

CHAPTER 370**INVESTMENT SERVICES ACT**

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

19th September, 1994;
23rd September, 1994;
30th December, 1994;
8th July, 1995

ACT XIV of 1994 as amended by Acts: XXIV and XXV of 1995; Legal Notices 191 of 1998 and 46 of 1999; Acts XVII of 2002, IV of 2003, XIII of 2004 and XII of 2006; Legal Notice 318 of 2006; Act XX of 2007; Legal Notice 425 of 2007; and Act XVII of 2009.

PRELIMINARY

1. The short title of this Act is the Investment Services Act. Short title.

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

"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 the following characteristics:

Interpretation.
Amended by:
XVII. 2002.136;
XX. 2007.61;
XVII. 2009.3.

- (a) the scheme or arrangement operates according to the principle of risk spreading; and either
- (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 repurchased 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:

Provided that the competent authority may issue a licence with respect to a scheme or arrangement whose units are to be offered for subscription, sale or exchange to:

- (i) licence holders; or
- (ii) persons whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instrument or instruments in which the scheme or arrangement invests; or
- (iii) persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, in which the scheme or arrangement invests; or

- (iv) persons who by regulation under this Act are exempt from the requirement of an investment services licence provided that the scheme or arrangement invests in instruments or property in respect of which such persons are exempt;

Notwithstanding that such a scheme or arrangement does not have the characteristic listed in paragraph (a), and in any such case, such scheme or arrangement shall be deemed to be a collective investment scheme;

"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 article 6;

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

"competent authority" means the body appointed by the Minister in terms of article 2A, which body shall also carry out the duties as competent authority for all purposes of the Directive;

"Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"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;

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

"European investment firm" means an investment firm as defined in Article 4(1) of the Directive and as authorized by its European regulatory authority within the meaning of Article 5 of the Directive or authorized by a European regulatory authority in an EEA State;

"European regulatory authority" means the body or bodies designated by a Member State or EEA State in accordance with Article 48 of the Directive to carry out each of the duties provided for under the different provisions of the Directive;

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

"instrument" means any instrument, contract or right falling

within the Second Schedule to this Act and whether or not issued in Malta;

"investment advertisement" means any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons:

- (i) to become or offer to become participants in a collective investment scheme; or
- (ii) to subscribe for or otherwise acquire or underwrite an instrument; or
- (iii) to purchase or otherwise procure an investment service;

"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 when provided in relation to an instrument;

"investment services licence" means a licence to provide an investment service under article 6;

"Investment Services Rules" refers to Rules issued by the competent authority under various articles of this Act;

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

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

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral, multilateral, to which Malta is a party;

"Member State" means a Member State of the European Communities;

"Minister" means the Minister responsible for finance;

"overseas regulatory authority" means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;

Cap. 330.

"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 regulations made under this Act;

Cap. 386. "prospectus" has the meaning assigned to it in article 2 of the Companies Act, and the word "shares" therein shall be read as including a reference to the word "unit";

"qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of the 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC taking into account the conditions regarding the aggregation thereof laid in that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment services licence holders, European Investment Firms or credit institutions may hold as a result of providing the service of underwriting or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A to Annex 1 to the Directive, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;

Cap. 345. "regulated market" has the meaning assigned to it under the Financial Markets Act;

Cap. 386. "subsidiary" has the same meaning as that given to the term by article 2 of the Companies Act;

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

Cap. 252. "working days" shall not include Saturdays and the days referred to in the National Holidays and Other Public Holidays Act.

(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.

(3) The objective of this Act is, in part, to transpose and implement the provisions of the Directive, and consequently this Act and any regulations adopted thereunder shall be interpreted and applied accordingly.

Competent authority.
Added by:
XVII. 2002.137.

2A. The Minister shall by Order in the Gazette appoint a body to be the competent authority for the purposes of this Act to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.

LICENSING REQUIREMENTS

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.

Requirement of licence for investment services.

*Amended by:
XVII. 2002.138.*

(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.

(3) The competent authority may by notice in writing to any person determine that -

- (a) a service falls within the First Schedule when provided in relation to an instrument; or
- (b) an instrument, contract or right falls within the Second Schedule and whether or not issued in Malta;

and subject to any appeal under article 19 with respect to such person the determination by the Competent Authority unless overruled by the Tribunal shall be conclusive for all purposes of this Act.

4. (1) Subject to the provisions of subarticle (3), 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.

Requirement of licence for collective investment scheme.

(2) Subject to the provisions of subarticle (3), 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 subarticle (1) 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

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

Application for a licence.

- (a) contain or be accompanied by such information and particulars, in addition to those required by this article, 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.

Power of competent authority to refuse or grant licence.
Amended by:
XVII. 2002.139;
IV. 2003.174;
XX. 2007.62.

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

Provided that the competent authority shall not -

- (a) (i) 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 Investment Services Rules and regulations made under this Act and applicable to him;
 - (ii) grant an investment services licence:
 - (a) if the applicant is a body corporate, unless it has both its head office and registered office in Malta;
 - (b) if the applicant is a body corporate with no registered office under its national law, unless it has its head office in Malta; or
 - (c) if the applicant is not a body corporate unless the applicant's head office is in Malta;
 - (b) grant a collective investment scheme licence unless it is satisfied that the scheme will comply in all respects with any Investment Services 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;
 - (c) grant a licence to an applicant unless the relevant European regulatory authorities have been consulted in the instances referred to in article 17C.
- (2) (a) 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.
- (b) For the better carrying out of the provisions of this Act, the competent authority may, from time to time,

issue and publish Investment Service Rules which shall be binding on licence holders and others as may be specified therein. Such Investment Service Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the competent authority may consider appropriate.

