

CHAPTER 330**MALTA FINANCIAL SERVICES AUTHORITY ACT**

To establish an Authority for Financial Services from within Malta, to regulate such activities and to provide for matters ancillary or incidental thereto or connected therewith.

*Substituted by:
XIII.1994.2.
Amended by:
XVII. 2002.103.*

20th January, 1989;

30th June, 1989

ACT XXXIV of 1988, as amended by Act XV of 1989; Legal Notice 167 of 1989; Legal Notice 79 of 1990; Act XXXI of 1990; Legal Notice 183 of 1990; Acts XIII of 1994, XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004, XII of 2006 and XX of 2007; Legal Notice 424 of 2007; and Acts III of 2009 and II of 2010.

1. The short title of this Act is the Malta Financial Services Authority Act.

*Short title.
Amended by:
XIII. 1994.2;
XVII. 2002.103.*

2. In this Act unless the context otherwise requires:

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

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

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

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

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

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

"Co-Ordination Committee" means the Committee established by article 9;

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

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

"Minister" means the Minister responsible for Finance;

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

*Interpretation.
Amended by:
XV. 1989.2;
XXXI. 1990. 2;
XIII. 1994.3;
XX. 1994.4.
Substituted by:
XVII. 2002.105.
Amended by:
IV. 2003.16;
XX. 2007.3.*

Authority;

"prescribed" means prescribed under this Act;

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

Establishment of
the Authority.
Amended by:
XIII.1994.5.
Substituted by:
XVII.2002.106.

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

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

Functions of the
Authority.
Amended by:
XIII.1994.6.
Substituted by:
XVII.2002.106.
Amended by:
XX.2007.4.

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

- (a) to regulate, monitor and supervise financial services in Malta;
- (b) to promote the general interests and legitimate expectations of consumers of financial services, and to promote fair competition practices and consumer choice in financial services;
- (c) to monitor and keep under review trading and business practices relating to the supply of financial services to private and other persons, and to provide relevant information and guidance to the public;
- (d) to monitor the working and enforcement of laws that directly or indirectly affect consumer of financial services in Malta, and to undertake or commission such study, research or investigation which it may deem necessary in this regard;
- (e) to advise the Government generally on the formulation of policies in the field of financial services, and to make recommendations to Government on action which in the opinion of the Authority would be expedient in relation to matters falling within the regulatory and supervisory functions of the Authority;
- (f) to investigate allegations of practices and activities detrimental to consumers of financial services, and generally to keep under review trading practices relating to the provision of financial services and to identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers of financial services;
- (g) to ensure high standards of conduct and management throughout the financial system;

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

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

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

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

Cap. 460.

Cap. 370.

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

The Authority.
Amended by:
XV. 1989. 3;
XIII. 1994. 8.
Substituted by:
XVII. 2002. 106.
Amended by:
IV. 2003. 16.

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

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

The Board of
Governors.
Amended by:
XIII. 1994. 9.
Substituted by:
XVII. 2002. 106.
Amended by:
IV. 2003. 10.

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

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

(3) A person shall not be eligible to be appointed as Chairman

or as a member of the Board of Governors or of any other organ of the Authority, or to hold any office with the Authority, if he is the holder of a licence or other authorisation issued by the Authority or otherwise falls under the regulatory or supervisory functions of the Authority, or is a director, an officer or employee of such holder or other such person.

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

(5) The Chairman and the members of the Board of Governors shall hold office for such term, being a period of not more than five years, as may be specified in the letter of appointment, and shall be eligible for reappointment; and shall receive such remuneration as the Minister may from time to time, determine.

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

- (i) is a member of the House of Representatives; or
- (ii) is legally incapacitated or interdicted; or
- (iii) has been declared bankrupt or has made a composition or arrangement with his creditors; or
- (iv) has contravened any provision made by or under any law appearing to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice concerned in the provision of financial services or in the management of companies; or
- (v) has engaged in any business practice appearing to the Prime Minister to be deceitful or oppressive or otherwise improper (whether unlawful or otherwise) or which otherwise reflects discredit on his method of conducting business or professional activities; or
- (vi) has engaged in or been associated with any other business practice or otherwise conducted himself in such a manner as to cast doubt on his competence or soundness of judgement; or
- (vii) has a financial or other interest as is likely to prejudicially affect the discharge by him of his functions; or
- (viii) is otherwise not a fit and proper person to hold that office.

