

**Circular addressed to the financial services industry  
regarding Malta's transposition of the  
Markets in Financial Instruments Directive ('MiFID')**

Consultation on the amendments to the Financial Markets Act, 1990 and the  
Investment Services Act, 1994 which transpose parts of the MiFID

**16<sup>th</sup> March 2007**

*The MFSA invites comments by not later than Wednesday 18<sup>th</sup> April, 2007, on the proposed amendments to the Financial Markets Act, 1990 and the Investment Services Act, 1994 attached to this document. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA.*

### **1.0 Background**

MFSA has so far issued two consultation documents outlining changes to local legislation which will come about in order to transpose MiFID. In this regard:

**13<sup>th</sup> November 2006:** 1<sup>st</sup> MiFID consultation document outlining the proposed amendments to the Investment Services Guidelines [to be renamed 'Investment Services Rules'] in order to transpose part of the MiFID Framework Directive and the Commission Implementing Directive; and

**27<sup>th</sup> December 2006:** 2<sup>nd</sup> MiFID consultation document outlining the proposed changes to the Investment Services Guidelines in order to transpose the MiFID transaction reporting provisions.

On the **31<sup>st</sup> January 2007**, MFSA issued the Draft Rules applicable to Investment Services Licence Holders which transpose certain parts of the **MiFID** and the requirements of **the Implementing Directive**. These are scheduled to replace Section C 1 of the current Investment Services Guidelines on **1<sup>st</sup> November 2007**. The purpose of this circular is to serve as a consultation document outlining the proposed amendments to the Investment Services Act, 1994 ['ISA'] and the Financial Markets Act, 1990 ['FMA'] with a view to transpose parts of **MiFID**.

### **2.0 Financial Markets Act, 1990 ('FMA')**

The following is a brief overview of the main proposed changes to the FMA which transpose the MiFID and which have been included in the attached Bill. It is to be noted that there are other planned changes to the FMA which do not arise as a consequence of MiFID. These changes, which aim to regulate the provisions of services by a Central Securities Depository, have not yet been finalised and will be the subject of a separate consultation document.

## **(2.1) The term ‘recognised investment exchange’ has been replaced with reference to the term ‘regulated market’**

In order to ensure a more fluid transposition of **MiFID**, the term ‘*recognised investment exchange*’ has been replaced with reference to ‘*regulated market*’. The amendments to the **FMA** include a definition of the term ‘*regulated market*’ as follows: ‘*a multilateral system operated by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments within the meaning of the Directive in the system: For the purpose of this definition, ‘buying and selling interests’ includes orders, quotes and indications of interest*’. This is a useful development as prior to this amendment, the FMA had no definition as to what constitutes the activity of an investment exchange/regulated market.

In addition to the above, the proposed amendments also include new definitions of the terms ‘*market operator*’ and ‘*multilateral system*’ which are relevant to the above.

## **(2.2) FMA – Part II**

The transposition of MiFID articles which affect regulated markets have mainly been transposed in Part II of the FMA which has been substantially amended. In this regard a number of new provisions have been included, in particular, provisions regarding clearing and settlement.

## **3.0 Investment Services Act, 1994 (‘ISA’)**

The following is a brief overview of the main proposed changes to the Investment Services Act, 1994 as per the attached copy of the Bill amending the ISA.

### **(3.1) Changes to Schedule 1 of the ISA**

#### **3.1.1 MiFID – Related Changes**

Schedule 1 of the ISA has been revised to bring it more in line with the list of services included in Section A of Annex I of MiFID. As a result of this revision:

- (a) the current definition of certain services has been amended to exclude certain aspects which were raised to the status of services in their own right. For example, the Underwriting of Financial Instruments has been included as a separate service and is therefore no longer included in the current services of “Arranging Deals” and “Dealing as Principal or Agent”. Hence Licence Holders wishing to provide the services of Underwriting would need to have this service specifically indicated in their licence. Similarly, dealing as principal (dealing on own account) will be included as a separate service.

- (b) The following two new services will be introduced:

- (i) *The operation of a Multilateral Trading Facility (MTF).*

An MTF is defined as a multilateral system which brings together multiple third party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract. MTFs may be operated either by duly authorised Category 3 Investment Services licence holders or by an operator of a regulated market. In the latter case, the regulated market would be exempt from the requirement of an investment services licence.

(ii) *Placing of financial instruments without a firm commitment basis.*

This service will be defined as being “*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.*”

- (c) Stockbroking will no longer feature as a separate licensable service in Schedule 1 on the basis of the fact that, essentially, this service falls under the service of “execution of orders on behalf of clients which will replace the current service of “dealing as agent” referred to in the current Schedule 1. In fact, Section A of Annex 1 of the **MiFID** does not refer to stockbroking as a separate service.

### **3.1.2 Other Non-MiFID Related Changes**

Further to the new regime relating to the regulation of Linked Long Term Contracts of Insurance [‘LLTCIs’] as per our circulars dated **2<sup>nd</sup> March 2006** and **23<sup>rd</sup> November 2006**, the definitions of Investment Advice and Management of Investments (the latter to be renamed Management of Portfolios) have been expanded to include the provision of investment advice in relation to and/or the selection of instruments underlying an LLTCI. This means that persons wishing to advise clients as to the choice of instruments to be linked to their LLTCI policy and/or who have a mandate to select such instruments on behalf of a client **would require an Investment Services Licence** in order to be in a position to provide such services where the instruments to be linked to the client’s LLTCI policy fall under the scope of Schedule 2 of the ISA.

### **(3.2) Changes to Schedule 2 of the ISA.**

**Schedule 2** of the **ISA** which lists the instruments to which licensable activity relates, has been amended to ensure conformity with the terminology of the **MiFID**. In this regard, certain new instruments, such as commodity derivatives, have been introduced. However, certain instruments which were included in the previous Schedule 2 and are not reflected in the **MiFID**, such as foreign exchange held for investment purposes, were retained.

In the light of the above changes, certain Investment Services Licence Holders may require amendments to their Licence to conform with the terminology used in the ISA Schedules, once these have been revised. Such Licence Holders will be contacted by the MFSA in due course.

### **(4.0) Powers of the MFSA**

The MFSA’s regulatory powers in the FMA and the ISA have been amended to bring these in line with the MiFID provisions.

### **Contacts**

**Should you have any queries regarding MiFID, please do not hesitate to contact:**

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## **PART XX**

### **AMENDMENT OF THE INVESTMENT SERVICES ACT, CAP. 370**

Amendment of  
the Investment  
Services Act,  
Cap. 370.

**1.** (1) This Part amends and shall be read and construed as one with the Investment Services Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on the 1<sup>st</sup> November 2007.

Amendment of  
article 2 of the  
principal Act.

**2.** Article 2 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the definition “collective investment scheme licence” there shall be added the following new definition:

“ “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;”;

(ii) in the definition “competent authority”, for the words “of article 2A;” there shall be substituted the words “of article 2A, which body shall also carry out the duties as competent authority for all purposes of the Directive;”;

(iii) immediately after the definition “competent authority” there shall be added the following new definitions:

“ “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;

“ “directive” refers to a directive issued under article 15 of this Act”;

(iv) immediately after the definition “ “document” or “documentation” ” there shall be added the following new definitions:

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

“ “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;”;

(v) immediately after the definition “investment services licence” there shall be added the following new definition:

“ “Investment Services Rules” means the Rules made under article 6 of this Act;

(vi) immediately after the definition “Malta’s international commitments” there shall be added the following new definition:

“ “Member State” means a Member State of the European Communities;”;

(vii) for the definition “overseas regulatory authority” there shall be substituted the following:

“ “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.”;

(viii) in the definition “prescribed” for the words “prescribed by rules or regulations” there shall be substituted the words “prescribed by regulations”;

(ix) in the definition “recognised investment exchange”, for the words “recognised investment exchange”, there shall be substituted the words “regulated market”;

(b) immediately after sub-article (2) thereof there shall be inserted the following new sub-article (3):

“(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.”.