(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 investors and the general public;
- (b) the protection of the reputation of Malta taking into account Malta's international commitments;
- (c) the promotion of competition and choice; 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 subarticle (2), 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) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the competent authority shall inform an applicant of its decision whether or not to grant a licence.

(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 qualifying shareholder or members, 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) (a) Where close links exist between an applicant and any other person the competent authority shall:

- (i) only grant a licence if it considers that such

close links do not prevent it from exercising effectively its supervisory functions; and

- (ii) refuse to grant such a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The competent authority may from time to time, by means of Investment Service Rules under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(9) The competent authority shall establish a register of all holders of an investment services licence. This register, which shall be publicly available, shall also indicate the services in relation to which each investment services licence was issued and shall be updated on a regular basis.

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

(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 Investment Services 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 investors and the general public, and the reputation of Malta taking into account Malta's international commitments; or
- (f) at the request of the licence holder;
- (g) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse the grant of such licence;

Power of competent authority to cancel or suspend licences.
Amended by:
XVII. 2002.140;
XX. 2007.63.

and

- (h) if the licence holder thereof has obtained the licence by making false statements or by any other irregular means.

(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 Investment Services 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 investors and the general public and the reputation of Malta taking into account Malta's international commitments; 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.
Amended by: XVII. 2002.141.

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 subarticle (1) 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 as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under subarticle (1).

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

Changes in
information;
payment of fees.
Amended by:
XVII. 2002.142.

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 and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning in article 6.

(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.

Persons providing
administrative
services.
Added by:
XVII. 2002.143.
Amended by:
XX. 2007.62;
XVII. 2009.4.

9A. (1) Any person who in Malta or from Malta provides to licence holders in Malta, or to equivalent authorised persons and schemes overseas, administrative services which do not themselves constitute licensable activity under this Act, shall be required to apply for recognition by the competent authority under this article, and no person shall provide such services unless he is so recognised.

(2) The competent authority may from time to time, issue Investment Service Rules laying down the requirements and conditions for granting recognition, providing for the refusal of recognition and for the variation, cancellation and supervision of recognition and generally regulating the provision of such administrative services. Such Investment Service Rules may in particular include provision for the following matters:

- (i) establishing which activities constitute administrative services for the purposes of this article;
- (ii) the form and the content of applications to the competent authority for recognition;
- (iii) the application, annual and other fees payable in respect of recognition;
- (iv) the obligation to supply documentation and other information to the competent authority;
- (v) measures to allow the competent authority to ensure compliance by recognised administrators with this Act and Investment Service Rules issued thereunder;
- (vi) arrangements for the exchange of information with other regulatory bodies both in Malta and overseas;
- (vii) providing for the mutual recognition of persons

recognised as fit to provide such services outside Malta;

- (viii) to provide for the imposition of administrative penalties up to a maximum of forty-five thousand euro (€45,000) or for other administrative sanctions in case of any breach of the provisions of this article or of the applicable Investment Services Rules or of any of the conditions attached to a recognition certificate, where any;
- (ix) generally any other matter ancillary or connected with the above.

(3) Where the competent authority refuses, varies, cancels or suspends a recognition issued in terms of this article or imposes an administrative penalty in terms of the applicable Investment Services Rules, an appeal shall lie to the Financial Services Tribunal and the provisions of article 19(3) shall apply to such appeal.

10. (1) Notwithstanding anything contained in in an any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed licence acquirer") who have taken a decision either to -

- (a) acquire, directly or indirectly, a qualifying shareholding in an investment services licence holder;
- (b) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an investment services licence holder; or
- (c) further increase, directly or indirectly, such qualifying shareholding in a credit in an investment services licence holder as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the investment services licence holder would become its subsidiary,

(hereinafter referred to in this Act as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by Investment Services Rules require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a fit and proper person.

(2) Notwithstanding anything contained in any other law, any person who has taken a decision either to -

- (a) dispose, directly or indirectly, of a qualifying shareholding in an investment services licence holder;
- (b) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a

Participation in an investment services licence holder.

*Amended by:
XVII. 2002.144.
Substituted by:
XVII. 2009.5.*

qualifying shareholding; or

- (c) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the investment services licence holder would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may, by Investment Services Rules require.

(3) Subarticles (1) and (2) shall apply irrespective of whether or not any of the relevant shares listed on a regulated market within the meaning of the Financial Markets Act or on an equivalent market which is not situated in a Member State or an EEA State.

(4) It shall be the duty of an investment services licence holder to notify the competent authority forthwith upon becoming aware that any person has taken any action set out in subarticles (1) or (2).

(5) If any person or any investment services licence holder takes or decides to take any action set out in subarticles (1) or (2) without notifying the competent authority or obtaining its approval in terms of article 10A, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

- (a) restraining such person or investment services licence holder from taking, or continuing with, such action;
- (b) declaring such action to be void and of no effect;
- (c) requiring such person or investment services licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired; or
- (e) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in subarticles (1) and (2).

(6) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an investment services licence holder, the competent authority may issue a notice of objection and exercise any of the powers assigned to it under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable and appropriate in the

circumstances.