(b) In determining whether a person is a fit and proper person, the Prime Minister shall have regard to that

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

- (c) Any person whom the Prime Minister has appointed or proposes to appoint as a member of the Board of Governors shall, whenever requested by the Prime Minister to do so, furnish to him such information as the Prime Minister considers necessary for the performance of his duties under paragraphs (a) and (b).
- (d) A member of the Board may be relieved of office by the Prime Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or of misbehaviour; and for the purposes of this paragraph repeated and unjustified non-attendance of meetings may be deemed to amount to misbehaviour.
- (e) Any member of the Board of Governors, may resign his office by letter addressed to the Prime Minister.
- (f) The appointment of any person as a member of the Board of Governors and the termination of office or resignation of any such person, shall be notified in the Gazette.

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

Meetings of the Board of Governors.
Amended by: XIII.1994.10.
Substituted by: XVII.2002.106.

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

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

(4) Decisions of the Board of Governors shall be taken by a majority of votes of the members present, and the Chairman or other person chairing the meeting shall have an original vote and in the event of an equality of votes a second or casting vote.

- (5) (a) The Board of Governors shall designate one of the officers of the Authority to act as Secretary to the Board of Governors for such period and as the Board of Governors shall deem appropriate.
- (b) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board of Governors and to keep minutes of those meetings.

(6) Any participation in the proceedings of the Board of Governors by a person not entitled so to do, shall not invalidate the proceedings.

(7) Subject to the foregoing provisions of this article, the Board of Governors may regulate its own proceedings.

(8) The Board may invite any person and may require any officer or employee of the Authority to attend a meeting of the Board of Governors and to take part in the discussions.

Legal and judicial representation.
Amended by:
XIII.1994.11.
Substituted by:
XVII. 2002.106.

8. The legal and judicial representation of the Authority shall vest in the Chairman of the Board of Governors, or in such other person as the Board of Governors may determine for any specific case or class of cases:

Provided that the Board of Governors may from time to time appoint any one or more of its members, or any one or more of the officers or employees of the Authority, to appear in the name and on behalf of the Authority in any judicial proceedings or on any act, contract, instrument or other document whatsoever, or in any class or category thereof.

The Co-ordination Committee.
Amended by:
XV.1989.4;
XIII.1994.12,13.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.16.

9. (1) The Co-ordination Committee shall be responsible for co-ordinating the implementation of the policies of the Authority.

(2) The Co-ordination Committee shall consist of the Chairman of the Board of Governors, who shall preside thereat, the Director-General and the Chief Operations Officer of the Authority.

(3) The Board of Governors shall designate one of the officers from the Legal Office to act as Secretary to the Co-ordination Committee for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Co-ordination Committee and to keep minutes of those meetings.

(5) The provisions of article 7 shall, in so far as applicable, apply to the meetings of the Co-ordination Committee as they apply to the meetings of the Board of Governors.

The Supervisory Council.
Amended by:
XIII.1994.12,14.
Substituted by:
XVII. 2002.106.

10. (1) The Supervisory Council shall be responsible for the approval of and for the issuing of licences and other authorisations, for the processing of applications for such licences and authorisations, and for the monitoring and supervision of persons and other entities licensed or authorised by the Authority in the financial services sector.

(2) The Supervisory Council shall consist of the Director-General, who shall preside thereat, and of each of the Directors responsible respectively within the Authority for Banking Company Compliance, Insurance, Investment Services and for any other area of financial services under the regulatory supervision of the Authority.

(3) The Supervisory Council shall designate one of the officers of the Authority engaged in any of its functions mentioned in

subarticle (1) as its Secretary for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparation for the meetings of the Supervisory Council and to keep minutes of those meetings.

(5) The provisions of article 7 shall, insofar as applicable, apply to the meetings of the Supervisory Council as they apply to the meetings of the Board of Governors.

11. (1) The Board of Management and Resources shall be responsible for carrying out the day-to-day management and the finances of the Authority including business development and ancillary services and for the general co-ordination of the Authority's administrative affairs, and shall be composed of the persons responsible for such activities within the Authority as may be designated by the Board of Governors.

The Board of Management and Resources.
Amended by:
XV.1989.5;
XXXI.1990.3;
XIII.1994.12.
Substituted by:
XVII.2002.106.

