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I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XIV of 1994

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

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

PRELIMINARY

Short title and
commencement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Minister" means the Minister responsible for finance;

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

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

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

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

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

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

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

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

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

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

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

LICENSING REQUIREMENTS

Requirement of
licence for
investment
services.

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

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

Requirement of
licence for
collective
investment
schemes.

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

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

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

APPLICATION, GRANT, REVOCATION, ETC. OF LICENCES

Application for a
licence.

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

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

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

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

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

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

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

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

Power of competent authority to refuse or grant licence.

Provided that the competent authority shall not-

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

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

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

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

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

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

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

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

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

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

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

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

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

7. (1) The competent authority may at any time cancel or suspend a licence in accordance with the provisions of this Act.

Power of
competent
authority to cancel
or suspend
licences.

(2) In the case of an investment services licence, the competent authority may cancel or suspend a licence-

(a) if it considers that the holder thereof is not a fit and proper person to provide the investment service he is authorised to provide; or

(b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any rules or regulations made thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the licence is subject by virtue of or under this Act; or

(c) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading; or

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

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

(f) at the request of the licence holder.

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

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

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

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

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

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

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

8. (1) Where the competent authority proposes-

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

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

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

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

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

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

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

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

Changes in information; payment of fees.

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

Notification of new or increased control.

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

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

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

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

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

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

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

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

(4) Every notice of objection mentioned in paragraph (b) of subsection (1) of this section shall state the reasons for such objection and shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the competent authority giving reasons why the notice of objection should be withdrawn; and the competent authority shall consider any representations so made before arriving at a final decision.

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

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

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

Consent required
for advertisement
of schemes,
instruments and
services.

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

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

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

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

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

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

(a) licence holders;

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

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

REGULATORY AND INVESTIGATORY POWERS

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

Minister's power to make regulations.

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

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

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

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

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

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

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

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

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

(2) Rules or regulations made under this section may also contain provision for enabling a person who has entered, or offered to enter, into an investment agreement with the holder of a licence to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make provision-

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

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

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

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

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

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

to do all or any of the following:

- (a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such service, scheme or advertisement as aforesaid;
- (b) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify;

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

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

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

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

Cap. 9 (5) The provisions of this section shall not apply to information or documentation which is privileged in accordance with the provisions of subsection (1) of section 642 of the Criminal Code.

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

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

14. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any persons or scheme referred to in paragraphs (i) to (iv) of subsection (1) of section 13 of this Act. Appointment of inspectors.

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

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

(b) shall have and may exercise all the powers conferred on the competent authority by section 13 of this Act, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;

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

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

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

(2) Without prejudice to the generality of the foregoing provisions of this section, a directive under this section may-

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require a collective investment scheme and the manager of such a scheme, or his equivalent, and any other person who may issue, redeem, sell or purchase units in the scheme, to cease the issue, redemption, sale, or purchase of units or all or any combination of those activities, as may be specified in the directive or further directive;

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

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

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

(3) The power to give directives under this section shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this section.

16. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under section 13 of this Act or whose affairs are being investigated under section 14 of this Act, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said sections. Right of entry.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in subsection (1) of this section were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in subsection (1) of this section for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in subsection (1) of this section.

(3) For the purposes of any action taken under the provisions of this section, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order.

CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITY

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

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

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

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

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

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

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

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

(2) The competent authority shall not exercise powers by virtue of this section unless it is satisfied that the assistance is requested by the overseas regulatory authority only for the purposes of the exercise of one or more of its regulatory functions.

(3) In deciding whether to exercise its powers by virtue of this section, the competent authority shall take into account, in particular-

(a) whether corresponding assistance would be given in that country or territory to the competent authority;

(b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Malta or involves the assertion of a jurisdiction not recognised by Malta;

(c) the seriousness of the case and its importance in Malta and whether the assistance could be obtained by other means;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

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

DUTY OF AUDITORS

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

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

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

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

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

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

APPEALS, REMEDIES, SANCTIONS AND CONFIDENTIALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. An investment agreement which is entered into -

Unenforceability of
certain agreements.