(7) A copy of any notice served on the person concerned in terms of subarticle (6) shall be served on the company to whose shares it relates.

(8) The competent authority, may, by means of Investment Services Rules issued under this Act, indicate the circumstances when persons are to be regarded as "acting in concert".

10A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under article 10(1), as well as following the possible subsequent receipt of the information referred to in subarticle (4), acknowledge receipt thereof in writing to the proposed acquirer.

Assessment
procedure.
Added by:
XVII. 2009.6.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under article 10(1) and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out an assessment on the basis of such information as may be determined by Investment Services Rules issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the assessment period and no later than the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption referred to in subarticle (5) up to thirty working days if the proposed acquirer is:

- (a) situated or regulated in countries that are not Member States or EEA States; or
- (b) a person not subject to supervision under:
 - (i) the Directive;
 - (ii) Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

- (iii) Council Directive 92/49/EEC of 18 June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);
- (iv) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;
- (v) Directive 2005/68/EC of the European Parliament and Council of 16 November, 2005 on reinsurance amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; or
- (vi) Directive 2006/48/EC of the European Parliament and of the Council of 14 June, 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

(7) The competent authority shall, upon completion of the assessment referred to in subarticle (2) and not later than the date of the expiry of the assessment period, issue a notice:

- (a) granting unconditional approval to the proposed acquisition;
- (b) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or
- (c) refusing the proposed acquisition.

(8) In making the assessment referred to in subarticle (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Investment Services Rules referred to in article 10(1) or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to the provisions of article 22, where a qualifying shareholding in an investment services licence holder is acquired notwithstanding the refusal of the competent authority, the

exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this subarticle shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of subarticles (1) to (6), where two or more proposals to acquire or increase qualifying shareholdings in the same investment services licence holder have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

10B. (1) The competent authority shall work in full consultation with European regulatory authority or overseas regulatory authorities when carrying out the assessment referred to in article 10A(2) if the proposed acquirer is one of the following:

- (a) a credit institution, an assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;
- (c) a person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in article 10A(2) to the European regulatory authority or overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the European regulatory authority or overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 10A shall indicate any views or reservations expressed by the European regulatory authority or overseas regulatory authority responsible for the proposed acquirer.

Co-operation with European regulatory authorities and overseas regulatory authorities in case of acquisitions.
Added by:
XVII. 2009.7.

Mergers,
reconstructions,
divisions and
changes in share
capital or voting
rights.

Added by:
XVII. 2009.8.

10C. (1) Notwithstanding anything contained in any other law, and without prejudice to article 10(1) and (2), the consent of the competent authority given in writing shall be required before an investment services licence holder may lawfully:

- (a) sell or dispose of its business or any significant part thereof;
- (b) merge with any other company, whether licensed under this Act or not;
- (c) undergo any reconstruction or division; or
- (d) increase or reduce its nominal or issued share capital or effect any material change in voting rights.

(2) It shall be the duty of all directors and qualifying shareholders of an investment services licence holder to notify the competent authority forthwith in writing, upon becoming aware that such investment services licence holder intends to take any of the actions set out in subarticle (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice -

- (a) granting unconditional consent to the taking of the action;
- (b) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or
- (c) refusing consent to the taking of the action,

and if it refuses to grant consent, it shall inform the person or the investment services licence holder concerned in writing for the reason for its refusal.

(4) If any person or any investment services licence holder takes or decides to take any action set out in subarticle (1) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

- (a) restraining such person or investment services licence holder from taking, or continuing with, such action;
- (b) declaring such action to be void and of no effect;
- (c) requiring such person or investment service licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

- (e) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in subarticle (1).

11.(1)(a) No collective investment scheme, whether licensed or not, shall issue or cause to be issued a prospectus in or from within Malta unless the prospectus has been approved by the *Competent Authority*.

Prospectus and investment advertisements.
Substituted by:
XVII. 2002.145.
Amended by:
XX. 2007.62.

- (b) No person, other than licence holders, may issue or cause to be issued an investment advertisement in or from within Malta unless its contents have been approved by a licence holder.

(2) The competent authority may, from time to time, issue such Investment Service Rules or directives to licence holders as it may consider appropriate in order to set minimum standards and requirements which are to be observed by licence holders when issuing or approving investment advertisements or issuing a prospectus in accordance with subarticle (1). Such Investment Service Rules or directives may also include provision for such exemptions or conditions as may be specified therein and may make different provision for different cases or classes of cases, under such terms and conditions as may be prescribed.

(3) The competent authority may impose such conditions, limitations and restrictions on a licence holder with respect to the issue or approval of investment advertisements, as it may consider appropriate.

REGULATORY AND INVESTIGATORY POWERS

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

Minister's power to make regulations.
Amended by:
XXV.1995.432;
XVII. 2002.146;
IV. 2003.175;
XIII. 2004.79;
XII. 2006.62;
XX. 2007.64;
L.N. 425 of 2007.