(2) The Chief Operations Officer shall preside over the Board of Management and Resources.

(3) The Board of Management and Resources shall designate one of the officers of the Authority engaged in any of the activities mentioned in subarticle (1), to act as secretary of the Board of Management and Resources for such period and under such terms as the Board of Governors shall deem appropriate.

(4) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board and to keep minutes of those meetings.

(5) The provisions of article 7 shall, insofar as applicable, apply to the meetings of the Board of Management and Resources as they apply to the meetings of the Board of Governors.

12. The Legal Office shall provide such legal advice and assistance and other services as the Board of Governors and the other organs of the Authority may require for the execution of their functions and duties.

The Legal Office.
Amended by:
XIII.1994.12,16.
Substituted by:
XVII.2002.106.

13. (1) The Authority may appoint a Director General, a Chief Operations Officer, a Consumer Complaints Manager and such other officers and employees as it may consider necessary for the efficient discharge of its functions, powers and duties under this Act or any other law. The appointment of officers and other employees of the Authority other than the Director-General, the Chief Operations Officer and the Consumer Complaints Manager shall be made by the Co-Ordination Committee on such terms and conditions as the Board of Governors may establish.

Officers and employees of the Authority.
Amended by:
XIII.1994.17.
Substituted by:
XVII.2002.106.
Amended by:
IV.2003.16.

(2) For the purposes of the Criminal Code and of any provision of penal nature in any other law, the members of the Authority, and every officer or employee thereof, shall be deemed to be public officers.

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Dissemination of information.
Amended by:
XIII.1994.18.
Substituted by:
XVII.2002.106.

14. (1) The Authority shall arrange for the dissemination in such form and manner as it considers appropriate of such information and advice as it may consider expedient to give the public about matters relating to the exercise of its functions under this Act or any other enactment.

(2) In arranging for the publication of any such information or advice, the Authority shall have regard to the duty of professional secrecy and, as far as practicable shall refrain from publishing any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interest of that individual.

Compensation schemes.
Amended by:
XIII.1994.19.
Substituted by:
XVII.2002.106.

15. Without prejudice to any provisions of other laws, the Minister may, acting on the advice of the Authority, make regulations to establish, co-ordinate, amalgamate and otherwise regulate compensation schemes or sub-schemes or other similar arrangements in the financial services sector:

- (a) for the provision of compensation where licence holders, or categories thereof, are unable to satisfy their obligations towards depositors, investors, policy-holders or other claimants in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed or otherwise authorized, and
- (b) for the provisions of compensation arising out of or in connection with any other liability as may be prescribed, and to regulate the management and the financing of any such schemes or arrangements for compensation and the contributions and levies to be paid thereto, and such regulations may make different provision for different classes of licence holders and claimants.

Powers of the Authority.
Substituted by:
XIII.1994.20;
XVII.2002.106.
Amended by:
IV.2003.11;
XII.2006.57;
XX.2007.5;
L.N.424 of 2007;
III.2009.9.

16. (1) Without prejudice to any other function and power under this or any other law, in the exercise of its functions and powers under this Act, the Authority shall have the right to reasonable access and entry to the business premises, offices, documentation and other information relating to the activities licensed or authorised by the Authority or otherwise falling under its supervisory or regulatory functions. The directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(2) The Authority may:

- (a) issue Rules regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions and such Rules

may:

- (i) provide for the returns, statements and notices to be made or given for any purposes in regard to which the Authority exercises supervisory or regulatory functions under this or any other Act, and the form and contents thereof; and
 - (ii) prescribe the information that such persons are to submit to the Authority;
- (b) issue a directive in writing requiring a holder of a licence or other authorisation, and, or any official thereof, to do or to refrain from doing any act, including such prohibitions, restrictions and conditions as may be specified in the directive; and any such directive may be issued in respect of specific cases or classes of cases; any holder of the licence or other authorisation and, or the official to whom the notice is addressed shall obey, comply with and give effect to any such directive within the time and manner stated in the directive.

