jista' jagħmel rikors fil-Qorti Kriminali sabiex din tohroġ ordni (minn hawn 'il quddiem imsejha "ordni ta' sekwestru"):

(a) li tissekwestra f'idejn dawk il-persuni (minn hawn 'il quddiem imsejha "s-sekwestratarji") li jkunu msemmijin fit-talba l-flus u l-proprjetà mobbli ohra kollha li jkunu dovuti lil jew jgħajtu lil jew jappartjenu lis-suspettat;

(b) li tordna lis-sekwestratarju biex jiddikjara bil-miktub lill-Avukat Ġenerali, mhux aktar tard minn erbgha u ghoxrin siegħa mill-waqt tan-notifika ta' l-ordni, ix-xorta u l-provenjenza tal-flus u l-proprjetà mobbli ohra kollha hekk sekwestrati, u

(ċ) li tipprojbixxi lill-persuna suspettata milli tittrasferixxi jew b'xi mod iehor tiddisponi minn xi proprjetà mobbli jew immobbli.

(2) Qabel ma tagħmel ordni ta' sekwestru, il-Qorti Kriminali tista' tehtieġ li tisma' lill-Avukat Ġenerali fis-sigrieta u ma għandhiex tohroġ dan l-ordni sakemm taqbel ma' l-Avukat Ġenerali li hemm raġuni biżżejjed kif provdut fis-subartikolu (1).

(3) Id-disposizzjonijiet tal-paragrafi (a), (b) u (e) tas-subartikolu (1) ta' l-artikolu 381 u tas-subartikolu (1) ta' l-artikolu 382 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw, *mutatis mutandis*, għall-ordni ta' sekwestru.

(4) Ordni ta' sekwestru ghandu jiġi notifikat lis-sekwestrat u lis-suspettat minn uffiċjali tal-Pulizija Eżekuttiva mhux taht il-grad ta' spettur.

(5) Ordni ta' sekwestru ma ghandux jibqa' fis-sehh, kemm-il darba ma jiġix imhassar qabel mill-Avukat Ġenerali permezz ta' avviż bil-miktub notifikat lis-suspettat u lis-sekwestrat kif stipulat fis-subartikolu (4), wara tletin jum mid-data li jinhareġ; u l-qorti ma ghandhiex tohroġ ordni ta' sekwestru iehor fir-rigward ta' dak is-suspettat hlief jekk tkun sodisfatta li saret disponibbli informazzjoni sostanzjalment ġdida dwar ir-reat skond l-artikolu 24:

Izda l-perjodu msemmi ta' tletin jum ghandu jitwaqqaf matul iż-żmien li s-suspettat ma jkunx jinsab f'Malta u l-Avukat Ġenerali javża lis-sekwestrat dwar dan permezz ta' avviż bil-miktub notifikat kif stipulat fis-subartikolu (4).

(6) Tul xi investigazzjoni ta' reat skond l-artikolu 24, il-Pulizija Eżekuttiva tista' titlob li tisma' taht ġurament kull persuna li jaħsbu li jista' jkollha informazzjoni dwar dan ir-reat; u l-Maġistrat ghandu minnufih jisma' lil dik il-persuna taht ġurament.

(7) Għall-iskop tas-smigh ta' persuna taht ġurament kif provdut fis-subartikolu (6), il-maġistrat ghandu jkollu l-istess setgħat mogħtija mil-liġi lill-Qorti tal-Maġistrati (Malta) jew lill-Qorti tal-Maġistrati (Għawdex) bhala qorti istrutturja kif ukoll is-setgħat imsemmija fl-artikolu 554 tal-Kodiċi Kriminali; izda dan is-smigh isir dejjem bil-magħluq. Kap. 9.

19. (1) Meta persuna tkun ġiet akkużata, kemm jekk L-iffriżar tal-fondi. kriminalment kemm jekk amministrattivament, bi ksur ta' xi disposizzjoni ta' dan l-Att (minn hawn 'il quddiem imsejha "il-persuna akkużata") u, wara li jkun irċieva informazzjoni mill-awtorità kompetenti, l-Avukat Ġenerali jista' fejn jidhirlu xieraq jitlob lill-Qorti Kriminali tohroġ ordni bil-miktub lil kull persuna (minn hawn 'il quddiem imsejha "ordni ta' l-iffriżar") li:

(i) taqbad f'idejn terzi persuni kull flejjes u kull proprjetà mobbli dovuti jew li jappartjenu lill-persuna akkużata; u

(ii) tipprojbixxi lil-persuna akkużata milli titrasferixxi, tagħti bi pleġġ, tipoteka jew tiddisponi b'mod iehor minn kull proprjetà mobbli jew immobbli:

Izda l-Qorti Kriminali ghandha tistabbilixxi f'din l-ordni xi flejjes jistghu jithallsu jew jiġu riċevuti mill-persuna akkużata tul

l-applikazzjoni ta' dan l-ordni, bi speċifikazzjoni tas-sorsi, mod u modalitajiet oħrajn tal-hlas, inklużi l-paga, pensjoni u benefiċċji tas-sigurtà soċjali pagabbli lill-persuna akkużata, biex hi u l-familja tagħha jkunu jistghu jghixu hajja deċenti fl-ammont ta' sitt elef lira fis-sena, fejn il-mezzi jippermettu:

Iżda wkoll il-Qorti Kriminali tista' barra dan –

(a) tawtorizza l-hlas tad-djun li għandhom jithallsu mill-persuna akkużata lil kredituri *bona fide* u li nholqu qabel ma saret l-ordni; u

(b) għal raġunijiet tajbin tawtorizza lill-persuna akkużata li titrasferixxi proprjetà mobbli jew immobbli.

Kull persuna indirizzata għandha thares fil-pront kull ordni miktuba mahruġa mill-Qorti Kriminali skond id-disposizzjonijiet ta' dan l-artikolu fir-rigward ta' dawk il-fondi u assi.

(2) Ordni ta' l-iffriżar għandha -

(a) tibda topera u torbot lill-terzi persuni immedjatament malli ssir, u r-Registatur tal-Qorti għandu jiehu hsieb li avviz tagħha jiġi pubblikat minghajr dewmien fil-Gazzetta, u għandu jiehu hsieb ukoll li kopja tagħha tiġi reġistrata fir-Registru Pubbliku fir-rigward ta' proprjetà immobbli; u

(b) tibqa' fis-seħh sa l-ahhar eżitu tal-proċedimenti amministrattivi jew kriminali kontra l-persuna akkużata, skond il-każ.

(3) Il-Qorti Kriminali tista', għal ċirkostanzi partikolari, tvarja l-ordni ta' l-iffriżar, u d-disposizzjonijiet tas-subartikoli ta' qabel għandhom japplikaw lill-ordni hekk varjat.

(4) Sa fejn ikun possibbli, ordni ta' l-iffriżar għandu jkollha l-isem u l-kunjom tal-persuna akkużata, il-professjoni, sengha jew stat iehor, l-isem tal-missier, l-isem ta' l-omm u kunjomha ta' xebba, fejn twieldet u fejn toqghod u n-numru tal-karta ta' l-identità tagħha jew ta' dokument ta' identifikazzjoni iehor, jekk ikun hemm.

(5) Meta xi flejjes ikunu dovuti, jew isiru dovuti lill-persuna akkużata, korp ta' persuni jew entità li fir-rigward tagħha ssir ordni minn xi persuna waqt li tkun fis-seħh ordni ta' l-iffriżar, dawn il-flejjes għandhom jiġu depożitati f'bank fuq kreditu tal-persuna akkużata.

(6) Meta din l-ordni ta' l-iffriżar ma tibqax fis-sehh kif provdut fis-subparagrafu (b) tas-subartikolu (2) hawn qabel, ir-Registratur tal-Qorti ghandu jiehu hsieb li avviz b'dan jiġi pubblikat fil-Gazzetta, u ghandu jirreġistra nota ta' thassir tar-registrazzjoni ta' dak l-ordni fir-Registru Pubbliku.

(7) L-awtorità kompetenti ghandha tikkommunika ma' l-Avukat Ġenerali dwar kwistjonijiet taht dan l-artikolu u taht l-artikolu 18 ta' dan l-Att, u tista' tiskambja informazzjoni, soġġetta għall-obbligazzjoni tas-segretezza professjonali.

20. (1) Biex jiġi żgurat il-harsien ta' dan l-Att, l-awtorità kompetenti tista' tikkordina il-hidmiet tagħha u tiskambja informazzjoni ma', u tikkollabora b'mod iehor ma':

Koordinazzjoni ma' awtoritajiet oħrajn.