**3. Article 6 of the principal Act shall be amended as follows:**

(a) in sub-article (1) thereof:

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

(ii) in paragraph (a) (i) as re-numbered, for the words “observe any rules and regulations made under this Act” there shall be substituted the words “observe any Investment Services Rules and regulations made under this Act”;

(iii) immediately after paragraph (a)(i) as re-numbered, there shall be inserted the following new paragraph (a)(ii):

“(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; ”;

(iv) paragraph (b) thereof shall be amended as follows:

(a) for the words “with any rules and regulations made under this Act” there shall be substituted the words “with any Investment Services Rules and regulations made under this Act”;

(b) for the words “with the scheme.”, there shall be substituted the words “with the scheme;”; and

(v) immediately after paragraph (b) there shall be inserted the following new paragraph (c):

“(c) grant a licence to an applicant unless the relevant European regulatory authorities have been consulted in the instances referred to in article 17C of this Act.”;

(b) in paragraph (b) of sub-article (2) thereof and wherever else it appears in the principal Act and in any regulations issued thereunder, for the word “guidelines”, there shall be substituted the words “Investment Services Rules”;

(c) for sub-article (9) thereof there shall be substituted the

following new sub-article:

“(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.”; and

(d) sub-articles (10) and (11) thereof shall be deleted.

Amendment of  
article 7 of the  
principal Act.

**4.** Article 7 of the principal Act shall be amended as follows:

(a) in paragraph (b) of sub-article (2) thereof, for the words “of any rules or regulations made thereunder,”, there shall be substituted the words “of any Investment Services Rules or regulations made thereunder,”; and

(b) in paragraph (b) of sub-article (3) thereof, for the words “of any rules or regulations made thereunder,”, there shall be substituted the words “of any Investment Services Rules or regulations made thereunder,”.

Amendment of  
article 12 of the  
principal Act.

**5.** Article 12 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words “may make rules or regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such rules or regulations,”, there shall be substituted the words “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,”;

(ii) in paragraph (b) thereof, for the words “and to regulate the management companies of such schemes; and to make provisions on capital adequacy requirements”, there shall be substituted the words “and to regulate the management companies of such schemes;”;

(iii) in paragraph (f) thereof, for the words “to prescribe rules governing the disclosure”, there shall be substituted the words “to prescribe regulations governing the disclosure”;

(iv) in paragraph (h) thereof, for the words “or any rules or regulations made under this article”, there shall be substituted the words “or any regulations made under this article”;

(v) in paragraph (j) thereof, for the words “applicable to a licence holder;”, there shall be substituted the words “applicable to a licence holder, as amended from time to time, and including any implementing measures issued thereunder;”;

(vi) paragraphs (k) and (l) thereof shall be re-numbered as paragraphs (n) and (o);

(vii) immediately after paragraph (j) thereof, there shall be inserted the following new paragraphs:

“(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;”;

(b) sub-article (2)(A) thereof shall be amended as follows:

(i) for the words “Rules or regulations made”, there shall be substituted the words “Regulations made”; and

(ii) in paragraph (a) thereof, for the words “under the rules or regulations”, there shall be substituted the words “under the regulations”;

(c) in sub-article (2)(B) thereof, for the words “Rules or regulations made” there shall be substituted the words “Regulations made”;

(d) in sub-article (3) thereof, for the words “rules or regulations” wherever they appear in the said provision there shall be substituted the word “Regulations”;

(e) sub-articles (4) and (5) thereof shall be re-numbered as sub-article (5) and (6) respectively;

(f) immediately after sub-article (3) thereof, there shall be inserted the following new sub-article (4):

“(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.”; and

(g) in sub-article (5) thereof, as re-numbered, for the words “rules or regulations made” there shall be substituted the words “Regulations made”.

Amendment of article 13 of the principal Act.

**6.** In paragraph (a) of sub-article (1) of article 13 of the principal Act, for the words “as it may require”, there shall be substituted the words “as it may require, including the power to require existing telephone and existing data traffic records,”.

Amendment of article 14 of the principal Act.

**7.** Immediately after sub-article (3) of article 14 of the principal Act there shall be inserted the following new sub-article (4):

“(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.”.

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Amendment of article 15 of the principal Act.

**8.** Sub-article (2) of Article 15 of the principal Act shall be amended as follows:

(a) in paragraph (e) thereof, for the words “such other person.”, there shall be substituted the words “such other person;”; and

(b) immediately after paragraph (e) there shall be inserted the following new sub-paragraph (f):

“(f) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive.”

Adds new article 16A and 16B to the principal Act.

**9.** Immediately after article 16 there shall be inserted the following new articles:

“Administrative penalties and other measures.”

**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 forty thousand liri.

(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 of this Act, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or 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.

“Obligation to give reasons.”

**16B.** Any decision taken by the competent authority under any provision of this Act or of any regulations, Investment Services Rules, or administrative provisions made thereunder adopted in the implementation of the Directive shall be properly reasoned.”.

Amendment of sub-title preceding article 17 of the principal Act

**10.** The sub-title “CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITY” immediately preceding article 17 shall be replaced with the following new sub-title “CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES AND OTHER BODIES”.

Amendment of article 17 of the principal Act.

**11.** Article 17 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be re-numbered as sub-article (11);

(b) sub-article (2) thereof shall be deleted and there shall be inserted the following new sub-articles as follows:

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

(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 sub-article (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 their 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 further 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) of this sub-article, 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 of this Act, 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 of this Act; or
- (e) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act.

(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.”;

(c) sub-article (11) as re-numbered shall be amended as follows:

(i) for the words “The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:”, there shall be substituted the words “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:”; and

(ii) in paragraph (g) thereof, for the words “overseas regulatory authority”, there shall be substituted the words “European regulatory authority”.

Adds new articles 17A, 17B, and 17C to the principal Act.

**12.** Immediately after article 17 there shall be inserted the following new articles:

“Co-operation in supervisory functions, on-site verifications or in investigations.”

**“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

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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 article 14 of this Act to carry out the verification or investigation.

“Refusal to cooperate.”

**17B.** The competent authority may refuse to act on a request for cooperation in carrying out an investigation, on-site verification or supervisory function under article 17A of this Act or to exchange information with European regulatory authorities designated as contact points under sub-article (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 detailed information as possible for such refusal.

“Inter-authority consultation prior to granting of a licence.”

**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.”.

Adds a new sub-title.

**13.** Immediately after article 17C there shall be inserted the following new sub-title “CO-OPERATION WITH OVERSEAS REGULATORY AUTHORITIES AND OTHER BODIES”;

Adds a new article 17D to the principal Act.

“Co-operation with overseas regulatory authorities.”.

**“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 of this Act. 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:

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 co-operation 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 sub-article (11) of article 17, and for the purposes of this sub-article the words “European regulatory authority” shall be read as “overseas regulatory authority”.

Amendment of  
article 19 of the  
principal Act.

**14.** Article 19 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) In paragraph (c) thereof, for the words “under article 6(9)”, there shall be substituted the words “under article 16A;”;

(ii) paragraph (g) thereof shall be re-numbered as paragraph (h);

(iii) Immediately after paragraph (f) thereof there shall be inserted the following new paragraph (g):

“(g) any punishment or penalty imposed under article 12(5);”;

(b) For sub-articles (3) thereof there shall be substituted the following:

“(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.”; and

(c) sub-article (4) thereof shall be deleted.