(3) Where a licence holder or the manager, secretary, director or the person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence issued by the Authority in terms of article 4 or any directives or Rules issued in terms of this article, the Authority may by notice in writing and without recourse to a court hearing impose on persons licensed or authorised by it, or falling under its regulatory or supervisory functions including managers, secretaries, directors and, or other persons, as the case may be, an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

(4) Where a notice as referred to in subarticle (3) has not been appealed, or where such notice has been appealed, within fifteen days of the determination by the Tribunal of such appeal, the administrative penalty as contained in the notice or as reduced or increased by the decision of the Tribunal shall be due to the competent authority. Upon the service of a copy of the notice of the decision, as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

(5) The right of the Authority to obtain information from a person who holds or has held a licence or other authorization, or from any of the officials or employees of such person, shall not be restricted, obstructed or precluded in any manner. Any gagging or similar confidentiality obligation or other restrictive condition arising from the legal or contractual relationship between such person and his officials or employees shall be, in so far as it is contrary to these provisions and impedes or restricts the right of the Authority to receive information required in the pursuance of its regulatory functions and duties arising under this or any other Act, null and void.

(6) In furtherance of subarticle (5), the following provisions shall apply:

- (a) any person who holds or has formerly held a license or other authorization from the Authority, and the officials and employees thereof shall, upon a written request by the Authority, promptly provide the Authority with any information that it may require as provided in subarticle (5), and may not raise any contractual gagging restriction or similar prohibition or other confidentiality obligation arising or alleged to arise under contract law or otherwise refuse to comply with such a request of the Authority;
- (b) no action for breach of contract and no disciplinary measure may be taken, directly or indirectly, by a person against any of its officials or employees for providing the Authority with any information required by the Authority as provided in subarticle (5); and any contractual or disciplinary measure contrary to this provision shall be null and void;
- (c) for the purposes of this article:
 - (i) "information" shall include explanations and other forms of assistance; and
 - (ii) "employees" and "officials" shall include former employees and officials.

Exchange of information.
Amended by:
XIII.1994.21.
Substituted by:
XVII.2002.106.
Amended by:
IV.2003.12;
XX.2007.6.

17. (1) Other than for the proper discharge of their duties or functions under this or any other Act, or as may be otherwise provided in any other law, the members of the Board of Governors or of any other organ of the Authority, and the officers and employees of the Authority shall treat any information acquired in the discharge of their duties as confidential, and shall not, directly or indirectly, disclose such information to any other person, except with the consent of the person who had divulged the information. For the purposes of this subarticle, "employees" and "officials" shall include former employees and officials.

(2) Without prejudice to the foregoing provisions of this article, the Authority may, pursuant to a written request, disclose information to:

- (a) a foreign competent authority or body carrying out similar or equivalent functions in order to assist the same in matters related to the regulation and supervision of financial services;
- (b) any other body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial or licensing function in terms of law:

Provided that the Authority shall disclose the requested information where required or requested to do so within the terms of Malta's international commitments, or where so required within the terms of understanding assumed in bilateral or multilateral agreements for the exchange of information and other forms of

collaboration with overseas regulatory authorities including a request arising under a Memorandum of Understanding concluded with the Competent Authority.

17A. (1) Where, upon information received from the Authority, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of a breach of this Act or of any other Act, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as an "attachment order") -

Attachment orders.
Added by:
XX. 2007.7.
Amended by:
L.N. 424 of 2007.

- (a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;
- (b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and
- (c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

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

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

Cap. 12.

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

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

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

(6) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents

(11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

Freezing of funds.
Added by:
XX. 2007.7.
Amended by:
L.N. 424 of 2007.

17B. (1) (a) Where a person (hereinafter referred to as "the person charged or accused") has been charged with a criminal offence, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") -

- (i) attaching in the hands of third parties all moneys and other movable property due or pertaining to the person charged or accused; and
- (ii) prohibiting the person charged or accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the Criminal Court shall in such order determine what moneys may be paid to or received by the person charged or accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the person charged or accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the Criminal Court may also -

- (i) authorise the payment of debts which are due by the person charged or accused to *bona fide* creditors and which were contracted before such order was made; and
- (ii) on good grounds authorise the person charged or accused to transfer movable or immovable property.

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

(2) A freezing order shall -

- (a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and
- (b) remain in force until the final determination of the administrative or criminal proceedings against the person charged, as the case may be.

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

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

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

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

(7) The Authority shall liaise with the Attorney General on matters arising under this article and article 17A and may exchange information, subject to the obligation of professional secrecy.