- (a) amend the definition of "collective investment scheme" contained in article 2, as well as the definition of "investment service" contained in article 2 and the First and Second Schedules;
- (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, the imposition of duties and obligations on the holders of a licence or persons responsible for the management or administration thereof and the regulation of any fees and, or any other charges imposed directly or indirectly on investors; provide for the safekeeping and custody of the property of collective investment schemes and for the requirement to appoint a custodian, and prescribe and regulate in the most extensive manner the functions, duties, responsibilities

and obligations of the custodian; establish the qualifications and other eligibility criteria necessary to act as custodian, including residence qualifications; provide for the protection of the property of the schemes in the event of the insolvency of the custodian, and for the purpose of this paragraph "custodian" shall include a sub-custodian; require the keeping of records with respect to the transactions and financial position of collective investment schemes and for the inspection of those records, and prescribe reporting and disclosure requirements, including the preparation of periodical reports with respect to the schemes and the furnishing of those reports to the shareholders, unit-holders or other participants in the said schemes, and to others; and provide for the regulation of the free circulation of units of collective investment schemes and to regulate the management companies of such schemes;

- (c) establish schemes or other arrangements for the compensation of investors in cases where licence holders or any categories thereof as may be specified, are unable to satisfy their obligations towards investors or claims in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed, and to regulate the management and the financing of any such schemes or arrangements and, the contributions and levies to be paid thereto, to set the minimum and maximum levels of compensation payable thereunder and may under such schemes and arrangements distinguish between different classes of investors and, exclude certain classes from compensation, and to make provision for the regulation of and for other aspect related to such schemes or arrangements and may moreover provide that such schemes or arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the competent authority and provide for the judicial and legal representation thereof; and such schemes shall be exempt from the payment of income tax as from the date of establishment of such schemes;
- (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 article 11 of this Act;
- (f) amend the provisions of article 18 on the

circumstances in which auditors are obliged to communicate information to the competent authority, to prescribe regulations governing the disclosure by auditors of information pursuant to article 18 and to establish supervisory and disciplinary procedures for auditors in respect of their duties under the provisions of article 18;

- (g) regulate the drawing-up, approval, publication and distribution in Malta of prospectuses relating to the offer of transferable securities authorised or otherwise approved, in a country or countries outside Malta and to make provision for the recognition of such prospectuses taking into account Malta's international commitments;
- (h) provide for and regulate the payment by any person, body or scheme, as the case may be, of licence or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;
- (i) exempt any person, service, instrument, collective investment scheme, or advertisement from any one or more of the provisions of this Act subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;
- (j) transpose the requirements of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as may be applicable to a licence holder, as amended from time to time, and including any implementing measures issued thereunder;
- (k) transpose, implement and give effect to the provisions and requirements of the Directive;
- (l) establish financial resources requirements for licence holders and to transpose, implement and give effect to the provisions of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), as may be amended from time to time, and including any implementing measures issued thereunder;
- (m) provide for reporting and other requirements and conditions which a person operating a multilateral trading facility must satisfy, on a continuing and ongoing basis and to establish the circumstances and the manner in which requirements and conditions may

be varied, suspended or revoked, and to transpose the requirements of the Directive thereon;

- (n) prescribe anything that is to be or which may be prescribed;
- (o) provide for any matter incidental to or connected with any of the above.

(2) (A) Regulations made under this article 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 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.

(2) (B) Regulations made under this article may make provision for the constitution of common funds for investment purposes in the form of a collective investment scheme by contract or other arrangement in writing and may exempt such funds from the application of any article or provision of the Civil Code under Title V of Part I of Book Second with such modifications and variations as may be established.

Cap. 16.

(3) Regulations made under this article, 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 regulations as may also be so specified.

(4) Where regulations have been issued in terms of this article, the competent authority may issue Investment Services Rules within the meaning of article 6 of this Act for the better carrying out and to better implement the provisions of the regulations.

(5) Regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94) or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

(6) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

Power of competent authority to require information.
Amended by:
XVII. 2002.147;
XX. 2007.65.

13. (1) The competent authority may, by notice in writing, 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 article 11(1); 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, including the power to require existing telephone and existing data traffic records, with respect to any such service, scheme or advertisement as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 6;
- (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 article.

(3) Where the person required to provide information or documentation under this article 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 article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

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

Cap. 9.

(6) The power to require the production of documentation under the provisions of this article 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 subarticle (1)(c), such person shall, for the purposes of

carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

(8) Without prejudice to the other provisions of this article, a licence holder may be required to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act.

Cap. 204.

Appointment of
inspectors.
Amended by:
XX. 2007.66.

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 article 13(1)(i) to (iv).

(2) An inspector appointed under subarticle (1) -

(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 subarticle (1);

(b) shall have and may exercise all the powers conferred on the competent authority by article 13, 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 article be paid by the persons or scheme concerned.

(4) For the purposes of this article inspectors may include an advocate, a person authorised to carry on the profession of accountant or auditor in terms of the Accountancy Profession Act, or a person considered by the competent authority as possessing suitable expertise to exercise such function.

Cap. 281.

Power to issue
directives.
Amended by:
XVII. 2002.148;
XX. 2007.67.

15. (1) Without prejudice to any of the powers conferred on it by articles 13 and 14, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under article 14 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 article 13(1) 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.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article 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 or any person who is or was providing, or who appears to be or to have been providing an investment service 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 or such other person;
- (f) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive;
- (g) require the removal of a financial instrument from trading, on trading arrangements within the meaning of the Directive, other than on regulated markets in terms of the Financial Markets Act.

Cap. 345.

(3) The power to give directives under this article 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 article.

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 article 13 or whose affairs are being investigated under article 14, 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 articles.

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 subarticle (1) 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 subarticle (1) 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 subarticle (1).