Amendment of article 21 of the principal Act.

**15.** Sub-article (1) of article 21 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “or of any rules and regulations” there shall be substituted the words “or of any Investment Services Rules and regulations”;

(b) in paragraph (a) thereof and wherever they appear in the said provision for the words “requirement, directive,” there shall be substituted the words “requirement, Investment Services Rules, directive,”.

Amendment of article 22 of the principal Act.

**16.** Article 22 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) for the words “as applied by article 17”, there shall be substituted the words “as applied by articles 17 and 17D”;

(ii) for the words “of any rules or regulations made”, there shall be substituted the words “of any regulations”;

(b) in sub-article (2) thereof, for the words “of any rules or regulations made”, there shall be substituted the words “of any regulations made”.

Amendment of article 23 of the principal Act.

**17.** In article 23 of the principal Act, for the words “under article 12(4)”, there shall be substituted the words “under article 12(5)”.

Amendment of article 25 of the principal Act.

**18.** Sub-article (1) of article 25 of the principal Act shall be amended as follows:

(a) for the words “a licence has contravened any of the provisions of this Act or of any rules and regulations”, there shall be substituted the words “a licence, or any other person, has contravened any of the provisions of this Act or of any regulations”; and

(b) for the words “directive or order” there shall be substituted the words “Investment Services Rules, directive or order”.

Amendment of article 26 of the principal Act.

**19.** Article 26 of the principal Act shall be amended as follows:

(a) sub-article (1) shall be amended as follows:

(i) for the words “employees or agents” there shall be substituted the words “employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority”;

(ii) for the words “or of any rules or regulations made”, there shall be substituted the words “or of any Investment Services Rules

or regulations made”;

(iii) in paragraph (c) thereof, for the words “an overseas regulatory authority”, there shall be substituted the words “a European regulatory authority or an overseas regulatory authority”;

(iv) in paragraph (g) thereof, for the words “or criminal nature.”, there shall be substituted the words “or criminal nature.”;

(iv) immediately after paragraph (g) thereof, there shall be inserted the following two new provisos:

“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.”;

(b) for sub-article (2) thereof there shall be substituted the following:

“(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.”; and

(c) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(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.”.

Amendment of article 27 of the principal Act.

**20.** In article 27 of the principal Act, for the words “any rules or regulations” wherever they appear in the said provision, there shall be substituted the words “any Investment Services Rules or regulations”.

Amendment of article 28 of the principal Act.

**21.** In article 28 of the principal Act, for the words “or any rules or regulations made” there shall be substituted the words “or any Investment Services Rules or regulations made”.

Deletion of article 29 of the principal Act.

**22.** Article 29 of the principal Act shall be deleted.

Amendment of the First Schedule to the principal Act.

**23.** For the First Schedule of the principal Act, there shall be substituted the following:

## **“FIRST SCHEDULE**

### **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.

Cap. 403.

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:

Cap. 331.

Provided that for the purposes of this subparagraph 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

- (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:

Cap. 331.

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.”

Amendment of  
the Second  
Schedule to the  
principal Act.

**24.** For the Second Schedule of the principal Act, there shall be substituted the following:

### **“SECOND SCHEDULE**

#### **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 depositary receipts in respect of shares;
- (b) bonds or other forms of securitised debt, including depositary 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.

- Cap. 345.
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 Schedule 1.
  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 or 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 Schedule 1, are cleared and settled through recognized clearing houses or are subject to regular margin calls.
- Cap. 345.



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.”;

## PART XX

### AMENDMENT TO THE FINANCIAL MARKETS ACT, CAP. 345

Amendment of the Financial Markets Act, Cap. 345.

**1.** (1) This Part amends and shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on the 1<sup>st</sup> November 2007.

Amendment of the introduction to the Act.

**2.** The long title immediately following the title to the Act shall be deleted and replaced as follows:

“To provide for the authorisation of regulated markets and for the orderly trading in transferable securities and to provide for matters ancillary or incidental thereto or connected therewith.”;

Amendment of “Arrangement of Act”, wording in the principal Act and in subsidiary legislation issued thereunder.

**3.** In the “Arrangement of Act”, for the words “Recognised Investment Exchanges”, there shall be substituted the words “Regulated Markets”, and for the words “Recognised Investment Exchange” and, or “Recognised Investment Exchanges”, wherever they appear in the Act or in any regulations issued thereunder, there shall be substituted the words “Regulated Market” and, or “Regulated Markets”, as the case may be.

Amendment of article 2 of the principal Act.

**4.** Article 2 of the principal Act shall be amended as follows:

(a) article 2 thereof shall be re-numbered as article 2(1);

(b) in sub-article 2(1) as re-numbered:

(i) the definition “Borża” shall be deleted;

(ii) the definition “bye-laws” shall be deleted;

(iii) in the definition “Central Bank”, for the words “Bank of Malta,” there shall be substituted the words “Bank of Malta as defined by the Central Bank of Malta Act;”;

(iv) immediately after the definition “central securities depository”, there shall be inserted the following new definition:

“ “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;”;

(v) the definition “Chairman” shall be deleted;

(vi) the definition “Council” shall be deleted;

(vii) the definition “Exchange” shall be deleted;

(viii) immediately after the definition “corporate body”, there shall be inserted the following new definitions:

“ “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;

“directive” refers to a directive issued under article 5 of this Act;

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

“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;”;

(ix) for the definition “financial instruments”, there shall be substituted the following:

Cap. 370. “ “financial instruments” shall have the same meaning assigned to the term “instruments” in the Second Schedule of the Investment Services Act;”;

(x) immediately after the definition “financial instruments”, there shall be inserted the following new definition:

“ “Financial Market Rules” means the Rules made under article 4 of this Act”;

(xi) the definition “financial year” shall be deleted;

(xii) in the definition “Listing Authority”, the words “provided that until such time as the Minister makes such

appointment any reference to the Listing Authority shall be interpreted as a reference to the Council” shall be deleted;

(xiii) immediately after the definition “market abuse”, there shall be inserted the following new definition:

“ “Market operator” means a person who manages and, or operates the business of a regulated market. The market operator may be the regulated market itself;”;

(xiv) immediately after the definition “members” there shall be inserted the following new definition:

“ “Member State” means a Member State of the European Communities;”;

(xv) immediately after the definition “minister”, there shall be inserted the following new definition:

“ “multilateral system” includes all those markets that are composed of a set of bye-laws and a trading platform as well as those that only function on the basis of a set of bye-laws but excludes bilateral systems where a person enters into every trade on own account and not as a riskless counterparty interposed between buyer and seller;”;

(xvi) the definition “official list” shall be deleted;

(xvii) the definition “orderly” shall be deleted;

(xviii) immediately after the new definition “multilateral system” there shall be inserted the following new definition:

“ “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;”;

(xix) immediately after the definition “recognised list”, there shall be inserted the following new definition:

“ “regulated market” means a multilateral system operated by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments within the meaning of the Directive in the system:

For the purposes of this definition, “buying and selling

interests” includes orders, quotes and indications of interest;”;

(xx) the definition “securities” shall be deleted;

(xxi) the definition “statute” shall be deleted;

(xxii) the definition “stockbroker” shall be deleted;

(xxiii) immediately after the definition “related company”, there shall be inserted the following new definition:

“ “Takeover Bids Directive” means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”;

(xxiv) immediately after the definition “trading”, there shall be inserted the following new definitions:

“ “transferable securities” has the same meaning as that given to the term in the Schedule to the Investment Services Act;”;

“ “Transparency Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”;

(xxv) in the definition of “Tribunal”, the proviso shall be deleted and for the words “act:”, there shall be substituted the words “act;”;

(c) immediately after the definition “Tribunal”, there shall be inserted the following new sub-article (2):

“(2) 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.”.