(8) Any person who acts in contravention of a court order mentioned in subarticle (1) shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87), or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

18. (1) The Central Bank of Malta and the Authority shall on request exchange information in their possession which is necessary for the discharge by the Central Bank of its duties under the Central Bank of Malta Act, and by the Authority under this Act or any other law.

Communications with the Central Bank of Malta.
Amended by:
XIII.1994.21.
Substituted by:
XVII. 2002.106.
Amended by:
XIII. 2004.69.
Cap. 204.

(2) The Authority may, subject to such conditions it may deem fit to impose and to such procedures as may be applicable according to law, disclose information to overseas central banks and other authorities responsible for monetary policy and, where appropriate to other overseas public authorities responsible for overseeing payment systems, where such information relates and is connected to their respective functions in terms of law.

19. (1) The Authority may investigate any matter which:

- (a) relates to the functions exercisable by the Authority under this Act or any law, and
- (b) is the subject of a representation (other than one appearing to the Authority to be frivolous) made to the Authority by or on behalf of a person appearing to the Authority to have an interest in that matter.

Consideration of complaints.
Amended by:
XIII.1994.21.
Substituted by:
XVII. 2002.106.

(2) Where the Authority has investigated any matter under this article, it shall prepare a report on that matter and (subject to any obligation with respect to professional secrecy) shall send a copy of

any such report to such of the following persons as it thinks appropriate, that is to say:

- (a) any person to whom the report refers or who appears to the Authority to have an interest in the matter to which the report relates;
- (b) any person whose functions under any enactment appear to the Authority to be exercisable in relation to that matter;
- (c) any person who appears to the Authority to be a person who ought to take account of the report in determining how to act in relation to that matter.

Appointment of
Consumer
Complaints
Manager.
*Substituted by:
XVII. 2002.106.
Amended by:
XX. 2007.8.*

20. (1) The Authority shall appoint a Consumer Complaints Manager.

(2) It shall be the function of the Consumer Complaints Manager to investigate complaints from private consumers arising out of or in connection with any financial services transaction, and to refer such cases as may be necessary or appropriate to the Supervisory Council for its consideration; provided that nothing in this subarticle shall be construed as giving a consumer a specific right to require the Consumer Complaints Manager to give him advice on any particular matter or to act on his behalf in any dispute with a licensed person before any court or tribunal, except to the extent, if any provided for by this or any other law.

(3) The Consumer Complaints Manager or any other duly authorised officer of the Authority may communicate to a consumer, whose complaint may have been investigated by the Authority, information concerning any matter which may have come to his cognisance in the course or as a result of the investigation.

(4) In furtherance of his functions under this article, the Consumer Complaints Manager shall, whenever the circumstances of a complaint so warrant, encourage the parties to the dispute, to reach an out-of-court settlement of the consumer dispute.

(5) The Consumer Complaints Manager shall, to the extent possible, assist and cooperate with bodies responsible for out-of-court settlement of consumer disputes in Malta and in other Member States and EEA States in the resolution of local and cross-border consumer disputes concerning financial services.

Power to make
regulations.
*Added by:
XX. 2007.10.
Amended by:
II. 2010.3.*

20A. (1) The Minister, acting on the advice of the competent authority, may make regulations to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.

(2) The Minister, acting on the advice of the competent authority, may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of

the foregoing may, by such regulations, prescribe anything that is to be or which may be prescribed and provide for any matter consequential, incidental to or connected with any of the above matters.

20B. The Minister may, acting on the advice of the Authority, make regulations to regulate distance selling arrangements in relation to financial services and the conclusion of agreements where the consumer and other purchasers and the provider of the service are at a distance from each other, and for this purpose to set out the form and procedure for concluding such distance selling agreements, to provide for the inclusion or exclusion of particular terms and conditions, to establish a cooling-off period for consumers, to lay down thresholds and exemptions, and to establish minimum consumer rights, and to introduce measures to make offers for such agreements more transparent and informative, and to regulate any other aspect of distance selling.

Distance selling arrangements.
Added by:
IV. 2003.13.
Amended by:
XX. 2007.9.

20C. (1) The Minister may, acting on the advice of the Authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 and to provide for the supplementary supervision of credit institutions, financial institutions, insurance undertakings and investment firms in a financial conglomerate, and to otherwise regulate the supervision of financial conglomerates and financial groups with crosssectoral financial activities.

