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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Emmanuel Bonnici, M.P., Ministru għall-Iżvilupp Terzjarju, u moqri għall-Ewwel darba fis-Seduta tat-8 ta' Lulju, 1991.

ATT biex jirregola t-tmexxija tal-kummerċ ta' investiment u biex jipprovdi għal hwejjeg li huma ancillari għalih jew li għandhom x'jaqsmu miegħu.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A **BILL** introduced by the Honourable Emmanuel Bonnici, M.P., Minister for Development of Tertiary Sector, and read for the First time at the Sitting of the 8th July, 1991.

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

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT biex jerregola t-tmexxija tal-kummerċ ta' investiment u biex jipprova għal hwejjeg li huma anċillari għalih jew li għandhom x'jaqsmu miegħu.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1991 dwar Servizzi ta' Investiment.

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għal attivitajiet kummerċjali internazzjonali jista' jstabilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jkunu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tinhtigx xort'ohra —

Tifsir.

“skema ta' investiment kollettiv” tfisser kull skema jew arrangament li jkollu bħala l-għan tiegħu jew bħala wiehed mill-għanijiet tiegħu l-investiment kollettiv ta' kapital akkwistat bil-mezz ta' offerta ta' unitajiet biex ikunu sottoskritti, mibjugħa jew mibdula u li jkollu wiehed mill-karatteristiċi li ġejjin —

(a) l-iskema jew l-arrangament jahdem fuq principju ta' riskju mifruq; jew

(b) il-kontribuzzjonijiet tal-partecipanti u l-profitti jew id-dhul li minnhom ikunu se jsiru l-hlasijiet lilhom ikunu tqegħdu f'pool; jew

(c) l-unitajiet ikunu jew ikunu jistgħu jinxtraw lura jew ikunu mifdija, fuq it-talba tad-detenturi tagħhom jew xort'ohra, u sew jekk direttament jew indirettament, mill-attiv ta' l-iskema jew ta' l-arrangament; jew

(d) l-unitajiet huma mahruġa, jew ikunu nharġu, jew ikunu se jinharġu kontinwament jew fi blokki f'intervalli qosra,

u tinkludi skema ta' titoli trasferibbli u skema ta' titoli mhux trasferibbli;

“liċenza għal skema ta' investiment kollettiv” tfisser liċenza għall-hruġ jew għall-holqien ta' unitajiet jew għat-tmexxija ta' attività minn skema ta' investiment kollettiv mahruġa taht l-artikolu 6 ta' dan l-Att;

“awtorità kompetenti” tfisser jew l-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta mwaqqfa bl-Att ta' l-1988 dwar Attivitàjiet Kummerċjali Internazzjonali ta' Malta jew il-Bank Ċentrali ta' Malta mwaqqaf bl-Att ta' l-1967 dwar il-Bank Ċentrali ta' Malta, kif il-Ministru bi ftehim mal-Ministru responsabbli għall-finanzi, jista' minn żmien għal iehor jippreskrivi fejn jindika l-oqsma ta' kompetenza rispettivi, u kull riferenza għal awtorità kompetenti f'dan l-Att għandha tiftiehem f'dan is-sens:

Iżda fl-artikolu 10 ta' dan l-Att l-espressjoni tfisser kemm l-Awtorità kif ukoll il-Bank imsemmija;

“dokument” tinkludi informazzjoni registrata f'kull sura u, dwar informazzjoni registrata f'xi sura li ma tkunx tinqara, referenzi għall-produzzjoni tagħha jinkludu referenzi għall-produzzjoni ta' kopja ta' l-informazzjoni f'sura li tinqara;

“ftehim ta' investiment” tfisser kull ftehim li l-egħmil jew it-twettiq tiegħu minn xi wahda mill-partijiet jikkostitwixxi servizz ta' investiment;

“servizz ta' investiment” tfisser kull servizz li jaqa' taht l-Ewwel Skeda li tinsab ma' dan l-Att meta jkun provdut dwar istrument jew jedd inkluż fit-Tieni Skeda li tinsab ma' dan l-Att;

“liċenza għal servizzi ta' investiment” tfisser liċenza biex ikun provdut servizz ta' investiment mahruġa taht l-artikolu 6 ta' dan l-Att;