(a) kull korp jew awtorità ffurmat jew imwaqqaf taht il-liġi Maltija għal kwistjonijiet li fir-rigward tagħhom dan il-korp jew awtorità jista' jkollu funzjoni regolatorja, superviżorja, ġudizzjarja jew ta' liċenzjar skond il-liġi, inklużi, b'mod partikolari, l-Awtorità dwar l-Elenku skond it-tifsira fl-Att dwar Swieq Finanzjarji u mar-Registratur tal-Kumpanniji;

(b) kull awtorità, awtorità barranija jew korp li twettaq funzjonijiet simili jew l-istess jew li ghandha d-dmir li tghin fis-sorveljanza tas-suq jew li taħdem għal l-iskop tal-kxif, il-prevenzjoni jew il-prosekuzzjoni ta' atti relatati ma' l-abbuż fis-suq; u

(ċ) kull awtorità lokali jew barranja superviżorja, ta' infurzar jew ġudizzjarja li l-funzjonijiet tagħha jinkludu l-kxif, il-prevenzjoni jew il-prosekuzzjoni ta' atti relatati ma' l-abbuż fis-suq.

(2) L-awtorità kompetenti ghandha teżercita s-setghat bis-sahha ta' dan l-artikolu:

(a) għall-prevenzjoni, investigazzjoni jew kxif ta' attivitajiet li huma jew li aktarx huma abbuż mis-suq taht il-liġi Maltija jew barranija;

(b) fejn awtorità barranija talbet l-ghajjnuna għall-iskopijiet ta' l-eżercizzju ta' funzjoni regolatorji wahda, jew aktar, tagħha, taht id-Direttiva dwar l-Abbuż fis-Suq;

(ċ) meta jkun hekk mehtieġ skond ir-rabtiet internazzjonali ta' Malta; jew

(d) meta jkun hekk mehtieg fil-parametri tar-rabtiet ta' qbil li jigu assunti f'pattijiet ta' ftehim bilaterali jew multilaterali għall-iskambju ta' informazzjoni u forom oħrajn ta' kollaborazzjoni ma' awtoritajiet regolatorji barranin inkluża talba li toriġina taht *memorandum of understanding* li jsir ma' l-awtorità kompetenti.

(3) Malli tirċievi talba minn awtorità barranija għal skop ta' twettiq tad-dmirijiet tagħha fl-investigazzjoni u kxif skond id-Direttiva dwar l-Abbuż fis-Suq, l-awtorità kompetenti għandha mal-ewwel tiehu l-miżuri mehtieġa biex tiġbor l-informazzjoni mehtieġa mill-awtorità barranija. Jekk l-awtorità kompetenti ma tistax tforri l-informazzjoni mehtieġa minnufih, għandha tavża lill-awtorità barranija li tkun qed tagħmel it-talba dwar ir-raġunijiet.

(4) L-awtorità kompetenti tista' tirrifjuta li taġixxi fuq talba għal informazzjoni meta:

(a) komunikazzjoni tista' tolqot negattivament is-sovranità, is-sigurtà jew il-politika pubblika ta' Malta;

(b) jkunu diġà ndew proċedimenti ġudizzjarji quddiem il-qrati ta' Malta fir-rigward ta' l-azzjonijiet imsemmija u kontra l-istess persuni; jew

(ċ) tkun diġà nġatat sentenza finali f'Malta fir-rigward ta' dawk il-persuni għall-istess azzjonijiet.

F'kull każ imsemmi hawn qabel, l-awtorità kompetenti għandha tavża lill-awtorità barranija li tkun qed tagħmel it-talba kif adatt, billi tagħtiha l-informazzjoni, bl-aktar dettal possibli, ta' dawk il-proċedimenti jew ta' dik is-sentenza.

(5) Meta l-awtorità kompetenti tkun konvinta li qed isiru, jew saru atti kontra d-disposizzjonijiet tad-Direttiva dwar l-Abbuż fis-Suq fit-territorju ta' Stat Membru ieħor jew Stat taż-ŻEE, din għandha tavża b'dan lill-awtorità barranija rilevanti bl-aktar mod speċifiku possibli.

(6) Kull persuna, korp jew awtorità li tirċievi informazzjoni skambjata konformament ma' dan l-artikolu għandha tkun soġġetta għall-obbligu tas-segretezza professjonali. Mingħajr preġudizzju għall-obbligazzjonijiet tagħhom fi proċedimenti ġudizzjarji taht il-liġi kriminali, meta il-persuna, l-korp, jew l-awtorità rilevanti tirċievi informazzjoni skond dan l-artikolu, din tista' tużaha biss għall-eżerċizzju tal-funzjonijiet tagħha fl-ambitu ta' dan l-Att u fil-kuntest ta'

proċedimenti amministrattivi jew ġudizzjarji relatati speċifikament ma' l-eżerċizzju ta' dawk il-funzjonijiet:

Iżda meta l-awtorità barranija li tkun qed tikommunika l-informazzjoni taghti l-kunsens tagħha, l-awtorità kompetenti li tkun qed tircievi l-informazzjoni tista' tużaha għal skopijiet oħrajn jew terġa' tibagħtha lil xi awtorità barranija oħra.

21. (1) Għat-twettiq ahjar tad-disposizzjonijiet ta' dan l-Att u għall-implimentazzjoni aktar effettiva tad-disposizzjonijiet tad-Direttiva dwar l-Abbuż fis-Suq, l-awtorità kompetenti tista', min żmien għal żmien, tohroġ regoli li jorbtu lill-persuni kollha speċifikati fihom, u dawn ir-regoli għandhom jiġu ppubblikati fil-Gazzetta.

Setgħa ta' l-awtorità kompetenti li tohroġ regoli.

(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1) bil-ghan li tiġi żgurata il-konformita mal-paragrafi 1 sa 5 ta' artikolu 6 tad-Direttiva dwar l-Abbuż fis-Suq, l-awtorità kompetenti tista' tohroġ regoli u tiehu l-miżuri kollha meħtieġa biex tiżgura t-tixrid kif imiss ta' informazzjoni korretta lill-pubbliku.

22. (1) Meta l-awtorità kompetenti tkun sodisfatta li l-azzjonijiet ta' persuna jikkostitwixxu ksur ta' xi disposizzjoni ta' dan l-Att, regolamenti jew regoli mahruġa tahtu, l-awtorità kompetenti tista', permezz ta' avviż bil-miktub u mingħajr il-htieġa għal smiġh f'qorti, timponi fuq dik il-persuna sanzjoni amministrattiva li tikkonsisti f' multa li ma tistax taqbez l-erbgħin elf lira.

Sanzjonijiet amministrattivi.

(2) Persuna li tiġi hekk notifikata tista' tagħmel rikors quddiem it-Tribunal għal Servizzi Finanzjarji biex tappella kontra d-deċiżjoni ta' l-awtorità kompetenti skond l-artikolu 23 ta' dan l-Att.

(3) Mal-konklużjoni ta' xi proċedimenti ta' appell skond l-artikolu 23 ta' dan l-Att, jew malli jiskadi t-terminu biex isir appell, l-awtorità kompetenti tista', permezz ta' dikjarazzjoni pubblika, tiżvela l-isem tal-persuna sanzjonata, il-ksur partikolari tad-disposizzjoni ta' dan l-Att, ir-regolament jew regoli mahruġa tahtu, u s-sanzjoni imposta. L-awtorità kompetenti ma għandhiex tagħmel dan fejn jidhrilha li l-iżvelar jippreġudika serjament is-swieq finanzjarji jew jikkawża dannu sproporzjonat lill-partijiet involuti. L-awtorità kompetenti għandha żżomm milli jsir dak il-kxif lill-pubbliku meta tqis li dan il-kxif jista' jkun ta' periklu għas-swieq finanzjarji jew ikun iwassal għal hsara sproporzjonata għall-partijiet involuti.

(4) Meta ma jkunx hemm appell minn avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu jew meta dan l-avviż ġie appellat fi żmien hmistax-il jum mill-konklużjoni ta' dan l-appell, is-sanzjoni

Kap. 12.

amministrattiva fl-avviż jew kif varjata bid-deċiżjoni tat-Tribunal ghal Servizzi Finanzjarji ghandha tkun dovuta lill-awtorità kompetenti meta ssir in-notifika ta' kopja ta' l-avviż jew tad-deċiżjoni, skond il-każ, permezz ta' att ġudizzjarju lill-persuna indikata fl-avviż jew fid-deċiżjoni, l-avviż jew id-deċiżjoni msemmi ghandha ssir titolu eżekuttiv favur l-awtorità kompetenti għall-effetti u finijiet kollha tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizazzjoni u Proċedura Ċivili.

(5) L-impożizzjoni mill-awtorità kompetenti ta' sanzjoni amministrattiva skond dan l-artikolu ghandha tkun mingħajr preġudizzju għal konsegwenzi oħrajn ta' l-att jew l-ommissjoni tal-hati taht il-liġi ċivili jew il-liġi kriminali:

Izda fil-każijiet kollha fejn l-awtorità kompetenti timponi sanzjoni amministrattiva li tikkonsisti f'multa minhabba f'xi ghemil jew f'xi nuqqas ta' xi haġa li ghandha ssir minn xi persuna u dak l-ghemil jew nuqqas jkkostitwixxi wkoll reat kriminali, ma ghandhom jittiehdu l-ebda proċeduri kontra dik il-persuna fejn jidhol dak ir-reat kriminali.