Amendment of  
article 3 of the  
principal Act.

**5.** Article 3 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “by an investment exchange if it is to qualify as a recognised investment exchange and in respect of which the competent authority may make an order hereinafter in

this Act referred to as a “recognition order” under this part of the Act”, there shall be substituted the words “by a market if it is to qualify as a regulated market in respect of which an authorisation may be issued by the competent authority”;

(b) in paragraph (b) thereof, for the words “including reporting requirements”, there shall be substituted the words “including reporting and transparency requirements”;

(c) in paragraph (c) thereof, for the words “a recognition order or”, there shall be substituted the words “an authorisation or”;

(d) for paragraph (d) thereof there shall be substituted the following:

“(d) requirements for the regulation and supervision of market operators and, or regulated markets;”;

(e) in paragraph (e) thereof, for the words “complaints about”, there shall be substituted the words “complaints about market operators and, or”;

(f) in paragraph (f) thereof, for the words “the rules of a recognized investment exchange by persons subject to such rules;”, there shall be substituted the words “the bye-laws of regulated markets by persons subject to such or bye-laws;”;

(g) for paragraph (g) thereof there shall be substituted the following:

“(g) arrangements for the scrutiny of practices of market operators and, or bye-laws and practices of regulated markets and for preventing restrictive practices in terms of the Competition Act and any regulations made thereunder;

(h) in paragraph (i) thereof, for the words “for a recognition order under”, there shall be substituted the words “for an authorisation under”.

Amendment of  
article 4 of the  
principal Act.

**6. Article 4 of the principal Act shall be amended as follows:**

(a) in paragraph (a) of sub-article (1) thereof, for the words “of an investment exchange in or from within Malta unless such person is in possession of a recognition order”, there shall be substituted the words “of a regulated market in or from within Malta unless such person is in possession of an authorisation”;

(b) in paragraph (b) of sub-article (1) thereof, for the words “for a recognition order under this Part of the Act declaring it to be a recognised”, there shall be substituted the words “for an authorisation under this Part of the Act declaring it to be an authorised”;

(c) immediately after paragraph (b) of sub-article (1) thereof, there shall be inserted the following new paragraphs (c) and (d):

“(c) A regulated market shall only be authorised where the competent authority is satisfied that both the market operator and the systems of the regulated market comply with the applicable requirements laid down in this Act and any regulation or Financial Market Rules made thereunder.

(d) Where a regulated market is a legal person and is managed or operated by a market operator other than the regulated market itself, the competent authority shall establish by means of Financial Market Rules how the different obligations imposed on the market operator under the Directive are to be allocated between the regulated market and the market operator.”;

(d) for sub-article (2) thereof, there shall be substituted the following new sub-article:

“(2) (a) The market operator of the regulated market shall provide all information, necessary to enable the competent authority to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the Act or any regulations or Financial Market Rules made thereunder.

(b) An application shall be made in such a manner as the competent authority may establish by Financial Market Rules and shall be accompanied by:

(i) a programme of operations setting out *inter alia* the types of business envisaged;

(ii) a full description of the organisational structure and the proposed bye-laws or similar arrangements of the applicant;

(iii) detailed information as required by the competent authority on the:

(a) persons who effectively direct the business and the operations of the regulated market;

(b) those persons who own the regulated market; and

(c) the market operator; and

(iv) any other information required by the competent authority.”;

(e) sub-articles (3) to (11) shall be re-numbered as sub-articles (4) to

(12) respectively;

(f) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article (3):

“(3) The market operator shall notify the competent authority immediately of any changes or corrections to the information provided in terms of sub-article (2) of this article:

Provided that in the case of changes to the persons who effectively direct the business and the operations of the regulated market the prior authorisation of the competent authority shall be requested;

Provided further that where there are objective and demonstrable grounds for believing that the appointment or election of an officer poses or may pose a material threat to the sound and prudent management and operation of the regulated market, the competent authority shall refuse to approve such appointment or election.”;

(g) in sub-article (4) thereof as re-numbered, for the words “The competent authority may issue directives setting out – ”, there shall be substituted the words “For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue and publish Financial Market Rules which shall be binding on regulated markets and others as may be specified therein. Such Financial Market Rules may lay down additional requirements and conditions in relation to activities of regulated markets, 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 including –”;

(h) in sub-article (6) thereof as re-numbered, for the words “Different directives may be issued by the competent authority under sub-article (3)” there shall be substituted the words “Different Financial Market Rules may be issued by the competent authority under sub-article (4)”;

(i) in sub-article (8) thereof as re-numbered, for the words “and subject to any directives issued under article 4(3) make or refuse to make a recognition order.”, there shall be substituted the words “and subject to any Financial Market Rules issued under sub-article (4) make or refuse to issue an authorisation. Where the competent authority issues an authorisation, the market operator shall be responsible for ensuring that the provisions of the Act, regulations and Financial Market Rules made thereunder and any implementing measures issued by the European Commission in terms of the powers conferred to it by the Directive, which are applicable to regulated markets, are complied with.”;



(j) in sub-article (9) thereof as re-numbered, for the words “A recognition order”, there shall be substituted the words “An authorisation”;

(k) in sub-articles (10) and (11) thereof as re-numbered, for the words “for a recognition order”, there shall be substituted the words “for an authorisation”;

(l) in sub-article (12) thereof as re-numbered, for the words “A recognition order”, there shall be substituted the words “An authorisation”.

Addition of  
new articles  
4A, 4B and 4C  
to the principal  
Act.

**7.** Immediately after article 4 of the principal Act there shall be inserted the following new articles 4A, 4B and 4C:

“Applicable law  
when Malta is  
the home  
Member State.

**4A.** Without prejudice to any relevant provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28<sup>th</sup> January 2003 on insider dealing and market manipulation, the public law within the meaning of the Directive governing the trading conducted under the systems of the regulated market shall be that of Malta when Malta is the home Member State.;

Significant  
influence over  
the management  
of a regulated  
market.

**4B.** (1) Persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market must be fit and proper.

(2) No person shall acquire a direct or indirect holding in a regulated market and, or the market operator which represents ten (10) per cent or more of the share capital issued by such body or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the regulated market (“qualifying shareholding”) or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the regulated market reaches or exceeds twenty (20) per cent, thirty three (33) per cent or fifty (50) per cent unless the competent authority has been notified of that intention by such person or by the relevant regulated market and the competent authority has approved the acquisition of or increase in such qualifying shareholding.

(3) The competent authority shall refuse to approve any changes to controlling interests as proposed by the regulated market and, or the market operator in terms of sub-article (2) of this article where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the said regulated market.

(4) The market operator of a regulated market

shall:

(a) provide the competent authority with, and make public, information regarding the ownership of the regulated market and, or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;

(b) inform the competent authority of and make public, any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.;

Regulated  
market bye-laws  
and  
arrangements.

**4C.** (1) Regulated markets shall be obliged to:

(i) have clear and transparent bye-laws regarding the admission of financial instruments to trading which shall ensure that any financial instruments admitted to trading on the regulated market are capable of being traded in a fair, orderly and efficient manner and, that transferable securities are freely negotiable:

Provided that in the case of derivatives such requirements shall also ensure that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions;

(ii) have effective arrangements to verify that issuers of transferable securities that are admitted to trading comply with their obligations under European Community Law in respect of initial, ongoing or ad hoc disclosure obligations;

(iii) establish arrangements which facilitate its members or participants in obtaining access to information which has been made public under European Community law;

(iv) establish the necessary arrangements to review regularly the compliance with admission requirements of the financial instruments which are admitted to trading.