“liċenza” tinkludi liċenza għal skema ta' investiment kollettiv u liċenza għal servizzi ta' investiment;

“Ministru” tfisser il-Ministru responsabbli għall-attivitàjiet kummerċjali internazzjonali;

“skema ta' titoli mhux trasferibbli” tfisser skema ta' investiment kollettiv li l-għan ewlieni tagħha jkun l-investiment kollettiv ta' kapital hlief f'titoli trasferibbli;

“partecipanti” tfisser il-persuni li jipparteċipaw fi jew jirċievu, jew li jkunu se jipparteċipaw fi jew ikunu se jirċievu, profitti jew dhul li jinqalghu mill-akkwist, żamma, tmexxija jew disponiment tal-proprjetà inkluża fi skema ta’ investiment kollettiv jew ammonti mhallsa minn dawk il-profitti jew minn dak id-dhul;

“preskritt” tfisser preskritt b’reboli jew b’regolamenti maghmula taht dan l-Att;

“skema ta’ titoli trasferibbli” tfisser skema ta’ investiment kollettiv li l-ghan ewlieni taghha huwa l-investment kollettiv ta’ kapital f’titoli trasferibbli;

“titolu trasferibbli” tfisser kull istrument li jaqa’ taht il-paragrafu 1 jew 2 tat-Tieni Skeda li tinsab ma’ dan l-Att, hlief istrument li t-titlu ghalih jew ma jkunx jista’ jiġi trasferit jew ikun jista’ jiġi trasferit biss bil-kunsens ta’ terza persuna barra minn, fil-każ ta’ istrument li jaqa’ taht il-paragrafu 1 ta’ l-imsemmija Skeda, jew il-korp magħqud li jkun hareġ l-istrument jew xi membri jew detenturi ta’ *debenture* ta’ dak il-korp magħqud;

“unità” tfisser kull haġa li tirrappreżenta l-jeddijiet u l-interessi tal-partecipanti fi skema ta’ investiment kollettiv.

3. (1) Ebda persuna m’ghandha tipprovdi, jew turi lilha nnifisha li tipprovdi servizz ta’ investiment f’Malta jew minn Malta kemm-il darba ma jkollhix liċenza valida għal servizzi ta’ investiment.

Htieġa ta’
liċenza għal
servizzi ta’
investment.

(2) Ebda individwu li odinarjament jirrisjedi f’Malta u ebda korp magħqud, korp mhux magħqud jew assoċjazzjoni iffurmati skond jew li jkunu jeżistu taht il-liġijiet ta’ Malta ma jistghu jipprovdu, jew juru lilhom infushom li jipprovdu, servizz ta’ investiment fi jew minn pajjiż, territorju jew post ieħor barra minn Malta jekk ma jkollhomx fil-pussess tagħhom liċenza valida għal servizzi ta’ investiment jew liċenza valida jew awtorizzazzjoni oħra mahruġa jew mogħtija mill-awtoritajiet xierqa tal-pajjiż, territorju jew post ieħor li fih jew li minnu jkunu qed jipprovdu s-servizz, liema liċenza jew awtorizzazzjoni għandhom, b’danakollu, ikunu aċċettabbli mill-awtorità kompetenti.

(3) Id-dispożizzjonijiet ta’ qabel ta’ dan l-artikolu m’ghandhomx japplikaw għal —

(a) l-awtorità kompetenti;

(b) il-Borsa ta’ Malta mwaqqfa bl-Att ta’ l-1990 dwar il-Borsa ta’ Malta;

Att XXXIII
ta’ l-1990.

(ċ) xi attività li ssir minn persuna li taġixxi bhala mpjegat jew aġent ta’ persuna oħra jekk dik il-persuna l-oħra—

(i) tkun id-dententur ta’ liċenza għal servizzi ta’ investiment; u

(ii) tkun responsabbli, skond il-kondizzjonijiet tal-ftehim taghha ma’ dak l-impjegat jew l-aġent, għal dik l-attività; u

(iii) tkun harset il-htigiet kollha ta' dan l-Att u ta' kull regoli jew regolamenti maghmula bis-saħħa tiegħu, kif ukoll kull kondizzjonijiet imposti bl-istess mod, u li jkunu jirreferu għal dak l-impjegat jew aġent;