Appelli.

Kap. 330.

23. (1) Id-disposizzjonijiet ta' l-artikolu 21 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta ghandhom japplikaw *mutatis mutandi* għal appelli li jistgħu jingiebu quddiem it-Tribunal taht dan l-Att.

(2) Jista' jsir appell quddiem it-Tribunal għal Servizzi Finanzjarji fir-rigward ta':

(a) kull penali amministrattiva imposta taht l-artikolu 22; jew

(b) kull ordni bil-miktub mahruġa skond is-subartikolu (6) ta' l-artikolu 16 jew skond l-artikolu 17.

Reati, pieni u rimedji.

24. (1) Kull persuna li tikser jew li ma tharisx xi disposizzjoni ta' l-artikoli 6, 8, 14, 15, 16, 18 jew 19 ta' dan l-Att, tkun hatja ta' reat.

(2) Kull persuna li, għall-finijiet ta', jew b'segwitu ta', xi disposizzjoni ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula bis-saħħa tiegħu, jew ta' xi kundizzjoni, obligazzjoni, htieġa, direttiva jew ordni magħmula jew mogħtija kif hawn qabel imsemmi, tagħti informazzjoni jew tagħmel dikjarazzjoni li tkun taf li ma tkunx preċiża jew li tkun falza jew li tiżgwida f'xi aspett materjali, jew bi traskuraġni tagħti informazzjoni jew tagħmel dikjarazzjoni li ma tkunx preċiża jew li tkun falza jew li tiżgwida f'xi aspett materjali, tkun hatja ta' reat.

(3) Kull persuna li b'xi dikjarazzjoni, weghda jew tbassira li tkun taf li tkun tiżgwida, falza jew qarrieqa, jew b'xi habi diżonest ta' fatti materjali, jew billi tagħmel bi traskuraġni (sew jekk b'mod diżonest jew xort'ohra) xi dikjarazzjoni, weghda jew tbassira li tkun mhux vera, qarrieqa jew falza, tipperswadi jew tippoiva tipperswadi lil xi persuna ohra biex tagħmel jew toffrilha li tinnegozja strumenti finanzjarji, tkun hatja ta' reat.

(4) Kull persuna li bil-hsieb li ma tinqabadx li tkun għamlet reat taht dan l-Att tneħhi, teqred, tahbi jew b'mod qarrieqi tibdel xi ktieb, dokument jew xi karta ohra, tkun hatja ta' reat.

(5) Persuna misjuba hatja ta' reat taht id-disposizzjonijiet tas-subartikoli (2) sa (4) ta' dan l-artikolu jew taht id-disposizzjonijiet ta' l-artikoli 6, 8, 14, 15 jew 16 ta' dan l-Att, meta tinsab hatja, tehel multa ta' mhux inqas minn elf lira u mhux iżjed minn erba' mitt elf lira jew sa tliet darbiet il-profitt li sar jew it-telf evitat bis-sahha tar-reat, liema minnhom ikun l-akbar, jew prigunerija għal żmien mhux iżjed minn seba' snin jew dik il-multa u prigunerija flimkien.

(6) Kull persuna li taġixxi kontra ordni ta' sekwestru msemmi fl-artikolu 18, jekk tinsab hatja, tehel multa ta' mhux iżjed minn hamest elef lira jew prigunerija għal żmien ta' mhux iżjed minn tnax-il xahar jew dik il-multa u prigunerija flimkien:

Iżda meta r-reat ikun il-hlas jew forniment lil xi persuna mis-sekwestrat ta' xi flejjes jew ta' xi proprjetà mobbli maqbudin kif provdut fis-subparagrafu (a) tas-subartikolu (1) ta' l-artikolu 18 jew it-trasferiment jew disponiment mis-suspettat ta' xi proprjetà mobbli jew immobbli bi ksur tas-subparagrafu (ċ) tas-subartikolu (1) ta' l-artikolu 18, il-multa għandha dejjem tkun id-doppju tal-valur tal-flus jew tal-proprjetà involuta.

(7) Kull persuna li tirċievi ordni dwar l-iffriżar ta' fondi li taġixxi kontra ordni kif imsemmi fl-artikolu 19, meta tinsab hatja, tehel, multa ta' mhux iżjed minn hamest elef lira jew prigunerija għal żmien ta' mhux iżjed minn tnax-il xahar, jew dik il-multa u prigunerija flimkien, u kull att mwettaq kontra dik l-ordni tal-qorti ikun null u bla effett.

(8) Persuna li l-imġieba tagħha tkun instabet li tammonta għal abbuż fis-suq taht proċeduri kriminali jew ċivili taht dan l-Att tista' tehel li thallas kumpens f'ammont stabbilit mit-Tribunal lil kull persuna li tkun qed tbatu telf minhabba dik l-azzjoni.

(9) Kull persuna li tkun qed tbatu telf b'konsegwenza ta' operazzjoni li għandha x'taqsam max-xiri jew bejgh ta' strumenti

finanzjarji mwettqa ma' persuna li l-azzjonijiet taghha ġew stabbiliti li jammontaw għal abbuż fis-suq taht dan l-Att, tista' titlob kumpens, pagabbli lilha minghand dik il-persuna, lit-Tribunal. Meta ssir dik l-applikazzjoni, it-Tribunal għandu jistabbilixxi safejn l-applikant garrab telf u l-ammont ta' kumpens li japplika u li jkun dovut lilu:

Iżda azzjoni għal kumpens għandha tkun preskritta wara sentejn mid-data meta d-deċiżjoni amministrattiva jew is-sentenza li tistabbilixxi li dik il-persuna li għandha thallas kumpens kienet hatja ta' abbuż mis-suq, tkun finali u konkluziva:

Iżda wkoll id-dritt li jintalab kumpens taht dan is-subartikolu ma jippreġudikax id-dritt ta' kull persuna li titlob kumpens taht xi liġi ohra.

(10) Għandu jkun hemm appell, fuq kwistjonijiet ta' dritt biss, minn deċiżjoni tat-Tribunal skond dan l-artikolu fil-Qorti ta' l-Appell (Ġurisdizzjoni Inferjuri).

(11) Meta t-Tribunal jkun stabbilixxa ammont ta' kumpens li għandu jithallas skond is-subartikolu (9) ta' dan l-artikolu u fejn dik id-deċiżjoni ma tkunx ġiet appellata jew, fejn dik id-deċiżjoni ġiet appellata, fi żmien hmistax-il ġurnata minn dak l-appell, il-kumpens kif stabbilit bid-deċiżjoni tat-Tribunal għal Servizzi Finanzjarji għandu jkun dovut u meta ssir in-notifika ta' kopja ta' l-avviż tad-deċiżjoni permezz ta' att ġudizzjarju lill-persuna indikata fid-deċiżjoni, id-deċiżjoni għandha tikkostitwixxi titolu eżekuttiv għall-effetti u l-iskopijiet tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Is-setgħa tal-
Ministru li jagħmel
regolamenti.
Kap. 370.

25. (1) Il-Ministru jista', fuq il-parir ta' l-awtorità kompetenti, jagħmel regolamenti għall-iskopijiet li jippreskrivi l-operazzjonijiet ta' stabbilizzar ta' prezzijiet permessi b'dan l-Att, u dawn ir-regolamenti jistgħu jiġu preskritti għal kategoriji partikolari ta' strumenti ta' bejgiegħa finanzjarji, u regolamenti differenti jistgħu jiġu preskritti għal kategoriji differenti ta' strumenti jew bejgiegħa finanzjarji.

(2) Il-Ministru jista', fuq il-parir ta' l-awtorità kompetenti, jagħmel regolamenti għall-implimentazzjoni ahjar tad-disposizzjonijiet ta' dan l-Att u għat-trasponiment ahjar tad-Direttiva dwar l-Abbuż fis-Suq u miżuri implimentattivi. B'mod partikolari, il-Ministru jista' jippreskrivi regolamenti taht dan l-Att għar-regolamentazzjoni jew għat-tifsir ahjar:—

(a) tad-dmirijiet ta' l-entitajiet emittenti ta' strumenti finanzjarji, skond l-artikolu 9 ta' dan l-Att u l-miżuri implimentattivi rilevanti;

(b) tad-dmirijiet ta' persuni b'responsabbiltajiet ta' ġestjoni f'entità emittenti u ta' persuni li ghandhom assoċjati mill-viċin, skond l-artikolu 10 ta' dan l-Att u l-miżuri implimentattivi rilevanti;

(c) tad-dmirijiet ta' persuni li jirrangaw operazzjonijiet fi strumenti finanzjarji professjonalment, skond l-artikolu 11 ta' dan l-Att u l-miżuri implimentattivi rilevanti;

(d) tad-dmirijiet ta' prezentazzjoni ġusta ta' informazzjoni finanzjarja u l-indikazzjoni ta' kunflitti ta' interessi, skond l-artikolu 12 ta' dan l-Att u l-miżuri implimentattivi rilevanti;

(e) ta' l-applikazzjoni kif imiss tal-projbizzjoni ta' manipulazzjoni tas-suq skond l-artikolu 8 ta' dan l-Att u ta' prattici aċċettati tas-suq u mġieba manipulattiva skond il-miżuri implimentattivi rilevanti; u

(f) ta' l-impożizzjoni ta' penali amministrattiva mill-awtorità kompetenti skond l-artikolu 22 ta' dan l-Att.