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

Administrative penalties and other measures.
Added by:
XX. 2007.68.
Amended by:
L.N. 425 of 2007.

16A. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or the manager, secretary, director or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence, and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or Investment Services Rules issued thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without recourse to a court hearing impose on the licence holder, manager, secretary, director, and, or any other person 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).

(2) Investment Services Rules may provide for the imposition of administrative penalties or other measures that may be imposed by the competent authority on licence holders or others, as may be specified, whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the Rules.

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

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

(4) Upon the conclusion of any appeal proceedings in terms of article 19, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or Investment Services Rules issued thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public

disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

16B. Any decision taken under this Act by the competent authority in terms of any provisions which transpose the Directive, including any regulations, Investment Services Rules, or administrative provisions made thereunder for the said transposition, shall state the grounds on which such a decision has been based.

Obligation to state grounds for decisions.
Added by:
XX. 2007.68.

CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES
AND OTHER BODIES

Substituted by:
XX. 2007.69.

17. (1) The competent authority shall act as the contact point in terms of and for the purposes of subarticle (1) of article 56 of the Directive.

Powers exercisable.
Amended by:
XVII. 2002.149;
XX. 2007.70.

(2) The competent authority shall cooperate with other European regulatory authorities whenever necessary for the purpose of carrying out its duties under the Directive. It shall render the necessary assistance to other European regulatory authorities, in particular by exchanging information and cooperating in any investigatory or supervisory function. In terms of the Directive, the competent authority may use its powers for the purposes of cooperation even in cases where the conduct under investigation does not constitute an infringement of any provisions of this Act, regulations or Investment Services Rules issued thereunder.

(3) Upon receipt of a request from European regulatory authorities designated as contact points within the individual Member States or EEA States under subarticle (1) of Article 56 of the Directive, the competent authority shall immediately take the necessary measures in order to gather the information required for the carrying out of its duties pursuant to the Directive. If the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.

(4) At the time of communicating information to the European regulatory authorities, whether designated as contact points or not, the competent authority may stipulate that the information must not be disclosed without its express agreement, in which case such information may be exchanged solely for the purposes for which the competent authority had given its agreement.

(5) Where a European regulatory authority exchanging information with the competent authority stipulates at the time of communication of the information that such information must not be disclosed without its express agreement, such information may be used by the competent authority solely for the purposes for which the European regulatory authority would have given its agreement.

(6) Information received by the competent authority from contact points in the other Member States or EEA States may be transmitted to other bodies or natural or legal persons, provided

that:

- (a) the express agreement of the contact points which disclosed the information is obtained; and
- (b) the information is used solely for the purposes for which the contact points gave their agreement:

Provided that in duly justified circumstances the competent authority can transmit information to other bodies or natural or legal persons without satisfying the conditions in paragraphs (a) and (b), in which case the competent authority shall immediately inform the contact point that sent the information.

(7) Where the competent authority receives confidential information from contact points in the other Member States or EEA States or from overseas regulatory authorities or auditors under articles 17D and 18, or when other bodies or natural or legal persons receive confidential information from the competent authority, they may only use such confidential information in the course of their duties, in particular:

- (a) to check that the conditions governing the taking-up of the business of investment services licence holders are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the financial resources requirements;
- (b) to monitor the proper functioning of trading venues within the meaning of the Directive;
- (c) to impose penalties or adopt other administrative measures and to consider representations received in their regard;
- (d) in appeals under article 19; or
- (e) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act.

Cap. 330.

(8) Without prejudice to the powers of the competent authority under this Act or any other law, where the competent authority has good reason to suspect that acts contrary to the provisions of the Directive are being or have been carried out on the territory of another Member State or EEA State by entities not subject to its supervision, it shall notify this in as specific a manner as possible to the contact point in the other Member State or EEA State.

(9) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to a European regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(10) Where a European regulatory authority suspects that acts carried out by entities not subject to its supervision and which are

contrary to the provisions of the Directive are being or have been carried out in Malta and notifies the competent authority to this effect, the competent authority shall take appropriate action. The competent authority shall inform the notifying European regulatory authority of the outcome of any such action and, to the extent possible, of significant interim developments:

Provided that any such action taken by the competent authority shall be without prejudice to the powers and functions of the European regulatory authority that has forwarded the information.

(11) Without prejudice to the foregoing provisions of this article, the competent authority may exercise the following powers at the request of or for the purpose of assisting a European regulatory authority:

- (a) the power to impose, revoke or vary conditions on the grant of a licence pursuant to the provisions of article 6(2);
- (b) the power to cancel or suspend a licence under article 7(1);
- (c) the powers of inquiry under article 13;
- (d) the power to appoint inspectors under article 14;
- (e) the powers of intervention under article 15;
- (f) the powers of entry under article 16;
- (g) the power to communicate to the European 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.

17A. (1) The competent authority may request the cooperation of a European regulatory authority in carrying out its supervisory functions or for an on-site verification or in an investigation:

Provided that in the case of a person holding a licence or other equivalent authorisation from a European Regulatory Authority and who is a remote member within the meaning of the Directive of a regulated market authorised in terms of the Financial Markets Act, the competent authority may communicate with such person directly, in which case the competent authority shall inform the contact point of the home Member State of such person accordingly.

