

October 2006

CENTRAL BANK OF MALTA ACT (CAP. 204)

To make provision for the establishment of a Central Bank of Malta and the determination of its functions and powers and to provide for matters ancillary or incidental thereto.

17th April, 1968

7th June, 1968

1st January, 2000

ACT XXXI of 1967, as amended by Acts: X and XXIX of 1968, XVII and XX of 1971, XXIV of 1972, XIX and LVIII of 1974; Legal Notice 148 of 1975; and Acts: XX of 1981, XIII of 1983, XXXVIII of 1986, XI of 1988, XIV and XXVI of 1994, XXIV of 1995, IX and XVI of 1997, XVII of 2002, III of 2004 and IX of 2005.

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Schedule One

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PART I
PRELIMINARY

1. Short title.

The short title of this Act is Central Bank of Malta Act.

2. Interpretation.

In this Act, unless the context otherwise requires –

"Bank" means the Central Bank of Malta established by article 3;

"bank" or "credit institution" has the same meaning assigned to it by article 2 of the Banking Act and includes any branch, agency or office in Malta of a bank or credit institution not incorporated in Malta; Cap. 371

"Board" means the Board of Directors of the Bank established by article 7;

"business of banking" has the same meaning assigned to it by article 2 of the Banking Act;

"the Community" means the European Community referred to in article 2 of the European Union Act; Cap.460

"competent authority" means any such authority or authorities, as the case may be, nominated to regulate the business of credit institutions, financial institutions or other financial services institutions under any law listed in Schedule Two of this Act;

"directive" means a directive issued by the Bank under this Act;

"director", in relation to the Bank, includes the Governor and the Deputy Governor;

"European Central Bank" means the bank established in accordance with Article 8 of the Treaty;

"financial institution" has the same meaning assigned to it by article 2 of the Financial Institutions Act and includes any branch in Malta of an institution not incorporated in Malta; Cap. 376.

"Governor" and "Deputy Governor" mean respectively the Governor and the Deputy Governor of the Bank appointed under article 8;

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"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for finance;

"reserve assets" shall include:

- (a) foreign exchange assets comprising currency, deposits and securities in any currency other than the euro, and
- (b) monetary gold, Special Drawing Rights (SDRs) and reserve position in the International Monetary Fund;

"Statute" means the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty;

"the Treaty" means the Treaty establishing the European Community done at Rome on 25 March 1957 and as subsequently amended.

PART II

ESTABLISHMENT AND CONDUCT OF AFFAIRS OF BANK

3. Establishment of Bank.

- (1) There shall be a Bank to be called the Central Bank of Malta. The Bank shall form an integral part of the European System of Central Banks as established under the Treaty and shall participate in carrying out the tasks and complying with the objectives conferred upon it by the Statute and shall assume all rights and obligations consequential to such a status.
- (2) The Bank shall be a body corporate having a distinct legal personality and be capable, subject to provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any property for the purpose of its functions, of suing and of being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

4. Objectives.

In accordance with the Statute, the primary objective of the Bank shall be to maintain price stability. Without prejudice to its primary objective, the Bank shall support the general economic policies of the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the Treaty and shall act in accordance with the principles set out in Article 4 of the Treaty.

5. Tasks of the Bank.

- (1) In accordance with the Statute, the tasks of the Bank shall include the following -
 - (a) to implement monetary policy;
 - (b) to hold and manage reserve assets;
 - (c) to ensure the stability of the financial system;
 - (d) to promote a sound and efficient payment system;
 - (e) to provide for the circulation of euro bank notes;
 - (f) to provide for the circulation of euro coins issued for and on behalf of the Government;
 - (g) to advise the Government generally on financial and economic matters;
 - (h) to compile and publish statistics as may be necessary to carry out its tasks.
- (2) In accordance with the Treaty, neither the Bank nor any member of the Board or any official of the Bank, when exercising any function, duty or power under this Act, shall seek or take instructions from the Government or any other body.
- (3) The Bank may issue, amend or revoke directives as may be required for carrying into effect any of the provisions of this Act.

6. Principal office of Bank.

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

7. Board of Directors.

- (1) There shall be a Board of Directors which shall be responsible for the policy and general administration of the affairs and business of the Bank, except in relation to the functions imposed, and the exercise of powers conferred, on the Bank by or under the Treaty or the Statute.
- (2) The members of the Board shall be the Governor, the Deputy Governor and the three other directors appointed under article 9.

8. Governor and Deputy Governor.

- (1) The Governor and the Deputy Governor shall be persons of recognised standing and experience in economic, financial or banking matters and shall each be appointed by the President of Malta, acting on the advice of the Prime Minister. They shall be appointed for a term of five years but shall be eligible for re-

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appointment. They shall receive such remuneration as shall be set out in their respective letters of appointment.