(3) Regolamenti li jsiru taht dan l-artikolu jistgħu jstabbilixxu reati u jistgħu jimponu sanzjonijiet amministrattivi jew miżuri amministrattivi oħrajn fir-rigward ta' xi ksur tagħhom jew ta' nuqqas ta' harsien tagħhom ta' mhux aktar minn:

(a) fil-każ ta' ksur kriminali, multa ta' erbgħin elf lira jew priġunerija għal żmien mhux iżjed minn sena, jew dik il-multa u priġunerija flimkien, skond il-każ; jew

(b) fil-każ ta' ksur amministrattiv, multa ta' erbgħin elf lira.

(4) Regolamenti li jsiru taht dan l-artikolu jistgħu wkoll jipprovdu għall-ghoti ta' setgħa u ta' awtorità lill-awtorità kompetenti biex din tkun tista' tiżgura li d-disposizzjonijiet tar-regolamenti jiġu implimentati kif imiss.

TAQSIMA V

DISPOSIZZJONIJIET MIXXELLANJI

Operazzjonijiet nulli jew li jistghu jkunu annullati.

26. Ebda operazzjoni ma tista' titqies nulla jew li tista' tkun annullata għar-raġuni biss li din tkun twettqet kontra d-disposizzjonijiet ta' dan l-Att.

Ilsien tar-regolamenti.

27. Regoli u regolamenti li jsiru taht dan l-Att u kull emenda jew revoka ta' regoli jew regolamenti bħal dawk, jistghu jiġu pubblikati bl-ilsien Inġliż biss.

Proċedimenti kriminali.

28. Ebda proċediment għal reat taht dan l-Att ma jista' jinbeda kemm-il darba ma jkunx ingħata il-kunsens ta' l-Avukat Ġenerali.

Thassir ta' Kap. 375.

29. (1) L-Att dwar Reati għal *Insider Dealing* u Abbuż fis-Suq, huwa b'dan imhassar mingħajr preġudizzju għal kull ma sar jew li jista' jsir taht dak l-Att.

(2) Bla hsara għas-subartikolu (1) b'dan l-artikolu, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra, kull referenza għall-Att dwar Reati għal *Insider Dealing* u Abbuż fis-Suq, użata f'xi liġi, regolament, regola jew dokument ieħor qabel id-dhul fis-seħh ta' dan l-Att, għandha titqies bħala referenza għal dan l-Att.

Emendi konsegwenzjali ta' l-Att dwar is-Swieq Finanzjarji, Kap. 345.

Sostituzzjoni ta' kliem.

30. L-Att dwar is-Swieq Finanzjarji, hawnhekk iżjed 'il quddiem f'dan l-artikolu imsejjah "l-Att prinċipali", għandu jiġi emendat kif ġej:-

(1) (a) Kull referenza għal "titoli", minbarra fl-użu fil-frazi "depożitarju ċentrali tat-titolu", fl-Att prinċipali jew f'xi regolament mahruġ tahtu qabel il-bidu fis-seħh ta' dan l-Att, għandha tkun sostitwita bil-kliem "strumenti finanzjarji" .

(b) Kull referenza għal "titoli" minbarra fl-użu fil-frazi "depożitarju ċentrali tat-titoli", f'xi linja gwida, direttiva, regola, liċenza, approvazzjoni, awtorizzazzjoni, hatra, avviż, deċiżjoni jew kull att ieħor magħmul jew mahruġ taht l-Att prinċipali qabel il-bidu fis-seħh ta' dan l-Att, għandha tinqara u tiġi interpretata bħala referenza għal "strumenti finanzjarji" .

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

(2) L-artikolu 2 ta' l-Att prinċipali għandu jkun emendat kif ġej:

(a) minflok it-tifsira "depożitarju ċentrali tat-titoli" għandu jidhol dan li ġej:

“ “depożitarju ċentrali tat-titoli” tfisser id-depożitarju jew ir-registru stabbilit għall-istrumenti finanzjarji skond ir-regolamenti li jgvernaw l-awtorizzazzjoni, l-operazzjonijiet, il-funzjonijiet u s-supervizzjoni ta’ d-depożitarju jew ir-registru kif preskritti mill-Ministru fuq il-parir ta’ l-awtorità kompetenti, liema regolamenti jistgħu ukoll jinkludu arrangamenti transitorji”;

(b) minflok it-tifsira “abbuż fis-suq” għandu jidhol dan li ġej:

“ “abbuż fis-suq” tfisser imġieba li tammonta għall-użu projbit ta’ informazzjoni interna jew manipulazzjoni tas-suq taht Att ta’ l-2005 dwar il-Prevenzjoni ta’ Abbuż fis-Swieq Finanzjarji.” ;

(ċ) Minflok it-tifsira “titoli” għandu jidhol dan li ġej :-

“ “titoli” tfisser:-

(a) ishma jew *stocks* f’kumpaniji jew titoli oħrajn ekwivalenti għal ishma f’kumpaniji,

(b) *bonds, debentures* u forom oħrajn ta’ dejn taht titoli, li jkunu negozjabbli fis-suq kapitali, u

(ċ) titoli oħrajn li normalment jiġu negozjati u li jagħtu l-jedd li jiġu akkwistati titoli trasferibbli simili permezz ta’ sottoskrizzjoni jew kambju, jew li jwasslu għall-hlasijiet ta’ flus hlief għal strumenti ta’ pagament;

(d) minnufih wara t-tifsira ta’ “*Exchange*”, għandha tidhol din it-tifsira ġdida li ġejja-

“strumenti finanzjarji” tfisser istrument minn dawn li ġejjin mahruġa jew li ser jinharġu minn soċjetà kummerċjali, enti morali stabbilita bil-liġi, il-Gvern ta’ Malta jew entitajiet li johorġu ohra:-

(a) titoli;

(b) unitajiet f’imprizi jew skemi ta’ investiment kollettiv kif definiti fl-Att dwar Servizzi ta’ Investiment;

(c) strumenti tas-suq tal-flus, inklużi dawk il-klassijiet ta' strumenti li normalment jiġu negozjati fis-suq tal-flus, bhal *treasury bills*, ċertifikati ta' depożitu u karti kummerċjali hlief għal strumenti ta' pagament;

(d) derivattivi inklużi:

(i) *futures* u kuntratti ta' kambju barranin li jsiru għal finijiet ta' investiment jew kambju miksuba jew miżmuma għal skopijiet ta' investiment inklużi strumenti konklużi bil-flus ekwivalenti;

(ii) drittijiet taht kuntratt għal differenzi jew taht xi kuntratt ieħor li l-għan tiegħu jew l-għan maħsub tiegħu huwa li jiżgura profitt jew jevita telf b'riferenza għal varjazzjonijiet fil-valur jew fil-prezz ta' proprjetà ta' kull deskrizzjoni jew f'indici jew f'fattur ieħor maħsub għal dak l-għan fil-kuntratt;

(iii) *options* għall-akkwist jew id-disponiment minn xi strument li jaqa' taht dawn il-kategoriji, inklużi strumenti konklużi bil-flus ekwivalenti, speċifikament inklużi għażliet fuq il-munita u fuq ir-rati ta' l-interessi; u

(iv) derivattivi fuq il-kommoditajiet;

(e) *Warrants*, ċertifikati jew strumenti oħra, inklużi kull *record* sew jekk f'forma ta' dokument sew jekk le, li jagħti l-jedd lid-detentur tiegħu biex jissottoskrivi għal, jakkwista, ibiegh jew xort' oħra jiddisponi minn, jagħmel *underwriting* ta', jew jikkonverti xi strument jew interess f'xi strument li jaqa' taht din it-tifsira, jew għal xi flus;

(f) ċertifikati jew strumenti oħra li jagħtu drittijiet ta' proprjetà dwar xi strument li jaqa' taht din it-tifsira;

(g) strument finanzjarju kif definit fid-Direttiva 2003/6/KE tal-Parlament Ewropew u tal-Kunsill tat-28 ta' Jannar, 2003 dwar *Insider dealing*

u l-Manipulazzjoni tas-Suq (abbuż fis-suq) inkluż, *inter alia* kull strument iehor ammess għall-kummerç f'suq regolat fi Stat li fih tapplika d-Direttiva msemmija u li għalih tkun saret talba għall-ammissjoni fil-kummerç f'suq simili skond l-istess Direttiva.”;

(3) L-artikolu 3 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 3 ta' l-Att prinċipali.