(2) A European regulatory authority may request the cooperation of the competent authority in carrying out its supervisory functions or for an on-site verification or in an investigation, in which case the competent authority shall, within the framework of its powers:

- (a) carry out the verifications or the investigation itself; or
- (b) allow the requesting authority to carry out the verification or investigation; or
- (c) allow inspectors or experts within the meaning of

Co-operation in supervisory functions, on-site verifications or investigations.
Added by:
XX. 2007.71.

Cap. 345.

article 14 to carry out the verification or investigation.

Refusal to co-operate.
Added by:
XX. 2007.71.

17B. The competent authority may refuse to act on a request for cooperation in carrying out an investigation, onsite verification or supervisory function under article 17A of this Act or to exchange information with European regulatory authorities designated as contact points under subarticle (1) of article 56 of the Directive only where:

- (a) such an investigation, on-site verification, supervisory function or exchange of information might adversely affect the sovereignty, security or public policy of Malta;
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of Malta; or
- (c) a final judgment has already been delivered in relation to such persons for the same actions in Malta:

In any case above-mentioned, the competent authority shall notify the requesting European regulatory authority accordingly, providing as much detailed information as possible for such refusal.

Inter-authority consultation prior to granting of a licence.
Added by:
XX. 2007.71.

17C. (1) Prior to granting a licence to an applicant which is -

- (a) a subsidiary of a person holding an investment services licence or an equivalent authorisation or of a credit institution authorised in another Member State or EEA State; or
- (b) a subsidiary of the parent undertaking of a person holding an investment services licence or an equivalent authorisation or of a credit institution authorised in another Member State or EEA State; or
- (c) controlled by the same natural or legal persons which control a holder of an investment services licence or the holder of an equivalent authorisation or a credit institution authorised in another Member State or EEA State,

the competent authority shall consult with the relevant European regulatory authorities.

(2) Prior to granting a licence to an applicant which is -

- (a) a subsidiary of a credit institution or insurance undertaking authorised in another Member State or EEA State; or
- (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in another Member State or EEA State; or
- (c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in another Member State or EEA State,

the competent authority shall consult with the European regulatory authority responsible for the supervision of credit institutions or insurance undertakings.

(3) Consultation between the competent authority and the European regulatory authorities shall in particular take place when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. The competent authority shall exchange all information that is of relevance to the other European regulatory authorities involved regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business, both for the granting of a licence as well as for the ongoing assessment of compliance with operating conditions.

CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITIES
AND OTHER BODIES

*Added by:
XX. 2007.72.*

17D. (1) Co-operation agreements with overseas regulatory authorities or other authorities, bodies and natural or legal persons in countries that are not Member States or EEA States may be entered into only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under article 26. Such exchange of information must be intended for the performance of the functions of those overseas regulatory authorities or other authorities, bodies and natural or legal persons:

*Co-operation with
overseas regulatory
authorities.
Added by:
XX. 2007.72.*

Provided that the transfer of personal data to countries that are not Member States or EEA States shall be in accordance with the provisions of Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) The competent authority may conclude cooperation agreements providing for the exchange of information with overseas regulatory authorities, other authorities or with bodies and natural or legal persons in countries that are not Member States or EEA States responsible for:

- (i) the supervision of credit institutions, other financial organisations, persons holding a licence, insurance undertakings and the supervision of financial markets;
- (ii) the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;
- (iii) carrying out statutory audits of the accounts of persons holding a licence or an equivalent authorisation and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

- (iv) overseeing the bodies involved in the liquidation and bankruptcy of persons holding a licence or an equivalent authorisation and other similar procedures;
- (v) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, persons holding a licence or an equivalent authorisation, credit institutions and other financial institutions.

(3) Where the information in the possession of the competent authority had originated from a European regulatory authority or an overseas regulatory authority, it may not be disclosed to an overseas regulatory authority or to any other third party without the express agreement of the European regulatory authority or the overseas regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

(4) Without prejudice to the foregoing provisions of this article, at the request of, or for the purposes of assisting an overseas regulatory authority, the competent authority may exercise the powers listed in article 17(11), and for the purposes of this sub-article the words "European regulatory authority" shall be read as "overseas regulatory authority".

DUTY OF AUDITORS

Auditor's duty to report.
Amended by:
XVII. 2002.150.

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

- (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) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the licence holders in or under this Act; or
- (c) gravely impairs the licence holder's ability to continue as a going concern; or
- (d) relates to any other matter which may be prescribed.

(2) An auditor of the licence holder shall report to the competent authority any facts or decision as specified in subarticle (1) of any person having close links with such licence holder within the meaning in article 6, of which he becomes aware in his capacity as auditor of the licence holder or of the person having such close links.

(3) 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 subarticle (1).

(4) The matters prescribed for the purposes of subarticle (1)(d) may include matters related to persons other than the licence holder.

APPEALS, REMEDIES, SANCTIONS AND CONFIDENTIALITY

19. (1) In this article the Financial Services Tribunal means the Tribunal established under article 21 of the Malta Financial Services Authority Act.

Appeals.
Amended by:
XVII. 2002.151;
XII. 2006.63;
XX. 2007.73;
XVII. 2009.9.
Cap. 330.

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

- (a) any notice in terms of article 3(3);
- (b) any failure to inform an applicant within the terms of article 6(6);
- (c) any administrative penalty imposed under article 16A;
- (d) any refusal, variation, cancellation or suspension of a licence under article 8(3);
- (e) any notice issued or any order made in terms of articles 10, 10A and 10C;
- (f) any decision concerning an advertisement under article 11;
- (g) any punishment or penalty imposed under article 12(5); or
- (h) any directive given under article 15.