(2) A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of

the issuer and in compliance with the relevant provisions of Directive 2003/71/EC of the European Parliament and of the Council of 4 November, 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, and amending Directive 2001/34/EC and any implementing measures that have been or may be issued thereunder.

(3) The issuer shall be informed by the regulated market of the fact that its transferable securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph (ii) of sub-article (1) of this article directly to any regulated market which has admitted the issuer's transferable securities to trading without its consent.

(4) In complying with the provisions of this article regulated markets shall also comply with the applicable provisions of Commission Regulation (EC) no 1287/2006 of 10<sup>th</sup> August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive on pre and post trade transparency and admission to trading as may be amended from time to time.”.

Amendment of  
article 5 of the  
principal Act.

**8. Article 5 of the principal Act shall be amended as follows:**

(a) in sub-article (2) thereof, for the words “specified manner.”, there shall be substituted the words “specified manner and any information so required shall be provided promptly.”

(b) sub-article (3) thereof shall be deleted.

Amendment of  
article 7 of the  
principal Act.

**9. Article 7 of the principal Act shall be amended as follows:**

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “for recognition”, there shall be substituted the words “for authorisation”;

(ii) in indent (ii) of paragraph (b) thereof, for the words “or any other requirement whatsoever.”, there shall be substituted the words “or any other requirement whatsoever.”;

(b) immediately after indent (ii) of paragraph (b) of sub-article (1) thereof, there shall be inserted the following new indent (iii):

“(iii) requiring the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive.”.

Amendment of article 8 of the principal Act.

**10.** Article 8 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words “A recognition order”, there shall be substituted the words “An authorisation”;

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “for recognition”, there shall be substituted the words “for authorisation”;

(ii) in paragraph (b) thereof, for the words “under this Act,” there shall be substituted the words “ under this Act, or”;

(iii) immediately after paragraph (b) thereof, there shall be inserted the following new paragraphs (c), (d) and (e):

“(c) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months, or

(d) has obtained the authorisation by making false statements or by any other irregular means; or

(e) no longer meets the conditions under which authorisation was granted.”;

(c) in the paragraph immediately following the new paragraph (e) of sub-article (2) thereof, for the words “the recognition order”, wherever these appear, there shall be substituted the words “the authorisation”;

Amendment of article 10 of the principal Act.

**11.** In article 10 of the principal Act, for the words “rules or bye-laws” wherever they appear, there shall be substituted the words “bye-laws”.

Addition of new article 10A to the principal Act.

**12.** Immediately after Article 10 of the principal Act there shall be inserted the following new article 10A:

“Settlement of transactions.”

**“10A.** (1) Regulated markets shall offer all their members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market subject to:

(a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question;

(b) agreement by the competent authority responsible for the supervision of the regulated market that technical conditions for settlement of

transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow smooth and orderly functioning of financial markets.

(2) Regulated markets shall not be prohibited from entering into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State or EEA State with a view to providing for the clearing and, or settlement of some or all trades concluded by market participants under their systems:

Provided that the competent authority may prohibit a regulated market from entering into such arrangements where it considers this is necessary to maintain the orderly functioning of that regulated market.”.

Amendment of  
article 11 of the  
principal Act.

**13.** Article 11 of the principal Act shall be amended as follows:

(a) for paragraph (b) thereof there shall be substituted the following:

“(b) to make Listing Rules for the better implementation and purposes of this Part of this Act;”;

(b) in paragraph (c) thereof, immediately after the words “remain listed”, there shall be inserted the following new words “and to monitor the timely disclosure of information by issuers or any other person subject to the Listing Rules with the objective of ensuring effective and equal access to the public in Malta and in all Member States or EEA States where the transferable securities are traded;”;

(c) for paragraph (d) thereof there shall be substituted the following new paragraphs (d) and (e):

“(d) to act as the central competent administrative authority responsible for carrying out the obligations provided for in the Transparency Directive and for ensuring that the provisions adopted pursuant to this Directive are applied and to issue rules in furtherance of its responsibility under any provisions of the said Directive which rules shall be binding on issuers, shareholders and any other person as may be indicated in the said rules;

(e) to act as the authority competent to supervise bids for the purpose of the Listing Rules made or introduced pursuant to the Takeover Bids Directive.”.

Amendment of  
article 12 of the  
principal Act.

**14.** Article 12 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “any rules”, there shall be substituted the words “any Listing Rules”, and the words “on the Official List” wherever they appear shall be deleted;

(ii) in paragraph (b) thereof, the words “on the Official List” wherever they appear shall be deleted;

(b) sub-article (2) thereof shall be amended as follows:

(i) for the words “The Exchange and every recognised investment exchange may admit to listing and trading to the official list or, as the case may be, to the recognised list concerned”, there shall be substituted the words “Every regulated market may admit to listing and trading to the recognised list concerned”;

(ii) in paragraph (b) thereof, the words “to the official list or” shall be deleted;

(iii) in the proviso to paragraph (b) thereof, the words “the Exchange and” shall be deleted.

Amendment of  
article 13 of the  
principal Act.

**15.** Article 13 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words “Listing rules” there shall be substituted the words “Listing Rules”;

(b) for the words “listing rules” wherever they appear in the said provision and in the Act there shall be substituted the words “Listing Rules”;

(c) in paragraph (d) thereof, for the words “in any listing particulars, prospectus” there shall be substituted the words “in any prospectus”;

(d) in paragraph (e) thereof, for the words “of any listing particulars, prospectus” there shall be substituted the words “of any prospectus”;

(e) in paragraph (f) thereof, for the words “the rules the publication” there shall be substituted the words “the Listing Rules the publication”;

(f) in paragraph (g) thereof, the words “the Exchange and” shall be deleted;

(g) paragraph (i) thereof shall be renumbered as paragraph (j); and

(h) immediately after paragraph (h) thereof, there shall be inserted the following new paragraph (i):

“(i) transposing, implementing and giving effect to the provisions, requirements, obligations, commitments and measures of the European parliament and of the Council issued in relation to the regulation of admissibility to listing of financial instruments on regulated markets and, or the regulation of issuers or any other person subject to the Listing Rules, arising out of membership of, affiliation to or relationship with international or regional organisations or groupings of countries or out of any treaty, convention or other international agreement whether bilateral, regional or multilateral, to which Malta is a party;”.

Amendment of article 14 of the principal Act.

**16.** In sub-article (2) of article 14 of the principal Act for the words “such rules of procedure as set out”, there shall be substituted the words “such procedure as is set out”.

Amendment of article 15 of the principal Act.

**17.** Article 15 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be deleted;

(b) sub-articles (3) and (4) thereof shall be respectively renumbered as sub-articles (2) and (3); and

(c) in paragraph (a) of sub-article (2) as re-numbered, and wherever it appears in the Act for the words “listing rule” there shall be substituted the word “Listing Rule”.

Amendment of article 16 of the principal Act.

**18.** Article 16 of the principal Act shall be amended as follows:

(a) for sub-article (1) thereof, there shall be substituted the following:

“(1) The Listing Authority shall notify the applicant of its decision regarding the approval of the prospectus within ten working days of the submission of the draft prospectus.”;

(b) for sub-article (2) thereof, there shall be substituted the following:

“(2) The time limit referred to in sub-article (1) shall be extended to twenty working days if the offer involves transferable securities issued by an issuer which does not have any transferable securities admitted to trading on a regulated market and who has not previously offered transferable securities to the public.”;

(c) sub-articles (3), (4), (5), (6) and (7) thereof shall be respectively renumbered as sub-articles (5), (6), (7), (8) and (9); and

(d) immediately after sub-article (2) thereof, there shall be inserted the following new sub-articles (3) and (4):

“(3) If the Listing Authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in sub-articles (1) and (2) shall apply only from the date on which such information is provided by the applicant.