(a) il-paragrafu preżenti (i) għandu jiġi enumerat mill-ġdid bhala l-paragrafu (j);

(b) Minnufih wara l-paragrafu (h) għandu jidhol dan il-paragrafu (i) ġdid kif ġej:-

“(i) eżenzjonijiet mill-htieġa ta' ordni ta' rikonoxximent magħmula taht is-subartikolu (1) ta' l-artikolu 4 ta' l-Att li jistgħu jkunu soġġetti għal varjazzjonijiet, żidiet, adattamenti u modifiki hekk kif stipulat u li jistgħu jkunu soġġetti għal kondizzjonijiet jew htigiet ohra, inklużi forom ta' awtorizzazzjoni u proċeduri ta' notifika ohra, kif stipulat.”; u

(ċ) in-nota marginali għanda tiġi sostitwita kif ġej:

“Setgħa tal-Ministru li jagħmel regolamenti.” ;

(4) Minflok l-artikolu 36 ta' l-Att prinċipali għandu jidhol dan li ġej:- Emenda ta' l-artikolu 36 ta' l-Att prinċipali.

“36. Meta l-*Exchange* jew kull *exchange* ta' investiment rikonoxxut jissuspetta li jistgħu jeżistu ċirkostanzi li jindikaw li jkun seħh, qiegħed isehh jew li probabbli jsehh fiċ-ċirkostanzi xi ksur tad-disposizzjonijiet ta' l-Att dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzarji, dan għandu jirrapporta minghajr dewmien żejjed dak is-suspett lill-awtorità kompetenti”; u

(5) L-artikolu 2 ta' l-Iskeda li tinstab ma' l-Att prinċipali għandha tiġi emendata kif ġej: Emenda ta' l-artikolu 2 ta' l-Iskeda ta' l-Att prinċipali.

(a) It-tifsira “titoli” għandha tiġi mibdula b' dan li ġej:-

“ “titoli” għandu jkollha t-tifsira mogħtija lilha fl-artikolu 2 ta' l-Att.”; u

Kap. 345.

(b) minnufih wara t-tifsira “Kumitat” ghandha tidhol it-tifsira ġdida li ġejja –

“ “strumenti finanzjarji” ghandu jkollha t-tifsira moghtija lilha fl-artikolu 2 ta’ l-Att.” .

Għanijiet u Raġunijiet

L-għan ewlieni ta’ l-Abbozz hu sabiex jissalvagwardja l-integrità tas-swieq finanzjarji ta’ Malta u tal-Komunità u biex ikabbar il-fiduċja ta’ l-investitur f’ dawk is-swieq billi tiġi trasposta u implimentata d-Direttiva dwar l-Abbuz fis-Swieq u l-miżuri ta’ implimentazzjoni li hemm magħha.

**A BILL
entitled**

AN ACT to Prevent Financial Markets Abuse

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

PART I

PRELIMINARY

1. (1) The short title of this Act is the Prevention of Financial Markets Abuse Act, 2005. Short title and coming into force.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different purposes thereof.

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

“accepted market practices” means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with guidelines adopted by the Commission in accordance with the procedure laid down in article 17 (2) of the Market Abuse Directive;

“Commission Regulation (EC) No 2273/2003” means Commission Regulation (EC) No 2273/2003 of 22nd December, 2003, implementing the Market Abuse Directive as regards exemptions for buy-back programmes and stabilisation of financial instruments;

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

“company” means any company, statutory body or other entity which issues financial instruments;

“the competent authority” means the Malta Financial Services Authority established by the Malta Financial Services Authority Act as appointed in terms of article 2 of the Financial Markets Act and article 2A of the Investment Services Act;

Cap. 330.

Cap. 345.

“counsel or procure” includes entice, encourage, advise, induce or recommend, and their grammatical derivatives shall be construed accordingly;

“credit institution” shall mean any person as defined in article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council as amended from time to time;

“EEA State” means any State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as adjusted by the Protocol signed at Brussels on 17th March, 1993 and as amended by any subsequent acts;

“financial instruments” shall have the meaning assigned to it in article 2 of the Financial Markets Act;

“foreign authority” means the single administrative authority appointed by any Member State or EEA State other than Malta, to ensure that the provisions adopted pursuant to the Market Abuse Directive are applied;

“implementing measures” means any European Union acts, regulations or directives implementing the Market Abuse Directive and as amended from time to time, including Commission Directive 2003/124/EC of 22nd December, 2003, Commission Directive 2003/125/EC of 22nd December, 2003, Commission Regulation

(EC) No 2273/2003 of 22nd December, 2003 and Commission Directive 2004/72/EC of 29th April, 2004;

“inside information” means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, including information regarding any takeover offer for a company, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions.

For the purposes of this definition, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments; for persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client’s pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuer or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions;

“investment firm” shall have the same meaning as that assigned to it in article 1(2) of Council Directive 93/22/EEC of the 10th May, 1993 on investment services in the securities field;

“Investment Services Directive” means Council Directive 93/22/EEC of the 10th May, 1993 on investment services in the securities field as amended from time to time and as superseded by Directive 2004/39/EC of the European Parliament and of the Council of the 21st April, 2004 on markets in financial instruments;

“issuer” means any person who issues one or more financial instruments;

“Listing Authority” means the Listing Authority in terms of article 2 of the Financial Markets Act;

“market abuse” means both the prohibited use of inside information and the practice of market manipulation;

“Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28th January, 2003 on insider dealing and market manipulation and includes any implementing measures issued thereunder;

“the Minister” means the Minister responsible for finance;

“Member State” means a Member State of the Community;

“person closely associated with a person discharging managerial responsibilities within an issuer” means:-

(a) the spouse of the person discharging managerial responsibilities, or any common law spouse or partner of that person considered as equivalent to the spouse by the law of that person’s domicile;

(b) dependent children of the person discharging managerial responsibilities, according to the law of that person’s domicile;

(c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned; or

(d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in (a), (b) and (c); or by a person discharging managerial responsibilities within an issuer; or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person;

“person discharging managerial responsibilities within an issuer” means a person who is:

(a) a member of the administrative, management or supervisory bodies of the issuer; or

(b) a senior executive, who is not a member of the bodies as referred to in paragraph (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of the issuer;

“person professionally arranging transactions” means an investment firm or a credit institution;

“public employee” means -

(a) a public officer;

(b) a member, officer or employee of the Malta Financial Services Authority or the Central Bank of Malta;

“recognised investment exchange” means a person in respect of whom the competent authority has issued a recognition order in terms of article 4 of the Financial Markets Act”.

“regulated market” means:

(a) in the case of Malta, a recognised investment exchange which appears on the list of regulated markets prepared and published by the European Commission in terms of the Investment Services Directive; or

(b) in the case of any other Member State or EEA State, any entity which appears on the list of regulated markets prepared and published by the European Commission in terms of the Investment Services Directive;

“share” has the same meaning in relation to companies not incorporated under the Companies Act as it has in relation to companies so incorporated; Cap. 386.

“takeover offer for a company” means an offer made:

(a) to all the holders of the shares in the company to acquire those shares or a specified proportion of them;

(b) to all the holders, other than the person making the offer and his nominees, of the shares in the company to acquire those shares or a specified proportion of them;

(c) to all the holders of a particular class of those shares going to acquire the shares of that class or a specified proportion of them; or

(d) to all the holders, other than the person making the offer and his nominees, of a particular class of those shares to acquire the shares of that class or a specified proportion of them;

“Tribunal” means the Financial Services Tribunal established in terms of article 21 of the Malta Financial Services Act.

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

(3) Save where the context otherwise requires, words and expressions used in this Act shall have the same meaning and the same interpretation as the meanings and interpretations given to those words and expressions in the Companies Act.

PART II

GENERAL PROVISIONS

Purpose.

3. The purpose of this Act is to safeguard the integrity of Maltese and Community financial markets and to enhance investor confidence in those markets. For this object, this Act transposes and implements the Market Abuse Directive and its Implementing Measures, and consequently this Act and any regulations adopted thereunder, shall be interpreted and applied accordingly.

Scope.

4. (1) The provisions of this Act shall apply to financial instruments admitted to trading on a regulated market in Malta or in any other Member State or EEA State or for which a request for admission to trading on such a market has been made. The fact that the transaction itself does not take place on such regulated market or constitutes an off-exchange deal in terms of the Off-Exchange Trading Regulations, 2004 shall not exclude the applicability of this Act to such transaction.

L.N. 286 of 2004.