(d) persuna li tkun id-detentur ta' liċenza valida ta' *stock broker* mahruġa taht l-Att ta' l-1990 dwar il-Borsa ta' Malta:

Iżda:

(i) jekk is-servizz provdut minn dik il-persuna jkun wiehed li dwaru l-awtorità kompetenti tkun l-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta, u s-servizz ma jkunx dak ta' sensal għax-xiri jew il-bejgħ ta' instrument jew dritt inkluz fit-Tieni Skeda li tinsab ma' dan l-Att, liċenza taht dan l-Att tkun mehtieġa għal dak is-servizz l-ieħor, u f'kull każ bħal dan il-liċenza ma tinharigx kemm-il darba l-applikazzjoni għaliha ma tkunx kontrafirmata mill-Kunsill tal-Borsa ta' Malta mwaqqaf taht l-imsemmi Att;

(ii) jekk is-servizz provdut minn dik il-persuna jkun wiehed li dwaru l-awtorità kompetenti tkun il-Bank Ċentrali ta' Malta, u s-servizz ma jkunx ta' sensal kif intqal qabel jew ta' konsulent ta' investimenti kif imfisser fil-paragrafu 5 ta' l-Ewwel Skeda li tinsab ma' dan l-Att, liċenza taht dan l-Att tkun mehtieġa għal dak is-servizz l-ieħor;

(e) persuna li fid-data tal-bidu fis-seħħ ta' dan l-artikolu kienet qed tipprovdni servizz ta' investiment, sal-limitu tas-servizz li jkun f'dik id-data provdut u biss sakemm liċenza għal servizz ta' investiment tinghatalha jew tkunilha miċhuda jew sakemm jgħaddu sitt xhur mill-imsemmija data, liema jkun l-iqsar żmien, u bil-kondizzjoni li dik il-persuna tkun applikat għal liċenza għal servizzi ta' investiment skond id-dispożizzjonijiet ta' dan l-Att mhux iktar tard minn xahar wara l-imsemmija data.

Htieġa ta' liċenza għal skemi ta' investiment kollettiv.

4. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, ebda skema ta' investiment kollettiv iffurmata skond jew li tkun teżisti taht il-liġijiet ta' Malta m'għandha toħroġ jew toħloq xi unitajiet jew tmexxi xi attività kemm-il darba ma jkunx hemm dwarha liċenza valida għal skema ta' investiment kollettiv.

(2) Ebda skema għal investiment kollettiv ma tkun prekluziva bid-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu milli toħroġ jew toħloq dawk l-unitajiet jew milli tiehu dawk il-passi li jistgħu jkunu mehtieġa għall-inkorporazzjoni jew, skond il-każ, l-istabbiliment ta' l-iskema jew milli tiehu dawk il-passi li jistgħu jkunu mehtieġa sabiex tkun żgurata l-awtorizzazzjoni ta' l-iskema mill-awtorità kompetenti.

Applikazzjonijiet għal liċenza.

5. (1) Applikazzjoni għal liċenza għandha ssir f'dik il-forma u b'dak il-mod mehtieġ mill-awtorità kompetenti, jew kif jista' jkun preskritt, u għandha wkoll —

(a) ikun fiha jew ikollha magħha dak it-tagħrif u dawk il-partikolaritajiet, b'żieda ma' dawk mehtieġa b'dan l-artikolu, li l-awtorità kompetenti tista' tehtieġ, jew kif jista' jkun preskritt;

(b) tkun verifikata b'dak il-mod u sa dak il-limitu mehtieg mill-awtorità kompetenti, jew kif jista' jkun preskritt;

(c) ikollha l-indirizz f'Malta ghan-notifika lill-applikant ta' kull avviż jew dokument ieħor mehtieg jew li hu awtorizzat li jkun notifikat lilu b'dan l-Att jew tahtu;

(d) fil-każ ta' liċenza għal servizzi ta' investiment, ikollha magħha programm ta' attivitajiet li juri dawk il-hwejjeg li jkunu mehtieġa mill-Awtorità kompetenti li jintwerew minn żmien għal żmien;

(e) fil-każ ta' liċenza għal skema ta' investiment kollettiv, tispeċifika x-xorta ta' l-iskema ta' l-investiment kollettiv li jkun;

(f) ikollha magħha dak id-dritt li jista' jkun preskritt għal-liċenza li dwarha tkun saret applikazzjoni.