In the case referred to in sub-article (1) the Listing Authority should notify the applicant if the documents are incomplete within ten (10) working days of the submission of the application.

(4) If the Listing Authority fails to give a decision on the prospectus within the time limits mentioned in sub-articles (1) and (2) this shall not be deemed to constitute approval of the prospectus.”;

(e) in sub-article (6) as re-numbered, for the words “with sub-article (5)”, there shall be substituted the words “with sub-article (7)”.

Amendment of  
article 17 of the  
principal Act.

**19.** Sub-article (1) of Article 17 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “at the request of the Exchange or another” there shall be substituted the words “at the request of a”;

(b) for paragraph (b) thereof, there shall be substituted the following:

“(b) Without prejudice to the right of the Listing Authority under paragraph (a) of this article to demand suspension or removal of an instrument from trading, the market operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the bye-laws of the regulated market unless such a step would be likely to cause significant damage to the investors’ interests or the orderly functioning of the market. The market operator of a regulated market that suspends or removes from trading a financial instrument shall make public this decision and communicate the relevant information to the Listing Authority. The Listing Authority shall inform the European regulatory authorities of the other Member States or EEA States of this decision.”;

(c) immediately after paragraph (b) thereof, there shall be inserted the following new paragraph (c):

“(c) When the Listing Authority demands the suspension or removal of a financial instrument from trading on one or more regulated markets, it shall immediately make public its decision and inform the European regulatory authorities of the other Member States or EEA States.”.



Amendment of article 18 of the principal Act.

**20.** In paragraph (b) of sub-article (3) of article 18 of the principal Act, for the words “the interest of the Exchange or of any” there shall be substituted the words “the interest of a”.

Amendment of article 19 of the principal Act.

**21.** Article 19 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words “Penalty or censure in”, there shall be substituted the words “Penalty in”;

(b) in sub-article (1) thereof:

(i) in paragraph (a) thereof, for the words “instruments, or” there shall be substituted the words “instruments,”;

(ii) in paragraph (b) thereof, for the words “to listing;” there shall be substituted the words “to listing, or”;

(iii) immediately after paragraph (b) thereof, there shall be inserted the following new paragraph (c):

“(c) any other person subject to the Listing Rules.”;

(iv) for the words “not exceeding twenty thousand liri.”, there shall be substituted the words “not exceeding forty thousand liri.”;

(c) sub-article (2) thereof shall be deleted;

(d) sub-articles (3), (4), (5) and (6) thereof shall be re-numbered as sub-article (2),(3) , (4) and (5) respectively;

(e) in sub-article (5) thereof as re-numbered, for the words “of sub-article (5)” there shall be substituted the words “of sub-article (4)”.

Amendment of article 20 of the principal Act.

**22.** Article 20 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words “Notice of penalty or censure.” there shall be substituted the words “Notice of penalty.”;

(b) sub-article (3) and (5) thereof shall be deleted;

(c) sub-article (4) and (6) thereof shall be re-numbered as sub-articles (3) and (4) respectively.

Amendment of article 22 of the principal Act.

**23.** Article 22 of the principal Act shall be amended as follows:

(a) for the words “(c) to the Exchange or to such other recognised investment exchange in relation to any financial instruments listed on the Exchange or on the other recognised investment exchange concerned”, there shall be substituted the words “(c) to regulated markets in relation to any financial instruments listed on the regulated markets concerned”;

(b) for paragraph (a) thereof, there shall be substituted the following:

“(a) if the Listing Authority delegates any of its powers to impose an administrative penalty under article 19(1) and (2) to the regulated markets concerned article 19(3) and article 20 shall apply *mutatis mutandis* to the regulated markets concerned”;

(c) the proviso to paragraph (b) thereof shall be amended as follows:

(i) for the words “under article 19(1), (2) and (3) as aforesaid neither the Listing Authority nor the Exchange or other recognised investment exchange concerned”, there shall be substituted the words “under article 19(1) and (2) as aforesaid neither the Listing Authority nor the regulated markets concerned”;

(ii) for the words “Authority or the Exchange or recognised investment exchange concerned as the case may be,”, there shall be substituted the words “Authority or the regulated markets concerned,”.

Repeal of Part IV of the principal Act.

**24.** Part IV of the principal Act shall be repealed and substituted by the following

#### **PART [ ]**

Amendment of article 32 of the principal Act.

**25.** Article 32 of the principal Act shall be amended as follows:

(a) immediately after paragraph (iv) of sub-article (1) thereof, there shall be added the following new paragraphs (v) and (vi):

“(v) any auditor of a regulated market who appears to be in possession of relevant information;

(vi) any other person who appears to be in possession of relevant information;”;

(b) in paragraph (a) of sub-article (1) thereof, for the words “as it may require;”, there shall be added the words “as it may require, including the power to require existing telephone and existing data traffic records;”;

(c) in sub-article (2) thereof.....

(d) sub-articles (4) to (8) thereof shall be deleted.

Amendment of article 33 of the principal Act.

**26.** Article 33 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words “article 32(1)(i) to (iv) there shall be substituted the words “article 32(1)(i) to (vi);

(b) in paragraph (b) of sub-article (2) thereof, for the words “competent authority by article 32, including the power to apply to the Court of Appeal in the circumstances described in subarticle (4) of that article, and any”, there shall be substituted the words “competent authority by article 32, and any”;

(b) sub-articles (4) and (5) thereof shall be renumbered as sub-articles (5) and (6) respectively;

(c) immediately after sub-article (3) thereof there shall be added the following new sub-article (4):

“(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.

Addition of new article 34A to the principal Act.

**27.** Immediately after article 34 of the principal Act there shall be inserted the following new article:

“Obligation to give reasons.”

**“34A.** Any decision taken by the competent authority under any provision of this Act or of any regulations, Financial Market Rules or administrative provisions made thereunder adopted in the implementation of the Directive shall be properly reasoned.”.

Amendment of article 35 of the principal Act.

**28.** Article 35 of the principal Act shall be amended as follows:

(a) for the words “any rules or bye-laws”, there shall be substituted the words “any bye-laws”; and

(b) for the words “the rules and bye-laws”, there shall be substituted the words “the bye-laws”.

Amendment of article 36 of the principal Act.

**29.** In sub-article (1) of article 36 of the principal Act, the words “the Exchange or” shall be deleted.

Amendment of article 37 of the principal Act.

**30.** Article 37 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words “Co-operation with overseas regulatory authority.”, there shall be substituted the words “Co-operation with European regulatory authorities.”;

(b) sub-article (1) thereof shall be renumbered as sub-article (11);

(c) sub-article (2) thereof shall be deleted and there shall be inserted the following new sub-articles as follows:

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

(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 Financial Market 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 sub-article (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 their 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 further 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) of this sub-article, 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 under articles 37C of this Act, 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 monitor the proper functioning of trading venues within the meaning of the Directive;

(b) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(c) in appeals under article 42 of this Act; or

(d) to investigate complaints received from consumers in terms of article 20 of the Malta Financial Services Authority Act.

(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.”;

(d) sub-article (11) as re-numbered shall be amended as follows:

(i) for the words “overseas regulatory authority” there shall be substituted the words “European regulatory authority”;

(ii) paragraph (c) thereof shall be re-numbered as paragraph (e);

(iii) immediately after paragraph (b) thereof there shall be inserted the following new paragraphs:

“(c) the powers to issue directives under article 5;

(d) the powers of entry under article 34;”;

(iv) in paragraph (e) thereof, as re-numbered, for the words “overseas regulatory authority” there shall be substituted the words “European regulatory authority”.