Financial conglomerates.
Added by:
XIII. 2004.70.
Amended by:
XX. 2007.9.

(2) Regulations made by the Minister in virtue of subarticle (1) shall, in particular and without prejudice to the authority vested in the Minister by the said subarticle -

- (a) provide for the appointment of a co-ordinator responsible for coordination and examination of supplementary supervision, for the assessment of the financial situation of a group, including solvency requirements, risk concentration and intra-group transactions, and the means for obtaining from the entities within a financial group and from other competent authorities, the information necessary for the performance of this supplementary supervision and may provide for consultation and the sharing and exchange of information with overseas competent authorities, as may be necessary;
- (b) provide for the establishment and imposition of administrative penalties or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Financial Services Tribunal.

20D. Regulations which are required to be issued by the Minister upon the advice of the Authority or after consultation therewith under any Act in respect of which the Authority has been appointed as the competent authority, may be made in the English language only.

Language of regulations.
Added by:
XIII. 2004.70.
Amended by:
XX. 2007.9.

Financial Services
Tribunal.

Amended by:

XIII.1994.21.

Substituted by:

XVII. 2002.106.

Amended by:

IV. 2003.14;

XX. 2007.11;

L.N. 424 of 2007.

21. (1) There shall be a tribunal to be called "The Financial Services Tribunal", in this Act also referred to as "the Tribunal", which shall exercise and perform the functions and powers assigned to it by law.

(2) The Tribunal shall consist of a chairman and two other members appointed by the Minister.

(3) The chairman shall be an advocate who for a period of, or periods amounting in the aggregate to, not less than twelve years has served as an advocate in Malta or served as a magistrate in Malta, or partly so practised and partly so served.

(4) Subject to any other provision in any other law related to the composition of the Tribunal or to the qualifications of its members, the two other members mentioned of the Tribunal shall be persons who in the opinion of the Minister possess the necessary expertise and experience in the business or regulation of financial services, or finance.

(5) The chairman and the other members of the Tribunal shall hold office for a period of three years, shall be eligible for re-appointment and may not be removed during their term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(6) The chairman and other members of the Tribunal shall receive such remuneration as may be determined in their instrument of appointment.

(7) The remuneration referred to in subarticle (6) shall not be altered during the tenure of office of a member by whom it is receivable, except for such changes as may from time to time be required to preserve at all times during the tenure of the appointment the proportion of the remuneration to the salary of a judge of the superior courts, as existed on the date of the appointment.

(8) An appeal within the terms of subarticle (9) to the Tribunal shall be made in writing explaining clearly the grounds for the appeal by not later than thirty days from the date the decision or act in question has been notified to the aggrieved person, and the Tribunal shall proceed to deal with any matter before it with utmost urgency and shall give its decision without delay.

(9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant -

- (a) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or
- (b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

Provided further that no appeal shall lie from any decision

imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (232.94).

(10) The Tribunal shall hold its sittings in public unless having regard to the nature of the matter before it, the Tribunal deems it fit and proper to conduct the proceedings or any part thereof behind closed doors; in any such case the decision of the Tribunal shall always be delivered in public.

(11) The Tribunal shall have the power to summon witnesses and to administer the oath thereto, and to appoint any expert or experts as it may deem necessary for the determination of the case before it.

(12) (a) All evidence must be relevant to the matter in issue between the parties.

(b) In all cases the Tribunal shall require the best evidence that the party may be able to produce.

(c) The Tribunal shall disallow any evidence which it considers to be irrelevant or superfluous, or which it does not consider to be the best which the party can produce.

(13) Upon the hearing of an appeal, made to it under any law, the Tribunal shall have the power -

(a) to confirm, reverse or vary the decision of the competent authority under the relevant law and to give directions within its powers under this Act or any other law to the said competent authority to implement the decision of the Tribunal;

(b) to require the production of any document or other information;

(c) to order the payment of costs and expenses by any party to the appeal.

(14) An appeal on a question of law only from a decision of the Tribunal shall lie to the Court of Appeal. An appeal shall be made by not later than twenty days from the date of the decision of the Tribunal. In the determination of such an appeal, the Court of Appeal shall have all the powers of the Tribunal to make orders.