6. (1) L-awtorità kompetenti tista' tagħti jew tiċhad l-ghoti ta' liċenza li dwarha tkun saret applikazzjoni skond dan l-Att u m'għandiex għalfejn tagħti raġunijiet għad-deċiżjoni tagħha:

Setgħa ta' l-Awtorità kompetenti dwar liċenzi.

Iżda l-awtorità kompetenti m'għandiex —

(a) tagħti liċenza għal servizzi ta' investiment kemm-il darba ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa biex tippovdi s-servizzi ta' investiment konċernati u li jkurf se jħares u josserva kull regoli u regolamenti magħmula taht dan l-Att u applikabbli għalih;

(b) tagħti liċenza għal skema ta' investiment kollettiv kemm-il darba ma tkunx sodisfatta li l-iskema tkun taqbel f'kull dettal ma' kull regoli u regolamenti magħmula taht dan l-Att u applikabbli għaliha u li d-diretturi u l-uffiċjali tagħha jkunu persuni xierqa u addattati biex iwettqu l-funzjonijiet mehtieġa minnhom dwar l-iskema.

(2) Fl-ghoti ta' liċenza l-awtorità kompetenti tista' tagħmel il-liċenza suġġetta għal dawk il-kondizzjonijiet li jidhrilha xierqa, u meta tkun tat liċenza tista', minn żmien għal żmien, tibdel jew tirrevoka kull kondizzjoni hekk imposta jew timponi kondizzjonijiet ġodda.

(3) Meta tkun qed tikkonsidra jekk tagħtix jew tiċhadx liċenza l-awtorità kompetenti għandha, b'mod partikolari, tikkunsidra —

(a) il-ħarsien tal-pubbliku;

(b) il-ħarsien tar-riputazzjoni ta' Malta;

(ċ) l-aħjar interessi ekonomiċi ta' Malta; u

(d) fil-każ ta' liċenza għal skema ta' investiment kollettiv, ir-riputazzjoni u kemm ikunu xierqa l-applikant u l-partijiet l-oħra li jkollhom x'jaqsmu ma' l-iskema.

(4) Kull liċenza għandha tispeċifika s-servizz ta' investiment li d-detentur tagħha jkun awtorizzat li jipprovdi jew, skond il-każ, il-klassi ta' l-iskema ta' l-investiment kollettiv li għaliha tirreferi l-liċenza, u b'mod partikolari jekk tkunx skema ta' titoli trasferibbli jew mhux trasferibbli; u meta l-liċenza tinħareġ mill-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta din għandha testendi u tapplika biss għall-iskemi u għas-servizzi ta' investiment li dwarhom dik l-Awtorità tkun l-awtorità kompetenti u meta l-liċenza tinħareġ mill-Bank Ċentrali ta' Malta din għandha testendi u tapplika biss għall-iskemi u għas-servizzi ta' investiment li dwarhom l-imsemmi Bank ikun l-awtorità kompetenti.

(5) Bla hsara għall-generalità tas-subartikolu (2) ta' dan l-artikolu, il-kondizzjonijiet li għalihom liċenza tista' tkun magħmula sugġetta jistgħu jkunu magħmula applikabbli, jew jista' jkun preskritt li jkunu applikabbli, għal —

(a) il-liċenzi għal servizzi ta' investiment kollha jew għal-liċenzi għal skema ta' investiment kollettiv kollha, skond il-każ;

(b) ċerti kategoriji ta' xi waħda mill-imsemmija liċenzi;

(ċ) dawk il-liċenzi kollha li jkunu mogħtija lil ċerti kategoriji ta' detenturi;

(d) dawk il-liċenzi kollha dwar servizzi jew skemi partikolari, skond il-każ.

(6) Meta l-applikant għal liċenza ma jkunx notifikat mill-awtorità kompetenti bid-deċiżjoni tagħha dwar jekk tagħtix jew tiċhadx il-liċenza li dwarha tkun saret applikazzjoni fi żmien sitt xhur minn meta tirċievi applikazzjoni magħmula skond id-dispożizzjonijiet applikabbli ta' dan l-Att, l-applikazzjoni titqies li tkun giet miċhuda u d-dispożizzjonijiet ta' dan l-Att għandhom japplikaw bħallikieku l-avviż taċ-ċaħda jkun ingħata ma' l-egħluq ta' l-imsemmi żmien.