Addition of new articles 37A, 37B and 37C to the principal Act.

**31.** Immediately after article 37 of the principal Act there shall be inserted the following new articles:

“Co-operation in supervisory functions, on-site verifications or investigations.”

“37A. (1) The competent authority may request the co-operation of a European regulatory authority in supervisory functions or for on-site verifications or investigations, and a European regulatory authority may likewise request the co-operation of the competent authority in the performance of its supervisory functions or in verifications or investigations.

(2) In the exercise of such co-operation between the competent authority and European regulatory authorities the provisions of article 17A of the Investment Services Act shall apply *mutatis mutandis*.

“Refusal to cooperate.”

37B. The competent authority may refuse to act on a request

for co-operation in carrying out supervisory functions, on-site verifications or investigations in terms of article 37A or to exchange information with European regulatory authorities designated as contact points under article 56(1) of the Directive, in the circumstances laid down in Article 17B of the Investment Services Act.

“Co-operation with overseas regulatory authorities.”.

37C. (1) Co-operation agreements with overseas regulatory authorities or other authorities, bodies and natural or legal persons in a country that is not a Member State or EEA State may be entered into only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under article 38 of this Act. 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:

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) In the conclusion of co-operation 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, the provisions of sub-article (2) of article 17D of the Investment Services Act shall apply *mutatis mutandis*.”.

(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 sub-article (11) of article 37 of the Investment Services Act, and for the purposes of this sub-article the words “European regulatory authority” shall be read as “overseas regulatory authority”.

Substitution of article 38 of the principal Act.

**32.** For article 38 of the principal Act there shall be substituted the following:

“(1) Regulated markets, the Listing Authority, the competent authority, their respective members, officers, employees or agents, as well as auditors, inspectors and experts, as the case may be, engaged in terms and for the purposes of any of the provisions of this Act

(a) shall deal with all documents and other information relating to the relevant regulated market or to dealings therewith or therein, or otherwise obtained for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder and not yet officially divulged, as confidential and protected by the duty of professional secrecy, and shall not disclose the same to any other person;

(b) are prohibited from using such documents and information and all other matters which are confidential and protected by the duty of professional secrecy and which comes to their knowledge by virtue of their position, in order to secure any advantage for themselves or for any third parties whether such third parties are connected or not with the financial instruments market.

(2) Article 26 of the Investment Services Act shall apply *mutatis mutandis* to regulated markets, the Listing Authority, the competent authority, their respective members, officers, employees or agents, as well as auditors, inspectors and experts engaged for the purposes of any of the provisions of this Act, bound by the obligation of confidentiality in terms of sub-article (1) of this article.

(3) Any person who acts in contravention of this article shall, without prejudice to the provisions of the Prevention of Financial Markets Abuse Act, be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) of five thousand liri or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

(4) Any person other than those mentioned in sub-articles (1) and (2) who acquires any documents or any other information to which the said sub-articles relate and who uses such documents or information, with intent to secure advantage either for himself or any other person, shall without prejudice to the Prevention of Financial Markets Abuse Act, be guilty of an offence against this Act and shall on conviction be liable to the same penalty established for an offence against the provisions of this article.”.

Amendment of article 39 of the principal Act.

**33.** Article 39 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “or the rules or bye-laws of a recognised investment exchange or will contravene or



fail to comply with any obligation, requirement, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the rules or bye-laws of a recognised investment exchange;”, there shall be substituted the words “or the bye-laws of a regulated market or will contravene or fail to comply with any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the bye-laws of a regulated market;”;

(ii) in paragraph (b) thereof, for the words “requirement, directive, or order”, there shall be substituted the words “requirement, directive, Financial Market Rule, Listing Rule or order”;

(b) in paragraph (a) of sub-article (2) thereof for the words “the rules of a recognised investment exchange or any obligation, requirement, directive, or order made or given under any of the provisions of this Act or under the rules or bye-laws of a recognised investment exchange;”, there shall be substituted the words “the bye-laws of a regulated market or any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act or under the bye-laws of a regulated market;”;

(c) in paragraph (a) of sub-article (3) thereof, for the words “the rules or bye-laws of a recognised investment exchange or any obligation, requirement, directive, or order made or given under any of the provisions of this Act, the regulations made thereunder or the rules or bye-laws of a recognised investment exchange;”, there shall be substituted the words “the bye-laws of a regulated market or any obligation, requirement, Financial Market Rule, Listing Rule, directive or order made or given under any of the provisions of this Act, the regulations made thereunder or the bye-laws of a regulated market”;

Addition of  
new article 39A  
to the principal  
Act.

**34.** Immediately after article 39 of the principal Act there shall be inserted the following new article:

“Administrative  
penalties.”

**“39A.** (1) Where any person contravenes or fails to comply with any provision of this Act, other than Part III thereof, including failure to cooperate in an investigation, or of any regulations, Financial Market Rules made thereunder adopted in the implementation of the Directive the competent authority may by notice in writing and without recourse to a court hearing impose on any such person or persons, as the case may be, an administrative penalty which may not exceed forty thousand liri.

(2) The competent authority may disclose to the public any penalty imposed under the immediately preceding sub-article:

Provided that the competent authority shall withhold such publication where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(3) Persons upon whom notice is served under sub-article (1) of this article shall have a right of appeal to the Tribunal in accordance with article 43 of this Act.

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

Amendment of  
article 40 of the  
principal Act.

**35.** Article 40 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words “order, directive, rule or regulation”, there shall be substituted the words “order, directive, Financial Market Rule, Listing Rule or regulation”;

(b) for sub-article (2) thereof there shall be substituted the following:

“(2) Any person who knowingly or recklessly gives the competent authority, any person appointed by it under article 32(1)(c) or any inspector appointed under article 33, information which is false or misleading shall be guilty of an offence.”;

(c) for sub-article (3) thereof there shall be substituted the following:

“(3) Any person who removes, destroys, conceals or fraudulently alters any book, document or other paper, including information stored in electronic format, which is or is likely to be relevant to a request for information or documentation or an inspection or an investigation in terms of this Act, shall be guilty of an offence.”;

(d) in sub-article (4) thereof, for the words “who intentionally obstructs”, there shall be substituted the words “who obstructs”.

Addition of  
new article  
41A.

**36.** Immediately after article 41 of the principal Act there shall be inserted the following new article 41A:

“Public  
statement to a  
person’s  
misconduct.”

“41A. If it appears to the competent authority or the Listing Authority that a 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, Financial Market Rules, Listing Rules or directives made or given under any of the provisions of this Act, the competent authority or the Listing Authority, as the case may be, may publish a statement to that effect.”;

Amendment of  
article 42 of the  
principal Act.

**37.** Article 42 of the principal Act shall be amended as follows:

(1) in sub-article (1) thereof, for the words “articles 4(10), 16(7), 17(3), 18(6), 20(6) and 33(5)” there shall be substituted the words “articles 4(11), 16(9), 17(3), 18(6), 20(4), 33(6) and 39A”; and

(2) in sub-article (2) thereof, the words “from a decision of the Council of the Malta Stock Exchange under paragraphs 5(1), 6(1) and 6(2) of the Statute as well as”, shall be deleted;

Amendment of  
article 43 of the  
principal Act.

**38.** Article 43 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) the words “the Exchange” and “of the Exchange or” wherever they appear shall be deleted;

(ii) in paragraph (a) thereof, for the words “the rules or bye-laws” there shall be substituted the words “the bye-laws”;

(b) in sub-article (2) thereof, for the words “from:

(a) a decision to discontinue the listing of any financial instruments as is mentioned in article 18(5); and

(b) a decision to publish a statement of censure under article 20:

Provided that a decision on any of the matters as is referred to in paragraphs (a) and (b) shall become operative”,

there shall be substituted the words “from a decision to discontinue the listing of any financial instruments as is mentioned in article 18 (5) in which case the decision shall become operative”.