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

Cap. 330.

20. An investment agreement which is entered into -

- (a) by a person in the course of providing an investment service in contravention of the provisions of article 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 article 3,

Unenforceability
of certain
agreements.

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 article, the court is satisfied that -

- (i) in a case falling under paragraph (a), the person therein mentioned reasonably believed he was not contravening the provisions of the said article 3; or
- (ii) in a case falling under paragraph (b), 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 article 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. Amended by: XXIV.1995.362; XX. 2007.74.

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

- (a) that there is reasonable likelihood that a person will contravene any of the provisions of articles 3, 4 or 11 or of any Investment Services Rules and regulations made under it, or will contravene or fail to comply with any condition, obligation, requirement, Investment Services Rules, 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, Investment Services Rules, 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), 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 subarticle (1), the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of articles 3, 4 or 11, 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 subarticle (1), 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 article 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 article 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.

22. (1) Any person who contravenes or fails to comply with any of the provisions of articles 3, 4, 9, 10, 11, 13, 15 or 26 or of article 13 as applied by article 14, or of articles 13, 14 or 15 as applied by articles 17 and 17D, or of any court order made under article 21 or of any regulations made under articles 12 or 31, 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.

Offences.
Amended by:
XX. 2007.75.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any 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 article 22 shall be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68) or to a

Penalties.
Amended by:
XX. 2007.76;
L.N. 425 of 2007.

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 article 12(5).

Criminal proceedings.

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

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

Public statement as to person's misconduct.
Amended by:
XII. 2006.64;
XX. 2007.77.

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

(2) Nothing in this article shall restrict or otherwise prejudice the powers of the competent authority under article 15(4).

Confidentiality.
Amended by:
XVII. 2002.152.
Substituted by:
IV. 2003.176;
XII. 2006.65.
Amended by:
XX. 2007.78.

26. (1) Information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any Investment Services Rules or regulations made thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

- (a) where the disclosure is required for the detection, prevention or prosecution of criminal offences under the criminal provisions of this Act or any other Act;
- (b) where the information is disclosed with a view to the institution of, or otherwise for the purposes of any proceedings by the competent authority before any court under this Act;
- (c) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or dissolution and consequential winding up by the Court of a licence holder, provided such information does not concern third parties and is necessary for the carrying out of the proceedings, or is disclosed to an overseas body responsible for the liquidation and bankruptcy of a person holding a licence or an equivalent authorisation from a European regulatory authority or an overseas regulatory authority;
- (d) where a summary or collection of the information is prepared or supplied in such a way as not to enable the identity of any persons to whom the information relates to be ascertained;
- (e) where the information is disclosed to an auditor where such disclosure would assist him in the exercise of his functions under article 18;

- (f) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in the exercise of their respective functions in terms of law; and Cap. 345.
- (g) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities in the pursuance of serious concerns of a regulatory or criminal nature:

Provided that this article shall not prevent the competent authority from exchanging or transmitting confidential information in accordance with the Directive and with other Directives of the European Community applicable to licence holders, credit institutions, pension funds, UCITS, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators:

Provided further that this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.

(2) Without prejudice to the cases covered by criminal law, any confidential information received by bodies or natural or legal persons within the meaning of Article 58 of the Directive shall only be used in the performance of their duties and for the exercise of their functions. In addition, such information is to be used specifically for the purpose for which such information was provided to them and, or in the context of administrative or judicial proceedings specifically related to the exercise of those functions:

Provided that where a body or person communicating information to the competent authority consents thereto, such information may be used by the competent authority for other purposes.

(3) The provisions of this article and of articles 17 and 17D of this Act shall not preclude the competent authority from transmitting to the Central Bank of Malta, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their functions.

MISCELLANEOUS

27. The competent authority and any member, officer or employee of the competent authority, and any other person appointed to perform a function under this Act, or under any Investment Services Rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any Investment Services Rules or regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith.

Exclusion of liability.
Amended by:
XXV.1995.432;
XX. 2007.79.

Notices, etc.
Amended by:
XX. 2007.80.

28. A notice or other document to be given or served under this Act, or any Investment Services 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.

29. (*Deleted by: XX. 2007.81.*)

Social security and
import duty
exemptions in
respect of licence
holders and
expatriate staff.
Cap. 318.

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 subarticle (1), 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 sub-article 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 article, "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. (1) A body corporate, formed, incorporated or registered in a country outside Malta (hereinafter referred to as "foreign body corporate"), and carrying on the business of a collective investment scheme, which is similar in nature to a body corporate as known under the laws of Malta (hereinafter referred to as "local body corporate"), and which would, if it were such a local body corporate qualify to be authorised or recognised as a collective investment scheme under this Act, may, subject to the specific approval and authorisation of the competent authority, be continued as a collective investment scheme under this Act and under the applicable laws of Malta.

Continuance of
foreign body
corporate.
*Substituted by:
XVII. 2002.153.*

(2) The continuance of a foreign body corporate shall not take place unless such continuance (or similar process, including conversion) is permitted by the applicable laws of the foreign jurisdiction and is in accordance with such provisions thereof as may bring about such continuance (or similar process).