Setgħa ta' l-awtorità kompetenti li thassar jew tissospendi liċenzi.

7. (1) L-awtorità kompetenti tista' f'kull żmien thassar jew tissospendi liċenza skond id-dispożizzjonijiet ta' dan l-Att.

(2) Fil-każ ta' liċenza għal servizzi ta' investiment, l-awtorità kompetenti tista' thassar jew tissospendi liċenza —

(a) jekk tikkunsidra li d-detentur tagħha ma jkunx persuna xierqa u addattata biex tipprovdi s-servizz ta' investiment li tkun awtorizzata tipprovdi; jew

(b) jekk tikkunsidra li d-detentur taghha ma jkunx jissodisfa l-htigiet ta', jew ikun kiser, xi wahda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti maghmula bis-sahha tieghu, jew ikun naqas li jissodisfa jew li jhares xi obbligu jew kondizzjoni li hu jew il-liċenza jkunu sugġetti ghalihom bis-sahha ta' dan l-Att jew tahtu; jew

(ċ) jekk l-awtorità kompetenti tkun inghatat mid-detentur tal-liċenza jew f'ismu taghrif li jkun falz, mhux preċiż jew qarrieqi; jew

(d) jekk id-detentur tal-liċenza ma jkunx beda jipprovdi s-servizz li jkun awtorizzat jipprovdi fi żmien sena mid-data tal-liċenza jew ikun waqaf milli jipprovdi dak is-servizz; jew

(e) jekk tikkunsidra mehtieg li l-liċenza tkun imhassra jew sospiza biex jithares il-pubbliku jew ir-riputazzjoni ta' Malta; jew

(f) fuq it-talba tad-detentur tal-liċenza.

(3) Fil-każ ta' liċenza ghal skema ta' investment kollettiv, l-awtorità kompetenti tista' thassar jew tissospendi liċenza —

(a) jekk tikkunsidra li l-iskema li ghalha tirreferi l-liċenza ma tkunx tissodisfa l-htigiet ta' xi dispożizzjoni ta' dan l-Att jew ta' xi regoli jew regolamenti maghmula bis-sahha tieghu, jew ikun hemm ksur ta' xi wahda minn dawk id-dispożizzjonijiet, jew xi obbligu jew kondizzjoni li ghalihom l-iskema jew il-liċenza ikunu sugġetti bis-sahha ta' dan l-Att jew tahtu ma jkunux ġew sodisfatti jew imharsa; jew

(b) jekk ikun inghata taghrif lill-awtorità kompetenti mill-iskema jew f'isimha jew dwarha li jkun falz, mhux preċiż jew qarrieqi; jew

(ċ) jekk l-iskema ma tkunx bdiet l-attivitajiet li tkun awtorizzata tmexxi fi żmien sena mid-data tal-liċenza jew tkun waqfet milli tmexxi dawk l-attivitajiet; jew

(d) jekk tikkunsidra mehtieg li thassar jew tissospendi l-liċenza biex jithares il-pubbliku jew ir-riputazzjoni ta' Malta; jew

(e) fuq it-talba tad-dirigent jew tat-trustee jew tal-kustodju ta' l-iskema, jew ta' l-ekwivalenti taghhom.

8. (1) Meta l-awtorità kompetenti jkollha l-hsieb —

(a) li tibdel xi kondizzjoni li ghalha tkun sugġetta liċenza jew li timponi kondizzjoni ġdida maghha; jew

(b) li thassar jew tissospendi liċenza, ghandha taghti lill-applikant jew, skond il-każ, lid-detentur tal-liċenza jew lid-dirigent jew it-trustee jew il-kustodju ta' skema ta' investment kollettiv, jew lill-ekwivalenti taghhom avviz bil-miktub tal-hsieb taghha li taghmel hekk fejn taghti r-raġunijiet ghad-deċizzjoni li tkun bi hsiebha tiehu.

Proċeduri
li ghandhom
jitharsu
dwar liċenza.