(15) The Minister may make regulations governing the procedure and fees for bringing and conducting appeals before the Tribunal, provided that in the absence of such regulations and subject to the rules of natural justice, the Tribunal shall regulate its own procedure.

(16) The Minister responsible for Justice may by regulations made under this subarticle establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals to the Court of Appeal under this article:

Provided that until such fees are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply. Cap. 12.

(17) An appeal made under this article shall not suspend the

operation of any decision or directive from which the appeal is made:

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

(18) In this article, "competent authority" refers to a competent authority appointed in terms of any law relating to financial services.

Financial provisions.
XV.1989.6;
XXXI.1990.4;
XIII.1994.21,22.
Substituted by:
XVII. 2002.106.

22. The revenue of the Authority shall consist of:

- (a) income derived in respect of licences, authorisations and registrations and other fees or charges payable under this Act or any other law in respect of which the Authority exercises registration, supervisory, regulatory or similar functions;
- (b) rents, interest and profits accruing from property, deposits and other assets of the Authority;
- (c) any other money receivable or received by the Authority.

Estimates and expenditure.
Amended by:
XV.1989.7;
XXXI. 1990.5;
XIII.1994.23.
Substituted by:
XVII. 2002.106.
Amended by:
IV. 2003.16.

23. (1) The Co-ordination Committee shall cause to be prepared in respect of each financial year and shall not later than six weeks after the end of the previous financial year prepare for adoption by the Board of Governors, within six weeks of presentation with or without amendments, estimates of the income and expenditure of the Authority for that financial year.

(2) In the preparation of such estimates the Authority shall endeavour to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its income and expenditure account, including, but, without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board of Governors may direct.

(4) Notwithstanding the provisions of subarticle (1), if in respect of any financial year, it is found that the amount approved by the Board of Governors is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Co-ordination Committee may adopt supplementary estimates for approval by the Board of Governors and, in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

24. (1) The Authority may:

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board of Governors;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

Other powers of the Authority.
Amended by:
XV. 1989.8;
XXXI. 1990.6;
XIII. 1994.21, 24.
Substituted by:
XVII. 2002.106.

(2) For the purpose of carrying out of its functions under this Act, the Authority may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such conditions as the Minister, may in writing approve.

25. The Minister may make advances to the Authority of such sums as he may consider to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may deem appropriate. Any such advances may be made by the Minister out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advances.

Advances by the Government.
Substituted by:
XIII. 1994.20.
Amended by:
XVII. 2002.106;
IV. 2003.16.

26. (1) The Authority may establish a Reserve Fund to which may be appropriated surplus funds arising from its Income and Expenditure Account provided the said fund does not exceed at any time the initial capital of the Authority.

Determination and allocation of profits.
Amended by:
XIII. 1994.21;
XVII. 2002.106;
IV. 2003.15, 16.

(2) The surplus funds of the Authority for each financial year shall be determined after the Authority meets all current expenditure for that year and after making such provisions, including provisions for contingencies, as it deems fit, and the appropriation referred to in subarticle (1).

(3) After the allocations referred to in subarticles (1) and (2) have been made, the remainder of the surplus funds shall be paid to the Government.

27. (1) The Authority shall cause to be kept proper books of accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year.

Accounts and audit.
Amended by:
XV. 1989.10;
XIII. 1994.21, 27.
Substituted by:
XVII. 2002.106.

(2) The accounts of the Authority shall be audited by auditors appointed by the Board of Governors from among persons who are qualified to be appointed as auditors of a company.

28. The Authority shall, as soon as may be but not later than three months after the close of each financial year, transmit to the House, through the Minister, a copy of its annual accounts certified by the auditors together with a report on its activities during the previous year.

Authority's reporting duties to the House.
Amended by:
XV. 1989.11;
XXXI. 1990.8;
XIII. 1994.21.
Substituted by:
XVII. 2002.106.

Exemption from liability.

Amended by:

XV.1989.12;

XXXI.1990.9;

XIII.1994.21.

Substituted by:

XVII. 2002.106.

Amended by:

IV. 2003.16.

Exemption from taxes.

Amended by:

XV.1989.13;

XIII.1994.28.

Substituted by:

XVII. 2002.106.

29. The Authority, the Board of Governors, the Co-Ordination Committee, the Supervisory Council, the Board of Management and Resources, the Legal Office and the officers and employees of the Authority shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

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