(2) Article 6 of this Act shall also apply to any financial instrument not admitted to trading on a regulated market in Malta or any other Member State, but whose value depends on a financial instrument as referred to in sub-article (1) hereof.

(3) The provisions of this Act shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by Malta, by the European System of Central Banks, by officers or employees of the Central Bank of Malta, or by any other officially designated body, or by any person acting on their behalf.

(4) The provisions of this Act shall not be deemed to prohibit an individual from doing anything for the purposes of stabilising the price of financial instruments or from trading in own shares in “buy-back” programmes provided it is done in accordance with Commission Regulation (EC) No 2273/2003 implementing article 8 of the Market Abuse Directive.

(5) The provisions of article 9 shall not apply to any issuer who has not requested or approved admission of his financial instruments to trading on a regulated market in Malta or in any other Member State or EEA State.

5. The prohibitions and requirements laid down in this Act shall apply to acts carried out:- Jurisdiction.

(a) by any person in Malta or outside Malta concerning financial instruments that are admitted to trading on a regulated market in Malta, including admission to a recognised investment exchange situated or operating in Malta or for which a request for admission to trading on such market in Malta has been made; or

(b) by any person in Malta concerning financial instruments that are admitted to trading on a regulated market in any other Member State or EEA State or for which a request for admission to trading on such market has been made.

PART III

MARKET ABUSE AND PREVENTIVE MEASURES

6. (1) No person shall use inside information to trade in any financial instrument admitted to a regulated market or in any other way to acquire or dispose of, or attempt to acquire or dispose of such financial instrument, whether for his own account or for the account of a third party, either directly or indirectly, if he is in possession of information related to such financial instrument by virtue of : Prohibited use of inside information.

(a) his membership of the administrative, management or supervisory bodies of the issuer;

(b) his holding in the capital of the issuer;

(c) his having access to the information through the exercise of his employment, profession or duties; or

(d) his criminal activities.

(2) Any person who possesses inside information by virtue of any of the reasons listed in sub-article (1) (a) to (d) shall be prohibited from:

(a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties, whether or not he knows or has

reasonable cause to believe that such person or any other person will make use of the information for the purpose of dealing;

(b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates;

(c) counselling or procuring any other person to deal, on a regulated market in those financial instruments.

(3) The prohibitions of sub-articles (1) and (2) shall also apply to an individual who is in possession of inside information even if this is not derived by virtue of any of the circumstances listed in sub-article (1) (a) to (d), in the event that such individual obtained or received such information directly or indirectly, from another person where the individual knew that he was receiving inside information or had reasonable cause to believe or ought reasonably to have known that he was receiving inside information.

(4) Where the person referred to in sub-article (1) is a legal person, the prohibition laid down in that sub-article shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

(5) This article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement such as an agreement granting a share option concluded before the person concerned possessed inside information.

(6) In relation to derivatives on commodities, inside information shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets. Users of markets on which derivatives on commodities are traded, are deemed to expect to receive information relating, directly or indirectly, to one or more such derivatives which is routinely made available to the users of those markets or required to be disclosed in accordance with legal or regulatory provisions, market rules, contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(7) The provisions of this article shall also apply to:

(a) any public employee or former public employee who holds inside information by virtue of his position or former position as a public employee; or

(b) any person who directly or indirectly obtained or received information from a public employee or former public employee who he knows or has reasonable cause to believe held the information by virtue of any such position.

7. Public institutions officially disseminating statistics liable to have a significant effect on financial markets, shall disseminate them in a fair and transparent way. Fair disclosure.

8. (1) No person shall manipulate a regulated market by disseminating false, exaggerated or misleading information, spreading false rumours, or putting into effect simulated or artificial operations or transactions or orders as provided for in this article. Market manipulation.

(2) A person shall be deemed to have committed market manipulation if he is responsible for :

(a) transactions or orders to trade:-

(i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments; or

(ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level:

Provided that no market manipulation shall be deemed to have been committed where the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

(3) Without prejudice to the generality of sub-article (2) above, the following conduct shall be deemed to amount to market manipulation:

(a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions;

(b) the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, or indirectly about its issuer, while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; or

(d) engaging in any activity so as to otherwise manipulate the financial instruments market by the employment of artificial devices, fictitious transaction or other deceptive or manipulative conduct including new patterns of activity which may arise from time to time that in practice constitute market manipulation.

Issuers of financial instruments.

9. (1) An issuer shall be obliged to inform the general public of inside information which directly concerns the said issuer.

(2) An issuer may delay public disclosure of inside information at his own responsibility such as not to prejudice his legitimate interests and related obligations.

(3) Whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure:

Provided that the provisions of this sub-article shall not apply if the person receiving the information owes a duty of confidentiality, irrespective of whether such duty is provided for by law or arises from articles of association or a contract.

(4) Issuers or persons acting on their behalf or for their account shall draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.

10. Any person discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer or to derivatives or other financial instruments linked to them.

Duties of persons with managerial responsibilities within issuer and persons closely associated to them.

11. Any person professionally arranging transactions in financial instruments who has a reasonable suspicion that a transaction might constitute the prohibited use of inside information or market manipulation, shall be obliged to notify the competent authority without delay.

Duties of investment firms and credit institutions.

12. Any person who produces or disseminates research concerning financial instruments or issuers of financial instruments and any person who produces or disseminates other information recommending or suggesting investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is fairly presented and shall disclose his interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

Duties of journalists, researchers and disseminators of financial recommendations.

13. (1) Without prejudice to any other functions of the competent authority under this Act or any other law, the competent authority shall have the function of monitoring any regulated market in Malta and of detecting instances of market abuse.

Investigations into market abuse.

(2) Where the competent authority suspects that circumstances may exist to indicate that the conduct of a person amounts to market abuse, it shall in terms of its powers under this Part, cause an investigation to be carried out with the purpose of determining whether or not the said behaviour amounts to market abuse.

(3) A foreign authority may request that the competent authority carry an investigation in Malta and may further request that its officials be allowed to accompany the officials of the competent authority during the course of the investigation.

(4) The competent authority may refuse to act on a request made in pursuance of sub-article (3) hereof only where:

(a) such an investigation might adversely affect the sovereignty, security or public policy of Malta;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same person before the Courts of Malta; or

(c) a final judgment has already been delivered by the Courts of Malta in relation to such person for the same actions in Malta.

In any of the cases above-mentioned, the competent authority shall notify the requesting foreign authority accordingly, providing information, as detailed as possible, on those proceedings or judgment.

(5) Upon receipt of a request in terms of sub-article (3), the investigation shall be subject to the overall control of the competent authority and be subject to the provisions of this Act and the laws of Malta.

Power to demand access to documents and telephone records.

14. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its functions under this Act the competent authority shall have the power to have access to any documentation in any form whatsoever and to receive a copy of it and to demand the aforesaid documentation from any person, including:

(a) any person who is or was carrying on, or who appears to be or to have been carrying on a transaction or activity regulated or prohibited by any of the provisions of this Act;

(b) any other person who appears to be in possession of relevant information or documentation; or

(c) any persons who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals.

(2) The competent authority may, by notice in writing, require any person referred to in sub-article (1):

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such documentation as it may require including existing telephone and existing data traffic records; and

(b) to furnish to the competent authority any aforesaid documentation verified in such manner as it may specify.

In both of the above cases, the person addressed shall comply with the request of the competent authority promptly by providing the competent authority with any documentation in his possession.

(3) The competent authority may take copies of any documentation furnished or provided to it or to which it has access under this article.

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

(5) Any person requested to provide information by virtue of sub-article (2), in particular the directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities at issue shall assist and shall promptly collaborate with the competent authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information as the competent authority may reasonably request from time to time.

15. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its functions and powers under this Act the competent authority shall have the power to demand information in any form whatsoever and to receive a written statement of it and to demand by notice in writing the aforesaid information promptly from any person. In particular, the competent authority may require any person referred to in sub-article (1) of article 14:

Power to demand information and assistance and to summon persons for hearing.

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information as it may require;

(b) to furnish to the competent authority any information in the form of a written statement or any information verified in such manner as it may specify;

(c) to attend before the competent authority, or before a person appointed by it as an inspector in terms of article 16, at such time and place as it may specify, to answer questions and provide information and documentation; and

(d) to give the competent authority any assistance which it may require and which that person is reasonably able to give.

(2) Any person requested to provide information by virtue of sub-article (1), in particular the directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities at issue shall assist and shall promptly collaborate with the competent authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information as the competent authority may reasonably request from time to time.

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

Power to appoint inspectors and to conduct onsite inspections.

16. (1) (a) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its powers under this Act, the competent authority may either act directly or it may act indirectly by appointing an inspector or inspectors being any officer or employee of the competent authority or any other person whom the competent authority deems competent for this purpose to investigate and report on the affairs of any person whose affairs or actions are being investigated in relation to a possible breach of this Act.