(2) Kull avviż moghti taht is-subartikolu (1) ta' dan l-artikolu għandu jgħid li min jirċievi l-avviż jista', f'dak iż-żmien xieraq wara li jirċievi n-notifika kif jingħad fl-avviż (li jkun żmien ta' mhux inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin jum), jagħmel rappreżentazzjonijiet bil-miktub lill-awtorità kompetenti fejn jgħid għaliex m'għandhiex tittiehed id-deċiżjoni propoſta; u l-awtorità kompetenti għandha tikkunsidra kull rappreżentazzjoni hekk magħmula qabel ma tasal għal deċiżjoni finali.

(3) L-awtorità kompetenti għandha tinnotifika d-deċiżjoni finali tagħha bil-miktub lil kull waħda mill-persuni li lilha għandu jingħata avviż taht is-subartikolu (1) ta' dan l-artikolu.

Obbliġi ta'
detentur ta'
liċenza.

9. (1) Id-detentur ta' liċenza għal servizzi ta' investiment u d-dirigent ta' skema ta' investiment kollettiv li tkun ingħatat liċenza taht dan l-Att, jew kull persuna oħra li jkollha r-responsabbiltà għall-amministrazzjoni jew tmexxija ta' kuljum ta' skema bħal dik, għandhom jagħtu lill-awtorità kompetenti l-partikolaritajiet dwar kull tibdil fit-tagħrif moghti taht dan l-Att malli jkun hemm dak it-tibdil.

(2) Kull detentur ta' liċenza għandu jhallas lill-awtorità kompetenti dak id-dritt kull tant żmien, u f'dak iż-żmien, li jista' minn żmien għal żmien ikun preskritt.

Setgħa
għall-egħmil
ta' regoli jew
regolamenti.

10. (1) Il-Ministru, li jaġixxi fuq il-parir ta' l-awtorità kompetenti, jista' jagħmel regoli jew regolamenti biex jagħtu effett aħjar lid-dispożizzjonijiet ta' dan l-Att u bla ħsara għall-ġeneralità ta' dak li ntqal qabel jista', b'dawk ir-regoli jew regolamenti, b'mod partikolari, jagħmel kull haġa minn dawn li ġejjin—

(a) jemenda t-tifsira ta' "skema għal investiment kollettiv" li tinsab fl-artikolu 2 ta' dan l-Att kif ukoll l-Ewwel u t-Tieni Skeda li jinsabu ma' dan l-Att;

(b) jirregola servizzi ta' investiment u skemi ta' investiment kollettiv, kif ukoll servizzi provduti u attivitajiet li jitmexxew b'konnessjoni magħhom jew dwarhom, jipprovdi għal kull haġa li jidhirlu spedjenti inkluż il-holqien u l-eżerċizzju ta' jeddijiet mill-pubbliku jew għall-benefiċċju tal-pubbliku u l-impożizzjoni ta' dmirijiet u obbliġi fuq detenturi ta' liċenza jew persuni responsabbli għat-tmexxija jew amministrazzjoni tagħha;

(c) jipprojbixxi, jirrestringi jew jikkontrolla jew xort'oħra jirregola l-promozzjoni jew il-bejgħ, b'kull mezz li jkun minn jew f'isem xi persuna, ta' servizz ta' investiment jew skema ta' investiment kollettiv jew ta' xi istrument inkluż fl-Ewwel Skeda li tinsab ma' dan l-Att;

(d) jistabbilixxi skemi jew jagħmel arrangamenti għall-kumpens ta' investituri f'każijiet fejn id-detentur ta' liċenza għal servizzi ta' investiment jew ta' skema ta' investiment kollettiv, jew id-detenturi ta' liċenza għal servizzi ta' investiment dwar skema bħal dik, ma jkunux jistgħu jissodisfaw talbiet dwar xi dejn ċivili li jinholq minnhom dwar is-servizz ta' investiment provdut minnhom jew dwar skema kif intqal qabel;

(e) jippreskrivi kull haġa li għandha jew li tista' tkun preskritta;

(f) jeżenta lill kull persuna, servizz, istrument jew skema ta' investment kollettiv minn kull wahda jew xi wahda jew iktar minn wahda mid-dispożizzjonijiet ta' dan l-Att u b'dawk il-kondizzjonijiet li jistgħu jkunu preskritti;

(g) jipprovdi għal kull haġa li hi inċidentali jew konnessa ma' dak li ntqal hawn fuq.