Substitution of  
article 44 of the  
principal Act.

**39.** For article 44 of the principal Act there shall be substituted the following:

“Applicability  
of article 21

“44. Subject to Article 43 of this Act, the provisions of

of the Malta  
Financial  
Services  
Authority  
Act.”

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.”.

Substitution of  
article 45 of the  
principal Act.

**40.** For article 45 of the principal Act there shall be substituted the following:

“Trading  
outside  
regulated  
markets.”

**“45.** (1) Quoted financial instruments may be traded outside the regulated market on which they are listed.

(2) The Minister may make regulations to establish conditions and procedures under which quoted financial instruments may be traded outside the regulated markets on which such quoted financial instruments are listed and other than by means of facilities provided by any such regulated markets.”

Amendment of  
article 47 of the  
principal Act.

**41.** In article 47 of the principal Act, for the words “with the Exchange”, there shall be substituted the words “with a regulated market”.

Amendment of  
Article 49 of  
the principal  
Act.

**42.** Article 49 of the principal Act shall be amended as follows:

(a) The said article 49 shall be re-numbered as article 49(1);

(b) Article 49(1) as re-numbered shall be amended as follows:

(i) in paragraph (c) thereof, the words “other than the Exchange” shall be deleted;

(ii) in paragraph (d) thereof, for the words “to which Malta is a party.”, there shall be substituted the words “to which Malta is a party;”;

(iii) immediately after paragraph (d) thereof, there shall be inserted the following new paragraph (e):

“(e) to transpose, implement and give effect to the provisions and requirements of the Directive, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.”;

(c) immediately after sub-article 49(1) as renumbered, there shall be inserted the following new sub-articles:

“(2) 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.

(3) Where regulations have been issued in terms of this

article, the competent authority may issue Financial Market Rules within the meaning of article 4 of this Act for the better carrying out and to better implement the provisions of the regulations.”.

Amendment of article 50 of the principal Act.

**43.** In article 50 of the principal Act, for the words “the Exchange” wherever they appear there shall be substituted the words “a regulated market”.

Amendment of article 51 of the principal Act.

**44.** Article 51 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words “under article 33(4)”, there shall be substituted the words “under article 33(5)”; and

(b) in sub-article (2) thereof, for the words “under article 33(4)”, there shall be substituted the words “under article 33(5)”.

Amendment of article 52 of the principal Act.

**45.** In article 52 of the principal Act, for the words “or any rules or regulations made thereunder” there shall be substituted the words “or any regulations or Financial Market Rules or Listing Rules made thereunder”.

Addition of new article 53 to the principal Act.

**46.** Immediately after article 52 of the principal Act, there shall be inserted the following new article 53:

“Objective.”

**“53.** The purpose of this Act is to regulate regulated markets, to provide for orderly trading in transferable securities and for matters ancillary or incidental thereto or connected therewith, and to implement the relevant provisions of the Directive which shall be interpreted and applied accordingly.”.

Repeal of Schedule to the principal Act.

**47.** The Schedule to the principal Act shall be repealed.

## **MSE Act amendments 2007**

### **Part (of amending Act)**

#### **Transitory Provisions**

1. With effect from such date as the Minister may by order establish, hereinafter ‘the operative date’, the Malta Stock Exchange plc shall continue in the personality of the Malta Stock Exchange established under Part IV of the Financial Markets Act prior to the repeal of such Part by this Act; and the Malta Stock Exchange Plc shall accordingly succeed to all its rights and obligations, including the recognition order issued to the Malta Stock

Exchange in terms of Part II of the Financial Markets Act, which, unless specifically cancelled or repealed, shall remain in force subject to such modifications and adaptations as are strictly necessary to place into full effect the continuation and devolution of the said rights and obligations and the recognition order in favour of the Malta Stock Exchange plc.

2. All authorizations, decisions, licenses, warrants, approvals, notices and other acts or commitments made or taken by the Malta Stock Exchange, including any membership or admission to the official list and any Council Notice or Bye-Laws, as well as agreements, contracts of employment and relative staff appointments and conditions, shall as from the operative date be deemed to have been made or taken and assumed by the Malta Stock Exchange plc, and accordingly shall, unless specifically cancelled or repealed, remain in force accordingly, with such modifications and adaptations as are strictly necessary to implement fully and correctly the succession and devolution of the business and the rights and obligations as aforesaid of the Malta Stock Exchange to and in favour of the Malta Stock Exchange plc in terms of this Part.
3. All assets, rights, liabilities, and obligations, both movable and immovable, of the Malta Stock Exchange shall as from the operative date vest in and devolve to the Malta Stock Exchange Plc to the exclusion of the immovable property and rights relating thereto as described in the Schedule to this Part. The Malta Stock Exchange plc shall within one month from the operative date cause a declaratory public deed to be published containing a detailed description of the allocation and the devolution in favour of and succession to the immovable property and rights relating thereto which prior to the operative date was vested in the Malta Stock Exchange subject to the provisions of this Part, and a note thereon shall be duly enrolled at the Public Registry and the Land Registry, as the case may be.
4. The succession, as from the operative date, of the assets, rights, liabilities and obligations in favour of Malta Stock Exchange Plc described in this Part shall be valid and effective even as regards third parties by operation of law without the need for any other formality, other than the public deed and notes required under article 3, and shall be exempt from the payment of income tax, duty on documents and other fiscal charges, notwithstanding any other provision of law.
5. Any reference in any law to the Malta Stock Exchange shall after the operative date be deemed to be a reference to the Malta Stock Exchange plc; and any reference to the Council, a member of the Council or any officer or employee of the Malta Stock Exchange shall after the operative date be deemed to be a reference to the Board of Directors, a director of the company and to officers or employees of the company, respectively.

25 January 2007

Schedule (article 3)

The immovable property consisting of:-

1. The immovable property consisting of offices and premises known as the “*Malta Stock Exchange*” or “*Borza ta’ Malta*”, with all the buildings and improvements thereon, formerly known as the “*Post Office Central Mailing Room*”, formerly also known as the “*Barrakka Garrison Church*”, situated at Castille Place, Valletta, without an official number, together with its surrounding garden, measuring approximately one thousand one hundred and thirty square metres (1130 m<sup>2</sup>) and is bounded altogether on the North-East and the North-West by Castille Place and the South-East by the Upper Barrakka Gardens;

The above-mentioned property is shown edged in red on a Plan marked as “Document X” attached herewith.

The said property comprises the following underground depths namely:-

- a) up to a depth of four point four metres in respect of the existing groundfloor level inside the Barakka Garrison Church, which is shown hatched in red number three on the said plan up to the uppermost level of the roof of the underground staircase and tunnel that are subject to third party rights;
- b) without restriction in that portion marked in blue in respect of number six on the said plan;
- c) up to a depth of fifteen metres (15m) in respect of that portion marked hatched blue number one on the said plan;
- d) up to a depth of four point four metres (4.4m) in respect of that portion marked hatched yellow number two on the said plan; and
- e) up to a depth of two point five zero metres in respect of that portion hatched in violet number seven on the said plan.

The airspace over the buildings without number, situated at Valletta, Barakka Gardens having a total aggregate area of approximately one hundred and ten square metres (110 sq.m.) and is set at a height of three point seven metres (3.7m) from the existing ground level, is bounded on the North-West by property belonging to the Emigrants’ Commission of the Curia in Malta, and on the East and South by Government property, and is better bordered in red number nine and ten and hatched violet number ten and yellow number nine, on the said plan attached herewith marked as “Document X”.