- (2) The Governor shall be in charge of the day-to-day management and operations of the Bank in accordance with the policy of the Board and shall be answerable to the Board for his acts and decisions. The representation of the Bank in judicial proceedings shall be vested in the Governor.
- (3) The Deputy Governor shall perform such duties as the Governor may direct and, in the event of the absence of, or a vacancy in the office of, the Governor, the Deputy Governor shall perform the duties of the Governor and shall have and may exercise the powers and perform the functions of the Governor.
- (4) The Governor and the Deputy Governor shall devote the whole of their professional time to the service of the Bank and while holding that office shall not occupy any other office or employment whether remunerated or not:

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

- (5) The Governor may be requested by the House of Representatives to report on the conduct of the Bank before a committee of the House of Representatives appointed for this purpose and to provide such committee with any information deemed necessary:

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

- (6) In accordance with the Treaty and the Statute, the Governor shall provide the Board with information about the exercise of powers conferred, upon the Governor or the Bank, by or under the Treaty or the Statute.

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9. Directors other than Governor and Deputy Governor.

The directors of the Bank, other than the Governor and Deputy Governor, shall –

- (a) be appointed by the Prime Minister;
- (b) be persons of recognised standing and professional experience in economic, financial or banking affairs;

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- (c) hold office for a period of five years and on such terms and conditions as may be set out in their respective letters of appointment, and shall be eligible for re-appointment;
- (d) be entitled to such honorarium as the Prime Minister may determine.

10. Disclosure of interest.

- (1) A Director who is directly or indirectly interested, otherwise than as a director or in common with other directors, in a contract made or proposed to be made by the Bank shall disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.
- (2) Any disclosure made under the preceding sub-article shall be recorded in the minutes of the Board and, after the disclosure, that director shall withdraw from the meeting while such contract is discussed or decided on by the Board.
- (3) No director shall obtain any credit accommodation from the Bank during his period of office.

11. Disqualification, resignation and filling of vacancies.

- (1) No person shall be appointed or shall remain a director who –
 - (a) is a member of the House of Representatives;
 - (b) is a director or salaried official of an institution licensed to provide financial or banking services or holds more than one *per centum* of the ordinary paid up share capital of such institution;
 - (c) is an officer in the public service;
 - (d) under the law of any country has been adjudged bankrupt or made a composition with his creditors or is legally incapacitated or has been convicted of a crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;
 - (e) holds any other position, or is otherwise in a position, which is in conflict with his duties as a director under this Act.

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- (2) A director may be relieved of his office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.
- (3) A director may resign his office on giving at least three months' notice of his intention in writing to the Prime Minister.
- (4) If a director dies, or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person shall be appointed in his place in accordance with the provisions of article 8 or 9, as the case may require.

12. Board procedure and quorum.

- (1) Meetings of the Board shall take place as often as may be required but not less frequently than ten times in each year, and there shall not be an interval greater than two months between a meeting of the Board and the next meeting.
- (2) Meetings of the Board shall be called by the Governor either on his own initiative or at the request of any two of the other directors.
- (3) The Governor shall preside as chairman at the meetings of the Board and, in his absence from any meeting, the Deputy Governor shall preside; and no decision shall be valid which is taken at a meeting of the Board at which neither the Governor nor the Deputy Governor is present.
- (4) Three members of the Board, one of whom shall be either the Governor or the Deputy Governor, shall form a quorum at any meeting.
- (5) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the directors.
- (6) Decisions shall be adopted by a simple majority of the votes of the directors present and voting. The chairman shall have an initial vote and, in the event of an equality of votes, he shall have and exercise a casting vote.
- (7) All acts done by any person acting in good faith as a director shall be as valid as if he were a director notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Board shall be questioned on the ground of the contravention by a director of the provisions of article 10 (1).
- (8) Subject to the provisions of this article, the Board may regulate its own procedure.

13. Audit Committee.

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The Board shall establish an Audit Committee to be chaired by one of the directors who is neither the Governor nor the Deputy Governor for the purposes of assisting it in fulfilling its responsibilities in matters related to the internal and external audit process, to the system of risk management and internal control and to the financial reporting process.

14. Staff appointments.

The appointment of officials and other employees of the Bank shall be made by the Board and on such terms and conditions as may be established by the Board.

15. Exclusion of liability.

- (1) The Bank, directors, officers or servants thereof, and any other person appointed to perform a function under this Act, or under any rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any rules or regulations aforesaid unless the act or omission is shown to have been done or omitted to be done in bad faith.
- (2) The provisions of sub-article (1) shall also apply to the Bank and to any director, officer or servant thereof and to any other person appointed by the Bank, in the performance or purported performance of any function assigned to the Bank or to any director, officer, servant or other person under any other law.

16. Remuneration, etc.

No salary, fee, wage, allowance or other remuneration paid by the Bank shall be computed by reference to net or other profits of the Bank.