(b) When appointing an inspector the competent authority may direct that the investigation shall be carried out within such time and shall be confined to such specific or general matters as the competent authority may deem fit.

(2) In the exercise of his functions, an inspector upon producing, if required, evidence of his authority shall have the power:-

(a) to investigate the affairs of any person mentioned in articles 14 and 15 if he thinks it necessary or expedient for the purposes of an investigation under this Act;

(b) to exercise all the powers, conferred on the competent authority by articles 14 and 15;

(c) to carry out on-site inspections and to have reasonable access and entry to the business premises, offices, documentation and other information necessary or expedient for the purposes of an investigation under this Act;

(d) to enter premises occupied by a person for the purpose of obtaining there the information or documents required by the notice in terms of articles 14 or 15, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles:

Provided that where the inspector has reasonable cause to believe that if any notice as is referred to in articles 14 or 15 were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, the inspector may enter any premises referred to in sub-article (2) for the purpose of obtaining there any information or documents that could have been required under such notice referred to in articles 14 or 15.

(3) An inspector appointed in terms of this article shall:

(a) have the power to make interim reports and on the conclusion of his investigation he shall make a final report to the competent authority if so directed by the competent authority; and

(b) be subject to professional secrecy.

(4) Where the competent authority has appointed a person as inspector under this article, 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 article and a requirement made by him shall be deemed to be and shall have the same force and effect as a requirement of the competent authority.

(5) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him by law in relation to the investigation of criminal offences.

(6) In the event that it results that the investigated person may have been in breach of this Act, the competent authority shall have power to order that all reasonable expenses incurred as a result of an investigation pursuant to this article be paid by such person. Any such order which shall be communicated to the person concerned by a notice for payment shall:

(a) be in writing; and

(b) require the addressed person to pay the expenses of and incidental to the investigation before the end of such period being

not less than fourteen days from the date of service of the notice, as may be specified in the notice:

Provided that any person who feels aggrieved by an order served on him in terms of this sub-article may appeal to the Tribunal against the decision of the competent authority in accordance with article 23 of this Act.

Powers to give certain orders.

17. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise and for the purposes of its functions under this Act and for the better implementation thereof, the competent authority shall have the power to issue such orders by notice in writing as it may deem appropriate and any person to whom the order is given shall comply with and otherwise give effect to any such order promptly or within the time and in the manner otherwise stated in the order.

(2) An order by the competent authority under this article may 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. Without prejudice to the generality of the aforesaid, an order may:

(a) require the cessation of any practice that is contrary to the provisions of this Act, or of any rules or regulations issued thereunder;

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(b) require the suspension or discontinuance of trading of the financial instruments concerned, including in particular a suspension or discontinuance of trading in exercise of the powers assigned to the competent authority by articles 17 and 18 of the Financial Markets Act; and

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(c) give effect to a temporary prohibition of professional activity, in particular in the exercise of the powers assigned to the competent authority by article 7 of the Investment Services Act as applicable.

(3) The power to issue orders under this article shall include the power to vary, alter, add to or withdraw any such order, as well as the power to issue new or further orders.

(4) Where under any of the provisions of any order issued pursuant to this article, a person is prohibited from carrying out any act, he shall be prohibited from doing any such act directly or indirectly, and whether personally or through the use of intermediation of another person.

(5) For the better information of the public, where the competent authority is satisfied that the circumstances so warrant, it may at any time:-

(a) make public any order it has given under any of the provisions of this article; and, or

(b) issue a public statement regarding any matter falling within its functions or powers under this Act.

(6) A person who feels aggrieved by an order served on him in terms of this article may appeal to the Tribunal against the decision of the competent authority in accordance with article 23 of this Act.

18. (1) Where, in the course of an investigation conducted pursuant to this Act, the Attorney General has upon information received from the competent authority reasonable cause to suspect that a person (hereinafter referred to as “the suspect”) may be responsible for a breach of this Act, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as an “attachment order”): Attachment orders.

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

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

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

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

(3) The provisions of paragraphs (a), (b) and (c) of sub-article (1) of article 381 and of sub-article (1) of article 382 of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order. Cap. 12.

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

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

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

(6) In the course of any investigation of an offence in terms of article 24 of this Act the Executive Police may request to hear on oath any person who they believe may have information regarding such offence; and the Magistrate shall forthwith hear that person on oath.

(7) For the purpose of hearing on oath a person as provided in sub-article (6) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

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Freezing of Funds.

19. (1) (a) Where a person (hereinafter referred to as “the person charged”) has been charged either criminally or administratively with being in default of any provision of this Act and upon receiving a request from the competent authority, the Attorney General may where he deems it appropriate request that the Criminal Court issue a written order to any person (hereinafter referred to as a “freezing order”):

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

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

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

Provided further that the Criminal Court may also -

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

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

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

(2) A freezing order shall -

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

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

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

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

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

(6) When such freezing order ceases to be in force as provided in sub-paragraph (b) of sub-article (2) hereof, the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

(7) The competent authority shall liaise with the Attorney General on matters arising under this article and article 18 of this Act

and may, exchange information, subject to the obligation of professional secrecy.

Coordination with other authorities.

20. (1) For the purpose of securing compliance with this Act, the competent authority may coordinate its efforts and exchange information with and otherwise collaborate with:

(a) any body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial or licensing function in terms of law, including in particular the Listing Authority within the meaning of the Financial Markets Act and with the Registrar of Companies;

(b) any authority, foreign authority or body carrying out similar or equivalent functions or which has the responsibility to monitor the market and to detect, prevent or prosecute acts related to market abuse; and

(c) any other local or foreign supervisory, enforcement or judicial authorities whose functions include the detection, prevention or prosecution of acts related to market abuse.

(2) The competent authority shall exercise powers by virtue of this article:

(a) for preventing, investigating or detecting activities which amount or are likely to amount to market abuse under Maltese or foreign law;

(b) where the assistance is requested by a foreign authority for the purposes of the exercise of one or more of its regulatory functions under the Market Abuse Directive;

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

(d) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a memorandum of understanding concluded with the competent authority.

(3) Upon receipt of a request from a foreign authority for the purpose of carrying out its duties in the investigation and detection in terms of the Market Abuse Directive, the competent authority shall immediately take the necessary measures in order to gather the

information required by the foreign authority. If the competent authority is not able to supply the required information immediately, it shall notify the requesting foreign authority of the reasons.

(4) The competent authority may refuse to act on a request for information where:

(a) communication might adversely affect the sovereignty, security or public policy of Malta;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of Malta; or

(c) where a final judgment has already been delivered in relation to such persons for the same actions in Malta.

In any case above-mentioned, the competent authority shall notify the requesting foreign authority accordingly, providing as detailed information as possible on those proceedings or the judgment.

(5) Where the competent authority is convinced that acts contrary to the provisions of the Market Abuse Directive are being, or have been, carried out on the territory of another Member State or EEA State, it shall give notice of that fact to the relevant foreign authority in as specific a manner as possible.

(6) Any person, body or authority receiving information exchanged pursuant to this article shall be subject the obligation of professional secrecy. Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, when the relevant person, body or authority receives information pursuant to this article, it may use it only for the exercise of its functions within the scope of this Act and in the context of administrative or judicial proceedings specifically related to the exercise of those functions:

Provided that where the foreign authority communicating information consents thereto, the competent authority receiving the information may use it for other purposes or forward it to any other foreign authority.

21. (1) For the better carrying out of the provisions of this Act and to better implement the provisions of the Market Abuse Directive, the competent authority may, from time to time, issue rules which shall be binding on persons specified therein and such rules shall be published in the Gazette.

Power of competent authority to issue rules.

(2) Without prejudice to the generality of sub-article (1) hereof, with a view to ensuring compliance with paragraphs 1 to 5 of Article 6 of the Market Abuse Directive, the competent authority may issue rules and take all necessary measures to ensure the proper dissemination of timely and correct information to the public.

Administrative sanctions.

22. (1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any such person an administrative sanction, consisting of a fine which may not exceed forty thousand liri.

(2) A person upon whom a notice is served may apply to the Tribunal to appeal against the decision of the competent authority in accordance with article 23 of this Act.

(3) Upon the conclusion of any appeal proceedings in terms of article 23 of this Act, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or rules issued thereunder, and the administrative sanction imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(4) Where a notice as referred to in sub-article (1) of this article has not been appealed or, where such notice has been appealed within fifteen days of the determination of such appeal, the administrative sanction as contained in the notice or as varied by the decision of the Tribunal shall be due to the competent authority and upon the service of a copy of the notice or the decision as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall constitute an executive title in favour of the competent authority for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

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

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

taken or continued against the said person in respect of such criminal offence.

23. (1) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandi* to appeals that may be brought before the Tribunal under this Act.

Appeals.

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(2) An appeal shall lie to the Tribunal against any decision or action taken by the competent authority with respect to:

(a) any administrative sanction imposed under article 22;
or

(b) any order in writing issued in terms of sub-article (6) of article 16 or in terms of article 17.