(3) Continuance may only take place if it is allowed by the statute or equivalent instrument of the foreign body corporate to so continue, and if it is approved in accordance with the procedure, if any, established therein or in the applicable law of the foreign jurisdiction for this purpose.

(4) The continuance of a foreign body corporate as a local body corporate shall be effected by an instrument of continuance containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles or equivalent constitutive document as may be required by this Act or other applicable laws of Malta for the registration of such body corporate in accordance with the type of local body corporate in which it is to be continued, and showing on the face of it that the continuance has been approved as provided in this article.

(5) The delivery of the instrument of continuance to the Registrar of Companies shall, for all purposes of the laws of Malta, be equivalent to the delivery of a deed of partnership or of a memorandum and articles of a company, as the case may be, as if it were a local body corporate to be registered under this Act; and the Registrar shall treat it accordingly.

(6) Upon the delivery of the instrument of continuance and its registration under this Act the body corporate shall cease to be a body corporate under the jurisdiction of its previous registration and shall continue its corporate existence under the laws of Malta, and shall retain all its assets, rights and liabilities.

(7) Where continuance as aforesaid entitles or requires the body corporate to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the courts in Malta may, on demand of either party, establish.

(8) (a) A local body corporate carrying on business as a collective investment scheme authorised or otherwise falling within the meaning of this Act, may, subject to the specific approval and authorisation of the competent authority, be continued as a foreign body

corporate, and the foregoing provisions of this article shall apply *mutatis mutandis*.

- (b) A local body corporate shall not cease to be a local body corporate subject to Maltese jurisdiction until the Registrar has received notice in writing of the continuance (or other process) made as aforesaid and unless and until, being satisfied that the requirements of this article have been complied with, the Registrar has registered such continuance and has, in consequence thereof and by virtue of this article, struck the name of the company off the register.

(9) The Minister may, acting on the advice of the competent authority, make regulations for the better carrying out of the provisions of this article.

Amended by:
L.N. 46 of 1999;
XVII. 2002.154;
XIII. 2004.80.
Substituted by:
XX. 2007.82.

FIRST SCHEDULE

(Article 2)

Services

1. Reception and Transmission of Orders in relation to one or more instruments

The reception from a person of an order to buy, sell or subscribe for instruments and the transmission of that order to a third party for execution.

2. Execution of orders on behalf of other persons

Acting to conclude agreements to buy, sell or subscribe for one or more instruments on behalf of other persons.

3. Dealing on own account

Trading against proprietary capital resulting in conclusion of transactions in one or more instruments.

4. Management of Investments

Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more instruments or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more instruments.

Management of Investments may also constitute the selection or agreement to select, on a discretionary basis, instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within class III - linked long term of the Second Schedule to the Insurance Business Act.

5. 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, 4 or 6 of this Schedule;

Provided that for the purposes of this sub-paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this subparagraph if such person does not provide an investment service and delegates all activities which are investment services in terms of this Act to a person who is licenced to provide such services; or

Cap. 331.

- (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:

Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in the terms of article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this Act.

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

6. Investment Advice

Giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more instruments.

For the purposes of this paragraph, a "personal recommendation" shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular instrument;
- (b) to exercise or not to exercise any right conferred by a particular instrument to buy, sell, subscribe for, exchange, or redeem an instrument;
- (c) to select one or more instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within the meaning of class III - 'linked long term', of the Second Schedule to the Insurance Business Act.

Cap. 403.

A recommendation is not a personal recommendation if it is

issued exclusively through distribution channels or to the public.

7. Underwriting of instruments and, or placing of instruments on a firm commitment basis

The underwriting or placing of instruments such that the person providing the service assumes the risk of bringing a new securities issue to the market by buying the issue from the issuer thereby guaranteeing the sale of a certain number of shares to investors

8. Placing of Instruments without a firm commitment basis

The marketing of newly-issued securities or of securities which are already in issue but not listed, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's securities' - without assuming the risk of guaranteeing the sale of a certain number of shares by buying the relative securities from the issuer.

9. Operation of a Multilateral Trading Facility

The operation of a multilateral system which brings together multiple third party buying and selling interests in instruments - in the system and in accordance with non-discretionary requirements - in a way that results in a contract.

Amended by:
L.N. 191 of 1998;
XVII. 2002.155;
L.N. 318 of 2006.
Substituted by:
XX. 2007.83.

SECOND SCHEDULE

(Article 2)

Instruments

1. Transferable Securities.

Those classes of securities which are negotiable on the capital market and include:

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;
- (b) bonds or other forms of securitised debt, including depository receipts in respect of such securities;
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

2. Money Market Instruments.

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

3. Units in collective investment schemes.

4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or

financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act and, or a Multilateral Trading Facility within the meaning of the First Schedule. Cap. 345.

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of this Schedule, and, which have the characteristics of other derivative instruments, having regard to whether, *inter alia*, they are cleared and settled throughout recognized clearing houses or are subject to regular margin calls.

8. Derivative instruments for the transfer of credit risk.

9. 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 for property of any description or in an index or other factor designated for that purpose in the contract.

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative instruments, having regard to whether, *inter alia*, they are traded on a regulated market within the meaning of the Financial Markets Act or a Multilateral Trading Facility within the meaning of the First Schedule, are cleared and settled through recognized clearing houses or are subject to regular margin calls.

11. Certificates or other instruments which confer property rights in respect of any instrument falling within this Schedule.

12. Foreign exchange acquired or held for investment purposes.