(2) Regoli jew regolamenti magħmula taht dan l-artikolu jistgħu wkoll jipprovdu sabiex persuna li tkun dahlet, jew offriet li tidhol fi ftehim għal investment mad-detentur ta' liċenza, tkun tista' thassar il-ftehim jew tirtira l-offerta f'dak iż-żmien u b'dak il-mod li jista' jiġi preskrit, u b'mod partikolari, iżda bla hsara għall-generalità ta' dak li ntqal qabel, jistgħu jipprovdu —

(a) għall-htieġa ta' notifika ta' avviż dwar id-drittijiet li jistgħu jiġu eżerċitati taht ir-regoli jew ir-regolamenti;

(b) għar-radd lura ta' proprjetà u biex isiru jew jingabru lura hlasijiet meta dawk id-drittijiet ikunu eżerċitati;

(c) għal dawk il-hwejjeġ l-oħra li huma inċidentali jew konnessi ma' dak li ntqal qabel.

(3) Regoli jew regolamenti magħmula taht dan l-artikolu jistgħu jsiru suġġetti għal dawk l-eżenzjonijiet jew kondizzjonijiet li jistgħu jkunu speċifikati fihom, jistgħu jipprovdu b'mod differenti għal każijiet differenti, ċirkostanzi jew għanijiet differenti u jistgħu jagħtu lill-awtorità kompetenti dawk is-setgħat għall-addattar tar-regoli jew regolamenti kif ukoll jista' jkun speċifikat.

(4) Regoli jew regolamenti magħmula taht dan l-artikolu jistgħu jimponu pjeni jew penalitajiet oħra dwar kull ksur jew nuqqas ta' tharis ta' mhux iktar minn multa ta' ghoxrin elf lira jew prigunerija għal żmien ta' mhux iżjed minn sena, jew dik il-multa u prigunerija flimkien.

11. (1) L-awtorità kompetenti tista' b'avviż bil-miktub, tehtieġ lil kull persuna li tkun qed tipprovdi jew li kienet tipprovdi, jew li tidher li tkun jew li kienet qed tipprovdi, servizz ta' investment, jew skema ta' investment kollettiv u lil kull persuna li tkun qed tmexxi jew li kienet qed tmexxi, jew li tidher li tkun jew li kienet qed tmexxi attivitajiet dwar skema bħal dik, jew lil kull persuna oħra li jkollha x'taqsam, li

Setgħa ta' l-awtorità kompetenti li titlob tagħrif.

(a) tagħtiha, f'dak iż-żmien u post u f'dik il-forma li tista' tispeċifika, dak it-tagħrif u dokumentazzjoni li tista' tehtieġ dwar xi servizz jew skema hekk kif intqal qabel;

(b) tagħti kull tagħrif jew dokumentazzjoni kif imsemmija verifikati b'dak il-mod li jista' jkun speċifikat;

(ċ) tidher quddiem l-awtorità kompetenti, jew quddiem persuna mahtura minnha, f'dak iż-żmien u post li tista' tispeċifika, biex twieġeb mistoqsijiet u tagħti taġhrif u dokumentazzjoni dwar kull servizz jew skema kif intqal qabel.

(2) L-awtorità kompetenti tista' taġmel kopji ta' kull dokumenti mogħtija jew provduti taħt dan l-artikolu.

(3) Meta l-persuna meħtieġa li taġti taġhrif jew dokumentazzjoni taħt dan l-artikolu ma jkollhiex it-taġhrif jew id-dokumentazzjoni rilevanti din għandha tghid lill-awtorità kompetenti fejn, skond l-aħjar taġhrif li jkollha, dak it-taġhrif jew dik id-dokumentazzjoni tkun u l-awtorità kompetenti tista' teħtieġ lil kull persuna, sew jekk indikata kif intqal qabel sew jekk le, li fil-fehma taġha jkollha fil-pussess taġha dak it-taġhrif jew dik id-dokumentazzjoni biex taġtilha.