17. Principal business and powers of the Bank.

- (1) In accordance with the Treaty and the Statute, in order to achieve its objectives and to carry out its tasks, the operations of the Bank shall include the following:

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- (a) to open accounts and accept and place deposits as provided in this Act, and, in special cases, with the prior approval of the Board, to open accounts for and accept deposits from other persons;
 - (b) to maintain accounts with central banks or other credit institutions and agent, accept from, and place deposits with, any such credit institution or agent, and act as correspondent, banker or agent for any central bank or other credit institution or other monetary authority and for any international financial institution established under international treaties;
 - (c) to subscribe to, purchase, sell, discount or re-discount equity, debt or other financial instruments as may be approved by the Board, provided that any equity interests in an undertaking or immovable property as the Bank may in any way acquire in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable moment;
 - (d) to issue, purchase, sell, discount or re-discount financial instruments bearing the Bank's name in such form and for such terms and maturities as may be approved by the Board;
 - (e) to grant to any credit or financial institution in Malta loans and advances against adequate security;
 - (f) to enter into repurchase and reverse repurchase agreements; and
 - (g) when it deems such action necessary to safeguard financial stability or in other exceptional circumstances, to grant a loan or advance to any credit institution incorporated in Malta against such forms of security as the Board may consider appropriate.
- (2) In managing and maintaining the reserve assets, the Bank may, in accordance with the guidelines and instructions of the ECB, carry out any transactions that it deems suitable, and in particular it may:
- (a) hold, manage, acquire and sell, spot and forward, all types of reserve assets and precious metals; and
 - (b) carry out any type of financial transaction with domestic or foreign institutions or with international organisations, including borrowing and lending operations.
- (3) The Bank may invest its staff and pension funds and other internal funds of the Bank in financial instruments approved by the Board.
- (4) The Bank may purchase, acquire or lease immovable property as the Bank may consider necessary or expedient for the provision, or future provision, of

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premises for the conduct of its business or for other similar requirements incidental to the performance of its functions under this Act.

- (5) Subject to any other provisions of this Act, the Bank may generally conduct business as a bank, and do all things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.
- (6) (a) The Bank shall, in the exercise of its functions as a Central Bank under this Act enjoy a special privilege over any funds held in the accounts of the Bank as well as securities, precious metals or any other assets belonging to its debtors and deposited with it as well as any other funds or other assets pledged in its favour by its debtors or by third parties to guarantee the obligations of its debtors.
- (b) The special privilege granted under this subarticle shall rank before any other privilege under any other law and notwithstanding the provision of any other law the funds and other assets subject to such privilege shall be applied to the satisfaction of the debt due to the Bank before any other claim.
- (c) The Bank may, subsequent to the prior notification to the debtor, apply any such funds or assets in satisfaction of the debts due to it without the necessity of any authorisation or sanction by any court or other authority, and may also, for such purpose, dispose of any such assets so held by it or pledged in its favour and apply the proceeds from such disposal directly to satisfy its claims.
- (7) The rights of the Bank to collateral security provided to it by a debtor or other counterparty shall not be affected by the insolvency proceedings against that debtor or counterparty, and such collateral security may be realised for the satisfaction of these rights.

18. Monetary Policy.

- (1) The sole authority and responsibility within the Bank to take decisions and to perform any function or duty or to exercise any power relating to monetary policy shall vest in the Governor who, when performing this function, shall act in accordance with the powers and duties conferred by the Statute.
- (2) The Governor may establish a Monetary Policy Advisory Committee to advise him on matters relating to monetary policy. The Committee shall be constituted of such number of persons as the Governor may determine and may also include suitably qualified persons from outside the Bank being persons who the

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Governor is satisfied have knowledge or experience which is likely to be relevant to the Committee's functions.

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

PART III

FINANCIAL PROVISIONS

19. Capital and Reserves.

- (1) The Bank shall have an authorised capital of twenty million euro which shall be fully paid and shall be held exclusively by the Government.
- (2) The Bank shall maintain a General Reserve Fund which shall be of not less than twenty million euro and which shall be available for any purpose as may be determined by the Board. Whenever amounts have been drawn from the General Reserve Fund, these shall be replaced, as may be decided by the Board, from the profits of the Bank arising in subsequent years.

20. Audit.

The accounts of the Bank shall be audited by independent external auditors appointed by the Board as recommended by the European Central Bank and approved by the Council of the European Union.

21. Annual accounts.

- (1) The financial year of the Bank shall begin on the first day of January and end on the thirty-first day of December.
- (2) The Bank shall, as soon as may be but not later than three months after the close of each financial year of the Bank, transmit to the Minister –

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- (a) a copy of the annual accounts certified by auditors;
- (b) a statement of the Bank's investments; and
- (c) a report on its operations during that year;

and shall publish the report referred to in paragraph (c).

(3) The Minister shall, as soon as may be and, in respect of the requirement of paragraph (a), not later than the first sitting of the House of Representatives after the seventh day of April –

- (a) cause a copy of the annual accounts, and of the statement and of the report aforesaid to be laid before the House of Representatives; and
- (b) cause a copy of the annual accounts of the Bank to be published in the Gazette.