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

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

shall be unenforceable against the other party; and such other party shall be entitled to recover any money paid, or other property transferred by him under the agreement, or where such property cannot be so recovered, such party shall be entitled to have it replaced by its value at the time of the agreement, together with

compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him:

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

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

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

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

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

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

(a) that there is reasonable likelihood that a person will contravene any of the provisions of sections 3, 4 or 11 of this Act or of any rules and regulations made under it, or will contravene or fail to comply with any condition, obligation, requirement, directive, or order made or given under any of the provisions of this Act; or

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

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

(2) If, on an application made under subsection (1) of this section, the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of sections 3, 4 or 11 of this Act, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on an application made under subsection (1) of this section, the court is further satisfied that -

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

(b) an investor has suffered loss or been otherwise adversely affected as a result of that contravention,

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

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

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

Offences.

22. (1) Any person who contravenes or fails to comply with any of the provisions of sections 3, 4, 9, 10, 11, 13, 15, or 26 of this Act or of section 13 as applied by section 14 or of sections 13, 14 or 15 as applied by section 17, or of any court order made under section 21 or of any rules or regulations made under sections 12 or 31 of this Act, or contravenes or fails to comply with any condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

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

(3) Any person who is knowingly a party to the carrying on of any investment service or of any activity by a collective investment scheme with a fraudulent intent or for a fraudulent purpose, shall be guilty of an offence.

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

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

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

23. A person guilty of an offence under the provisions of section 22 of this Act shall be liable on conviction to a fine (*multa*) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed under subsection (4) of section 12 of this Act. Penalties.

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

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

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

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

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

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

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

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

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

(5) Subject to the provisions of subsection (4) of section 19, upon expiry of one month from the date of service of the notice under subsection (2), or a copy of the notice under subsection (3) of this section, whichever was the later, the competent authority may publish the proposed statement and, after publication, shall send a copy to that person and to any person on whom a copy of the notice was served under subsection (3) of this section.

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

Confidentiality.

26. (1) Subject to the provisions of subsection (2) of this section, information obtained by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any rules or regulations made thereunder, or in the discharge of any functions under any of the said provisions, or from an overseas regulatory authority, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, not being a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, except with the consent of the person from whom he obtained the information, provided the information relates solely to that person.

(2) The provisions of subsection (1) of this section shall not preclude the disclosure of information -

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

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

(c) which has been made available to the public by virtue of being disclosed on any circumstances in which, or for any purpose for which, disclosure is not precluded by this section;

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

(e) to an auditor where the competent authority considers that such disclosure would assist the auditor in the exercise of his functions under section 18 of this Act;

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

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

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

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

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

MISCELLANEOUS

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

Exclusion of liability.

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

Notices, etc.

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

(a) it has been delivered to him; or

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

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

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

Application of
Exchange Control
Act.
Cap. 233

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

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

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

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

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

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

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

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

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

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

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

Minister's power to make transitional arrangements.

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

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

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

Amendments of
enactments
specified in Third
Schedule.

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

SCHEDULES**FIRST SCHEDULE**

(Section 2)

Services

1. Dealing as Principal or Agent

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

2. Arranging Deals

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

3. Management and Administration

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

4. Trustee, Custodian or Nominee Services

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

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

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

5. Investment Advice

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

- advice on the merits of their purchasing, selling, subscribing for or underwriting an instrument, or exercising any right conferred by an instrument to acquire, dispose of, underwrite or convert an instrument; or
- advice in relation to a scheme or arrangement involving an instrument.

SECOND SCHEDULE

(Section 2)

Instruments

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

(2) Subsection (1) above shall not apply to:
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a cheque or other bill of exchange, a banker's draft or a letter of credit; or
 - (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, or an insurance policy.
2. Units in a collective investment scheme.
3. Warrants, options, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire, sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument falling within this Schedule or for any currency.
4. Certificates or other instruments which confer property rights in respect of any instrument falling within this Schedule.
5. Futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes.

6. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

THIRD SCHEDULE

(Section 32)

Amendments

First Column

Second Column:

Central Bank of
Malta Act, Cap. 204

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

Malta Stock Exchange
Act, Cap. 345

- (1) Section 2 shall be amended as follows:
 - (a) by the insertion of the following definition after the definition of "quoted company" and before the definition of "related company":

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

First Column

Second Column:

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

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

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

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

- (3) In section 9, the proviso to subsection (1) shall be deleted.

- (4) Section 11 shall be amended by substituting the words "carried out by him in securities which are quoted" for the words "carried out by him outside the Exchange in securities which are not quoted".

First Column

Second Column:

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

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