24. (1) Any person who contravenes or fails to comply with any of the provisions of articles 6, 8, 14, 15, 16, 18 or 19 of this Act, shall be guilty of an offence.

Offences,
punishments and
remedies.

(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 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 trade in financial instruments shall be guilty of an offence.

(4) 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.

(5) A person found guilty of an offence under the provisions of sub-articles (2) to (4) of this article or under the provisions of articles 6, 8, 14, 15 or 16 of this Act shall be liable on conviction to a fine (*multa*) of not less than one thousand liri and not exceeding four hundred thousand liri or up to three times the profit made or the loss avoided by

virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(6) Any person who acts in contravention of an attachment order mentioned in article 18 shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in sub-paragraph (a) of sub-article (1) of article 18 or in the transfer or disposal by the suspect of any movable or immovable property in contravention of sub-paragraph (c) of sub-article (1) of article 18, the fine shall always be at least twice the value of the money or property in question.

(7) Any addressee of an order regarding the freezing of funds who acts in contravention of a court order mentioned in article 19 shall on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law.

(8) A person whose actions are found to amount to market abuse whether under criminal or administrative proceedings under this Act shall be liable to pay compensation to any person suffering a loss from such action in the amount as may be determined by the Tribunal.

(9) Any person suffering a loss as a consequence of a transaction in relation to financial instruments, entered into with a person whose actions have been determined as amounting to market abuse under this Act, may apply for compensation, payable to him by the said person, to the Tribunal. On such application, the Tribunal shall determine the extent to which the applicant suffered a loss and the applicable amount of compensation which is due to him:

Provided that an action for compensation shall be barred by the lapse of two years from the date on which the administrative decision or judgement finding that person liable to pay compensation has committed market abuse has become final and conclusive:

Provided further that the right to claim compensation under this sub-article shall not prejudice the rights of the person claiming compensation under any other law.

(10) There shall be an appeal on questions of law only from a decision of the Tribunal taken pursuant to this article to the Court of Appeal (Inferior Jurisdiction).

(11) Where the Tribunal has determined an amount of compensation to be paid in terms of sub-article (9) of this article and where this decision has not been appealed or, where such decision has been appealed within fifteen days of the determination of such appeal, the compensation as determined in the decision of the Tribunal shall be due and upon the service of a copy of notice of the decision by means of a judicial act on the person indicated in the decision, the decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

25. (1) The Minister may, acting on the advice of the competent authority, make regulations for the purposes of prescribing the price stabilisation operations permitted by this Act, and such regulations may be prescribed for particular categories of financial instruments or dealers, and different regulations may be prescribed for different categories of financial instruments or dealers. Minister's power to make regulations.
Cap. 370.

(2) The Minister may, acting on the advice of the competent authority, make regulations to better implement the provisions of this Act and to better transpose the Market Abuse Directive and any implementing measures. In particular the Minister may prescribe regulations under this Act to better regulate or define: -

(a) the duties of issuers of financial instruments, in terms of article 9 of this Act and the relevant implementing measures;

(b) the duties of persons with managerial responsibilities within an issuer and persons closely associated to them, in terms of article 10 of this Act and the relevant implementing measures;

(c) the duties of persons professionally arranging transactions in financial instruments in terms of article 11 of this Act and the relevant implementing measures;

(d) the duties of fair presentation of financial information and the indication of conflicts of interests in terms of article 12 of this Act and the relevant implementing measures;

(e) the proper application of the prohibition of market manipulation in terms of article 8 of this Act and acceptable market practices and manipulative behaviour in terms of the relevant implementing measures; and

(f) the imposition of administrative penalties by the competent authority in terms of article 22 of this Act.

(3) Regulations made under this article may establish offences and may impose administrative sanctions or other administrative measures in respect of any contravention thereof or failure of compliance therewith, not exceeding:

(a) in the case of a criminal infringement, a fine (*multa*) of forty thousand liri or imprisonment for a term not exceeding one year, or both such fine and imprisonment, as the case may be; or

(b) in the case of an administrative infringement, a fine of forty thousand liri.

(4) Regulations made under this article may also provide for the assignment of power and authority to the competent authority in order to enable it to ensure that the provisions of the regulations are properly implemented.

PART V

MISCELLANEOUS PROVISIONS

Void or voidable transactions.

26. No transaction shall be deemed to be void or voidable by reason only that it was entered into in contravention of the provisions of this Act.

Language of regulations.

27. Rules and regulations made under this Act and any amendment or revocation of such rules and regulations, may be published in the English language only.

Criminal proceedings.

28. No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

Repeal of Cap. 375.

29. (1) The Insider Dealing and Market Abuse Offences Act is hereby repealed without prejudice to anything done or which may be done under that Act.

(2) Subject to sub-article (1) hereof, unless the context otherwise requires, any reference to the Insider Dealing and Market Abuse Offences Act used in any law, regulation, rule or other document before the coming into force of this Act, shall be deemed to be a reference to this Act.

Consequential amendments to the Financial Markets Act, Cap. 345.

30. The Financial Markets hereinafter in this article referred to as “the principal Act”, shall be amended as follows:-

Substitution of terms.

(1) (a) Any reference to “securities”, other than as used in the term “central securities depository”, wherever used in the principal Act or in any regulation issued thereunder before the

coming into force of this Act, shall be substituted by the word “financial instruments”.

(b) Any reference to “securities” other than as used in the term “central securities depository”, in any guideline, directive, rule, licence, approval, authorization, appointment, notice, decision or any other act made or issued under the principal Act before the coming into force of this Act, shall be read and interpreted as referring to “financial instruments”.

(2) article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) for the definition of “central securities depository” there shall be substituted the following:

“ “central securities depository” means the depository or register for financial instruments established in accordance with regulations governing the authorization, operations, functions and supervision of the depository or register as may be made by the Minister acting on the advice of the competent authority, which regulations may also provide for transitional arrangements;”

(b) for the definition of “market abuse” there shall be substituted the following:

“ “market abuse” means conduct amounting to the prohibited use of inside information or market manipulation in terms of the Prevention of Market Abuse Act.”;

(c) for the definition of “securities” there shall be substituted the following -

“ “securities” means :-

(a) shares or stock in companies and other securities equivalent to shares in companies;

(b) bonds, debentures and other forms of securitised debt which are negotiable on the capital market; and

(c) any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement excluding instruments of payment; and

(d) immediately after the definition “Exchange”, there shall be inserted the following new definition -

“financial instruments” means any of the following instruments issued or to be issued by a commercial partnership, a corporate body established by law, the Government of Malta or other issuers:-

(a) securities;

(b) units in collective investment undertakings or schemes as defined in the Investment Services Act;

(c) money-market instruments, including those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(d) derivatives including:

(i) futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes, including equivalent cash-settled instruments;

(ii) 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;

(iii) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments, specifically including options on currency and on interest-rates; and

(iv) derivatives on commodities;

(e) warrants, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire,

sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument falling within this definition or for any currency;

(f) certificates or other instruments which confer property rights in respect of any instrument falling within this definition;

(g) financial instrument as defined by Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on Insider Dealing and Market Manipulation (market abuse) including, inter alia, any other instrument admitted to trading on a regulated market in a State to which the said Directive applies or for which a request for admission to trading on such a market has been made in terms of the aforesaid Directive.”;

(3) article 3 of the principal Act shall be amended as follows: Amendment of article 3 of the principal Act.

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

(b) immediately after paragraph (h) there shall be inserted a new paragraph (i) as follows:-

“(i) exemptions from the requirement for a recognition order under sub-article (1) of article 4 of the Act which may be subject to such variations, additions, adaptations and modifications as may be prescribed and which may be subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed.”; and

(c) For the marginal note there shall be substituted the following:

“Minister’s power to issue regulations.”

(4) For article 36 of the principal Act there shall be substituted the following:- Amendment of article 36 of the principal Act.

“36. Where the Exchange or any recognised investment exchange suspects that there may exist circumstances to indicate that any violation of the provisions of the Prevention of Financial Markets Abuse Act may have been committed,

is being committed or is likely in the circumstances to be committed, it shall without undue delay report such suspicion to the competent authority.”; and

Amendment of
article 2 of Schedule
of the principal Act.

(5) Article 2 of the Schedule to the principal Act shall be amended as follows:

(a) for the definition “securities”, there shall be substituted by the following:–

Cap., 345.

““securities” shall have the meaning assigned to it in Article 2 of the Act.” ; and

(b) immediately after the definition “Committee”, there shall be inserted the following new definition -

““financial instruments” shall have the meaning assigned to it in article 2 of the Act.”.

Objects and Reasons

The main object of the Bill is to safeguard the integrity of Maltese and Community financial markets and to enhance investor confidence in those markets transposing and implementing the Market Abuse Directive and its implementing measures.