(4) The Bank shall, as soon as may be after the last working day of each month, make up and publish a return of its assets and liabilities as at the close of business on that day. A copy of the return shall be transmitted to the Minister who shall cause it to be published in the Gazette.

22. Determination and allocation of profits.

(1) Subject to the following provisions of this article, the net profits of the Bank for each financial year shall be determined by the Bank after meeting all expenditure for that year and after making such provision as it thinks fit for bad and doubtful debts, depreciation in assets, contributions to staff and pension funds and all other reserves and contingencies.

(2) After such allocations as may be determined by the Bank under the provisions of sub-article (1) have been made, the remainder of the net profits established as aforesaid shall be paid to the Government.

PART IV

COLLECTION OF INFORMATION

23. Collection of Information.

(1) Without prejudice to the provisions of article 36 (2), the Bank may require a reporting agent as defined in sub-article (3) to provide the Bank with such information as the Bank may consider necessary to carry out its functions under

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this Act or to implement instructions or guidelines issued in terms of the Statute, and the Bank may enquire into and ask for clarifications of any information so provided.

- (2) It shall be the duty of every reporting agent required to provide the Bank with information as specified in subarticle (1), to comply with such requirement.
- (3) For the purpose of this article and of the following article, a “reporting agent” may include:
 - (a) a credit institution licensed under the Banking Act;
 - (b) a financial institution licensed under the Financial Institutions Act;
 - (c) a person licensed under the Investment Services Act;
 - (d) a person licensed to conduct business of insurance under the Insurance Business Act or a person registered or enrolled to conduct insurance intermediaries’ activities under the Insurance Brokers and other Intermediaries Act;
 - (e) a person who has issued a debt security, and is not a credit institution licensed under the Banking Act or a person licensed under the Investment Services Act;
 - (f) a person who has acted as an agent in connection with arranging or managing the issue of a debt security, and is not a credit institution licensed under the Banking Act or a person licensed under the Investment Services Act;
 - (g) a person who holds reserve assets and liabilities or carries out cross-border transactions which the Bank determines relevant to compile balance of payments statistics or to establish the balance sheet of the stock of external financial assets and liabilities for Malta, otherwise referred to as the international investment position;
 - (h) a recognised investment exchange under the Financial Markets Act; or
 - (i) any other person who the Bank determines, after consultation with such person, is in possession of information considered relevant to carry out its tasks under this Act.
- (4) Except as provided for under Part VIII of this Act, information collected under the provisions of this article shall be subject to the duty of professional secrecy.

24. Collection of Statistical Information.

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- (1) In accordance with the Statute and the guidelines and instructions of the ECB, the Bank may issue directives providing for the definition and imposition of statistical reporting requirements, establishing the standards for transmission and accuracy of statistical information, and specifying the conditions under which the right to verify or to carry out the compulsory collection of statistical information may be exercised under the provisions of subarticle (2).

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

- (a) require submission of documents;
- (b) examine the books and records of the reporting agent;
- (c) take copies or extracts from such books and records; and
- (d) obtain written or oral explanations.

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

- (3) When it deems it necessary in the carrying out of its functions under this Act, the Bank shall prepare and publish statements, consolidating and, or aggregating statistical information so furnished under this article and, where necessary, under article 36(1).

- (4) Where a reporting agent contravenes or fails to comply with a reporting requirement under the provisions of article 23 or fails to comply with a requirement contained in any directive issued under article 24 (1), the Bank shall impose sanctions as set out in Article 7 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank.

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PART V

RELATIONS WITH GOVERNMENT

25. Adviser to Government.

The Bank shall advise the Government generally on financial and economic matters.

26. Banker to Government.

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- (1) The Bank may act as banker to the Government and may open accounts for and accept deposits from the Government.
- (2) The Bank may open accounts for and accept deposits from funds, corporations and institutions controlled by the Government or established by law and act as banker to any such funds, corporations and institutions.

27. Prohibition of public sector financing.

- (1) The Bank shall not grant overdrafts or any other type of credit facility to Community institutions or bodies or the government or to any public undertaking, public authority or government-owned corporation of any Member State, nor shall the Bank directly purchase their debt instruments.
- (2) Government-controlled credit institutions shall be given the same treatment as other credit institutions with regard to the supply of reserves.

28. Bank as agent for Government.

In accordance with the provisions of this Act and in conformity with its duties and functions, the Bank may act generally as agent for the Government.

29. Information to Minister.

The Bank shall keep the Minister informed of the policy of the Bank.

PART VI

RELATIONS WITH CREDIT AND FINANCIAL INSTITUTIONS

30. Banker to credit and financial institutions.

- (1) The Bank may act as banker to credit and financial institutions in Malta and may open accounts for and accept deposits from such credit and financial institutions.
- (2) The Bank may also open accounts and place deposits with credit institutions.

31. Other credit institutions as agents.

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The Bank may in exceptional circumstances appoint one or more other credit institutions in Malta to act as its agent for the issue, re-issue, exchange and withdrawal of notes and coin, or for other purposes, on such terms and conditions as may be agreed between the Bank and each of such other credit institutions.

32. Deposits of credit institution with Bank.

In accordance with the Statute, credit institutions may be required to hold minimum reserves with the Bank, and to report thereon.

33. Interest rates of credit and financial institutions.

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

PART VII

PAYMENT SYSTEMS

34. Payment systems.

- (1) The Bank shall, in accordance with the Statute, oversee and regulate the operation of, and the participation in, domestic payment systems as well as any form of cash or security transactions, whether domestic or cross-border, that may be involved therein, and may itself establish and operate such a payment system.
- (2) No person shall organise, establish, operate or participate in a domestic payment system unless such system is approved and authorised by the Bank.
- (3) Any person who contravenes or fails to comply with the provisions of sub-article (2) shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding forty-five thousand euro or to imprisonment not exceeding two years, or to both such fine and imprisonment.
- (4) No proceedings for an offence under sub-article (3) shall be commenced without the consent of the Attorney General.
- (5) The Bank may issue directives in respect of:
 - (a) including, without prejudice to the generality of the aforesaid, the regulation of clearing houses, settlement agents and participants in payment systems as well as the legal enforceability of payments made through such systems and

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the collateral given in connection with the operation of such a payment system;

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

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

(6) Unless otherwise provided in the directives made in virtue of sub-article (5), payments, set-off or netting made through or within a payment system including any collateral given by a participant in connection with any such system, shall, notwithstanding any other law relating to bankruptcy or insolvency or to the regulation and enforcement of collateral or otherwise regulating the validity of such payments, set-off or netting and the giving of collateral, be final and binding on all parties thereto and may not be attacked or impugned in any court of law. To the extent specified by the Bank in directives as aforesaid, any payment order, set-off or netting made through or within a payment system by a participant and any collateral given in connection with such a system shall, notwithstanding any other law as aforesaid, not be the subject of an attachment or seizure order, nor of a warrant of prohibitory injunction issued at the request of the creditors of the participant.

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

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

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

35. Appeals.

Any person who:

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(a) is aggrieved by decisions taken by the Bank under article 34 (2) or under any directives issued under article 34 (5)(a);

(b) is a party to any disputes in respect of rights and obligations arising under any directives issued under article 34 (5)(b) and (c); or

(c) has had an administrative penalty imposed upon him pursuant to article 56(1);

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

PART VIII

RELATIONS WITH THE COMPETENT AUTHORITY

36. Information, inspection and reporting by the competent authority.

- (1) The Bank may require the competent authority to pass to it any information in the possession of or accessible to the competent authority which is necessary for the Bank in the discharge of its duties under this Act or any other Act.
- (2) The Bank may, in writing, request the competent authority to inspect, verify and file a report to the Bank on any matter which the Bank may reasonably require in the exercise of its duties under this Act or any other Act and the competent authority shall comply with such request.

37. Information to competent authority.

- (1) The Bank shall pass to the competent authority any information in the possession of or accessible to the Bank when so requested by the competent authority in the exercise of its duties under any law.
- (2) The Bank shall discuss with the competent authority matters of mutual interest resulting from information collected under article 23.

38. Confidentiality.

Any information exchanged between the Bank and the competent authority shall be subject to the duty of professional secrecy.

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PART IX

RELATIONS WITH INTERNATIONAL AND OTHER ORGANISATIONS

39. Participation in International Organisations.

In accordance with the Statute, ~~T~~the Bank may own shares and undertake other participations in international and national organisations and may further participate in international monetary agreements to the extent necessary to carry out its tasks and duties under the law and to fulfil its international obligations.

40. Banking Services.

The Bank may open accounts and provide banking services to international and other organisations outside Malta, including to their representative offices in Malta, as may be necessary to fulfil Malta's international obligations.

41. Disclosure of Information.

The Bank may, on the basis of international agreements or upon reciprocity agreements, or otherwise in order to fulfil its international obligations including in situations of instability in the financial system, disclose information in its possession to international and other bodies, authorities and, or organisations, when this is required to carry out its duties under the law or to fulfil its international obligations including in situations of instability in the financial system.

Provided that the bodies, authorities and, or institutions receiving the information are obliged to use such information solely for such purposes as may be specifically agreed upon with the Bank;

Provided further that the bodies, authorities and, or institutions to which information is disclosed are subject to obligations of professional secrecy.

PART X

CURRENCY

42. Issue of euro banknotes.

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The Bank shall provide for the circulation in Malta of euro banknotes in compliance with the guidelines and instructions of the European Central Bank.

43. Issue of euro coins.

- (1) The Bank shall provide for the circulation in Malta of euro coins. In doing so, the Bank shall act as agent for the Government.
- (2) The volume of euro coins to be issued in Malta shall be subject to prior approval by the European Central Bank.

44. Definition of currency note or coin.

For the purposes of the following provisions of this Part "currency note" or "coin" means euro banknotes or euro coins and any other note or coin, by whatever name called, which is legal tender in the country outside Malta in which it is issued.

45. Forgery and uttering of currency.

- (1) Whosoever forges any currency note or utters any forged currency note knowing the same to be forged shall be liable, on conviction, to imprisonment for a term of not less than two years and not exceeding nine years:

Provided that where a forged currency note is uttered by a person who proves that at the time at which it came into his custody or possession he did not know the same to be forged, the punishment shall be reduced to a term of imprisonment of not less than two months and not exceeding three years.

- (2) Whosoever makes use of legal facilities or materials to manufacture any currency note in violation of the rights and conditions under which such facilities or materials are to be used shall be liable, on conviction, to imprisonment for a term of not less than two years and not exceeding ten years.

46. Possession of forged notes.

Whosoever without lawful authority or lawful or reasonable excuse (the proof whereof shall lie on the person accused) purchases or receives from any person, or has in his custody or possession, a forged currency note knowing the same to be forged shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding five years.

47. Making or having in possession paper or implements for forgery.

Whosoever without lawful authority or lawful or reasonable excuse (the proof whereof shall lie on the person accused) –

- (a) makes, uses, or knowingly has in his custody or possession, any paper intended to resemble and pass as special paper such as is provided and used for the making of any currency note, or any such special paper,
- (b) makes, uses, or knowingly has in his custody or possession, any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices, peculiar to and used in or on any such paper,
- (c) engraves or in anywise makes upon any plate, wood, stone, or other material or produces in electronic or digital form, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part the words, figures, letters, marks, lines, or devices, peculiar to and used in or on any currency note,
- (d) uses or knowingly has in his custody or possession any plate, wood, stone, or other material or any other electronic or digital storage device, upon which any such words, letters, figures, marks, lines, or devices, have been engraved, produced or stored in electronic or digital form, or in anywise made as aforesaid,
- (e) uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines, devices, holograms or other components have been printed or in anywise made as aforesaid,

shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding five years.

48. Mutilation and defacement of euro banknotes.

Whosoever without lawful authority or lawful or reasonable excuse (the proof whereof shall lie on the accused person) mutilates, cuts, tears, or perforates with holes, any currency note or in any way defaces any currency note by writing, printing, drawing, or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, shall be liable, on conviction, to a fine (*multa*) not exceeding one hundred and fifteen euro.

49. Coinage offences.

- (1) Whosoever counterfeits or lightens or impairs or melts down any coin or introduces or utters any counterfeit or debased coin knowing the same to be

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counterfeit or debased shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding nine years:

Provided that where a counterfeit or debased coin is introduced or uttered by a person who proves that at the time at which it came into his custody or possession he did not know the same to be counterfeit or debased, the punishment shall be reduced to a term of imprisonment of not less than two months and not exceeding three years.

(2) Whosoever, without the authority of the Bank, makes or knowingly keeps in his possession any die or other instrument or machine exclusively intended for coinage shall, on conviction, be liable to imprisonment for a term of not less than nine months and not exceeding two years.

(3) Whosoever makes use of legal facilities or materials to manufacture coins in violation of the rights or the conditions under which such facilities or materials are to be used, shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding five years.

50. Obligation to deliver counterfeit currency notes and coins to the Bank.

- (1) Notwithstanding the provisions of any other law, a person who is in possession of any counterfeit currency note or coin shall be obliged to withdraw from circulation such currency note or coin which that person knows or has sufficient reason to believe to be counterfeit, and shall immediately deliver it over to the Bank.
- (2) Any currency note or coin which the Bank, after examination, has determined to be counterfeit may be destroyed or otherwise disposed of in such manner and under such conditions as the Bank may determine.
- (3) If, in the course of criminal proceedings, the court deems it necessary to order the destruction of counterfeit currency notes or coins, it shall consult with the Bank beforehand and shall, if and as the Bank may require, refrain from ordering their destruction and proceed to consign such currency notes or coins to the Bank for examination.

51. Reproduction of euro banknotes and euro coins.

Notwithstanding anything contained in the foregoing articles, under duly warranted circumstances the Bank may, acting in accordance with the provisions of Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes , authorise the reproduction of euro banknotes or euro coins.

52. Jurisdiction over offenders outside Malta.

A person in Malta who has committed any of the offences stipulated in articles 45 to 49 outside Malta in relation to the euro may be charged and prosecuted for those offences before the courts in Malta and shall, on conviction, be liable to the punishment stipulated under these articles as if these offences had been committed in Malta.

53. Previous convictions outside Malta.

The courts in Malta shall, when awarding punishment to an offender for any of the offences stipulated in articles 45 to 49, including the circumstances specified under article 52, and in the case where the offences relate to the euro, consider any previous convictions and, or punishment awarded by any court outside Malta for any similar offence committed by that offender.

54. Compilation of information on counterfeit euro banknotes and euro coins.

There shall be a unit within the Bank which shall have sole responsibility in Malta to analyse suspected counterfeit euro banknotes and euro coins in accordance with Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as may be subsequently amended, and to carry out any tasks or other duties consequential thereto.

55. Sanctions for medals and tokens similar to euro coins.

- (1) Whosoever, unless authorised by the Commission of the European Union, produces, sells, imports or distributes for sale or for other commercial purposes medals and tokens, other than exempted medals and tokens, similar to euro coins:
 - (a) which have the terms “euro” or “euro cent” or the euro symbol on their surface; or
 - (b) having their size inside the reference band appearing in Schedule One; or
 - (c) having on their surface any design similar to any of the national obverse designs or to the common reverse face of euro coins, or is identical or similar to the edge design of the two-euro coin,

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shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty three thousand euro, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) The following shall be exempted medals or tokens:

- (a) medals and tokens bearing the terms “euro” or “euro cent” or the euro symbol without an associated nominal value unless their size is outside the reference band;
- (b) medals and tokens whose size is inside the reference band and which:
 - (i) are pierced with a hole of over six millimetres in their centre, or when their shape is polygonal but limited to six edges, provided the condition under subarticle (3)(b) is satisfied; or
 - (ii) are made of alloys containing gold, silver and platinum with a millesimal fineness in weight of at least 375, 500 and 850 respectively; or
 - (iii) fulfil the conditions laid down in sub-article (3).

(3) The conditions referred to in subarticle (2)(b)(iii) are the following:

- (a) the combinations of diameter and edge height of medals and tokens are consistently outside the ranges defined in each of the cases specified in item 1 of Schedule One; and
- (b) the combinations of diameter and metal properties of medals and tokens are consistently outside the ranges defined in each of the cases specified in item 2 of Schedule One.

(4) In this article:

“reference band” means the set of combinations between the values for diameter and values for edge height

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included in the reference range for diameter and the reference range for edge height respectively;

“reference range for diameter” is the one between 19.00 millimetres and 28.00-millimetres; and

“reference range for edge height” is the one included between 7.00% and 12.00% of each value within the reference range for diameter.

- (5) The provisions of this article shall not apply to medals and tokens issued before the 6 December 2004.

PART XI

GENERAL

56. Administrative penalties.

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

Provided that an administrative penalty may not be greater than twenty three thousand euro;

Provided further that the Minister may not issue regulations providing for penalties and, or sanctions where regulations providing for similar penalties and, or sanctions have been adopted by the ECB under the Treaty or the Statute.

- (2) Without prejudice to the generality of the provisions of sub-article (1), the Minister may by such regulations prescribe administrative penalties only in respect of the following:

(a) where a participant in a payment system contravenes or fails to comply with a requirement contained in any directive issued under article 34;

(b) where any person contravenes or fails to comply with the provisions of article 50 to withdraw from circulation currency notes and coins and to deliver them to the Bank;

(c) upon any body corporate where the offences referred to in articles 45 to 49 are committed for their benefit by any person, acting either individually or

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as part of an organ of the body corporate, who has a senior position within the body corporate, on the basis of –

- (i) a power of representation of the body corporate, or
- (ii) an authority to take decisions on behalf of the body corporate, or
- (iii) an authority to exercise control within the legal person,

or where such person aids or acts as an accessory in the commission of such offences or the attempted commission of such offences; and

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

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57. Recovery of Administrative penalties.

- (1) Where by virtue of regulations made under article 56, the Bank imposes an administrative penalty, it shall so notify the person on whom the penalty is being imposed by means of a notice in writing.
- (2) Where an administrative penalty is imposed on a reporting agent in respect of a breach of the provisions referred to in article 56 (2) (a), such penalty shall be without prejudice to the obligation of the undertaking to meet the costs of the verification and, or, the compulsory collection procedure, as the case may be.
- (3) Where a notice imposing an administrative penalty is served on any person and:
 - (a) such person does not appeal to the Financial Services Tribunal (hereinafter in this article “the Tribunal”) in accordance with the provisions of article 35 and fails to pay to the Bank the administrative penalty within thirty days from the date of service of such notice; or
 - (b) such person appeals to the Tribunal and fails to pay to the Bank the administrative penalty as confirmed or reduced by the Tribunal within fifteen days from the date of the decision of the Tribunal;

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

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

58. Bye-laws.

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

59. Exemption from income tax and duty on documents and transfers.

The Bank shall be exempt from any liability for the payment of income tax and duty on documents and transfers under any law for the time being in force.

60. Power to issue regulations.

The Minister may, by regulations, amend the Schedules to this Act.

61. Rates.

(1) Reference in any law to the Bank's discount and, or official interest rates shall be a reference to the key interest rates of the Eurosystem.

(2) For the purpose of this article:

(a) "Eurosystem" shall mean the European Central Bank and the national central banks of the Member States whose currency is the euro; and

(b) "key interest rates" shall mean the interest rates which reflect the formulation of monetary policy by the European Central Bank.

PART XII

TRANSITIONAL PROVISIONS FOR THE MALTESE LIRA

62. Notes.

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- (1) Upon due notice being given by the Minister in the Gazette, the Bank shall have the power to call in any Maltese lira notes on payment of the equivalent of the face value thereof in euro, and any such notes shall, until ten years following the expiration of the period mentioned in the notice, but subject to the provisions of sub-article (2), be redeemable by the Bank on demand for euro currency at the conversion rate of the Maltese lira for the euro established in terms of the Treaty and without charge.
- (2) No person shall be entitled to redeem from the Bank the value of any lost, stolen, mutilated or imperfect Maltese lira note. The circumstances in which, and the conditions and limitations subject to which the value of lost, stolen, mutilated or imperfect Maltese lira notes may be redeemed as of grace shall be within the absolute discretion of the Bank.
- (3) After the expiration of one year following the end of the period mentioned in the notice calling in any notes under sub-article (1), any Maltese lira notes so called in but not presented for redemption shall cease to be included in the currency liabilities of the Bank and the value of such notes, after deducting therefrom the value of any notes which are subsequently redeemed, shall be apportioned to the profits of the Bank over the remaining period until the expiration of the ten-year period specified under the provisions of sub-article (1).
- (4) Until the expiration of the ten-year period specified under sub-article (1), the provisions of articles 45 to 50 and of article 54 shall also apply to Maltese lira notes.
- (5) For the purpose of this article, "Maltese lira notes" means the currency notes which were legal tender in Malta prior to the introduction of the euro.

63. Coins.

- (1) Upon due notice being given by the Minister in the Gazette, the Bank shall have the power to call in any of the Maltese lira coins on payment of the equivalent of the face value thereof in euro and any such coins shall, until two years following the expiration of the period mentioned in the notice, but subject to the provisions of sub-article (4) and provided that the coins have not been tampered with, be redeemable by the Bank on demand for euro currency at the conversion rate of the Maltese lira for the euro established in terms of the Treaty and without charge.
- (2) No person shall be entitled to redeem from the Bank the value of any lost, stolen, mutilated or imperfect coin. The circumstances and conditions under which such value may be redeemed as of grace shall be within the absolute discretion of the Bank.

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- (3) After the expiration of six months following the end of the period mentioned in the notice calling in any coins under sub-article (1), any Maltese lira coins so called in but not presented for redemption shall cease to be included in the coin liabilities of the Bank and the value of such coins, after deducting therefrom the value of any coins which are subsequently redeemed, shall be apportioned to the profits of the Bank over the remaining period until the expiration of the two-year period specified under the provisions of sub-article (1).
- (4) Until the expiration of the two-year period specified under sub-article (1), the provisions of articles 45 to 50 and of article 54 shall also apply to Maltese lira coins.
- (5) For the purpose of this article, “Maltese lira coins” means the coins which were legal tender in Malta prior to the introduction of the euro.

SCHEDULE ONE
(Article 55)

1. Ranges referred to in article 55(3)(a)

Defined ranges		
	Diameter (mm)	Edge height (mm)
1.	19.45 – 20.05	1.63 – 2.23
2.	21.95 – 22.55	1.84 – 2.44
3.	22.95 – 23.55	2.03 – 2.63
4.	23.95 – 24.55	2.08 – 2.68
5.	25.45 – 26.05	1.90 – 2.50

2. Ranges referred to in article 55(3)(b)

	Diameter (mm)	Metal properties
1.	19.00 – 21.94	Electrical conductivity between 14 and 18% IACS
2.	21.95 – 24.55	Electrical conductivity between: - 14 and 18% IACS; or - 4.5 and 6.5% IACS, unless the medal or token is of single alloy and its magnetic moment is outside the range from 1 to 7 μ Vs.cm
3.	24.56 – 26.05	Electrical conductivity between: - 15 and 18% IACS; or - 13 and 15% IACS, unless the medal or token is of single

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		alloy and its magnetic moment is outside the range from 1 to 7 μ Vs.cm
4.	26.06 – 28.00	Electrical conductivity between 13 and 15% IACS, unless the medal or token is of single alloy and its magnetic moment is outside the range from 1 to 7 μ Vs.cm

SCHEDULE TWO

(Article 2)

Banking Act (Cap 371)

Financial Institutions Act (Cap 376)

Investment Services Act (Cap 370)

Insurance Business Act (Cap 403)

Insurance Brokers and Other Intermediaries Act (Cap 404)

Financial Markets Act (Cap 345)