(4) Dikjarazzjoni magħmula u dokumentazzjoni provduta skond xi wahda mill-htiegiet taħt dan l-artikolu jistghu jingiebu bhala prova kontra l-persuna li taġmel id-dikjarazzjoni jew li tipprovi d-dokumentazzjoni kif ukoll kontra kull persuna li għaliha jirreferu.

(5) Id-dispożizzjonijiet ta' dan l-artikolu m'għandhomx japplikaw għal taġhrif jew dokumentazzjoni li huma privileġġati skond l-artikolu 642 tal-Kodiċi Kriminali.

Kap. 9.

(6) Meta l-awtorità kompetenti tkun hatret persuna taħt il-paragrafu (ċ) tas-subartikolu (1) ta' dan l-artikolu, dik il-persuna jkollha, sabiex taqdi l-funzjonijiet taġha skond il-hatra taġha, dawk is-setgħat kollha mogħtija lill-awtorità kompetenti b'dan l-artikolu u jekk dik il-persuna teħtieġ xi haġa dik il-htieġa titqies li tkun saret u li jkollha l-istess saħħa u effett bħal htieġa ta' l-awtorità kompetenti.

Hatra ta' spetturi.

12. (1) L-awtorità kompetenti tista', kull meta jidhrilha meħtieġ jew spedjenti, taħtar spettur jew spetturi biex jistharrġu u jirrapportaw dwar l-affarijiet ta' kull persuna jew skema msemmija fis-subartikolu (1) ta' l-artikolu 11 ta' dan l-Att.

(2) Spettur mahtur taħt is-subartikolu (1) ta' dan l-artikolu —

(a) jista' wkoll, jekk jidhirlu meħtieġ jew spedjenti għall-finijiet ta' dak l-istharrġ, jistharreġ l-affarijiet ta' kull persuna jew skema ohra;

(b) ikollu u jkun jista' jeżerċita s-setgħat kollha mogħtija lill-awtorità kompetenti bl-artikolu 11 ta' dan l-Att, u kull haġa li jeħtieġ titqies li tkun u jkollha l-istess saħħa u effett bħal htieġa ta' l-awtorità kompetenti;

(ċ) jista', u jekk hekk ordnat mill-awtorità kompetenti għandu, jaġmel rapporti *interim* u fuq il-konklużjoni ta' l-istharrġ tiegħu jaġmel rapport finali lill-imsemmija awtorità.

13. (1) Bla hsara ghal xi wahda mis-setghat taghha moghtija bl-artikoli 11 u 12 ta' dan l-Att, l-awtorità kompetenti tista', kull meta jidhrilha xieraq, u sew jekk fuq rapport ta' spettur mahtur taht l-artikolu 12 ta' dan l-Att u sew jekk le, taghti, b'avviż bil-miktub, dawk id-direttivi li jidhrilha xierqa fiċ-ċirkostanzi; u kull persuna jew skema msemmija fis-subartikolu (1) ta' l-artikolu 11 ta' dan l-Att li lilha jinghata l-avviż ghandha tobdi, thares jew xort'ohra taghti effett lil kull direttiva bhal dik fiż-żmien u bil-mod imsemmi fid-direttiva jew f'direttiva oħra wara.

Setgha ghal indhil.

(2) Bla hsara għall-generalità tad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, direttiva taht dan l-artikolu tista' —

(a) tehtieg kull haġa li ghandha ssir jew li ma ghandhiex issir, jew timponi kull projbizzjoni, restrizzjoni jew limitazzjoni, jew kull htieġa oħra, u taghti setghat, dwar kull transazzjoni jew ghemil iehor, jew dwar kull attiv, jew dwar kull haġa oħra tkun li tkun;

(b) tehtieg li skema ta' investment kollettiv u d-dirigent ta' dik l-iskema, jew lill-ekwivalenti tiegħu, li jieqfu milli johorġu jew jifdu, jew milli johorġu u jifdu, unitajiet taht l-iskema kif jista' jkun speċifikat fid-direttiva jew f'direttiva oħra wara;

(c) tehtieg li xi persuna li jkollha funzjonijiet dwar id-detentur ta' liċenza titneħha jew titneħha u tinbidel minn persuna oħra li tkun aċċettabbli għall-awtorità kompetenti;

(d) tehtieg li skema ta' investment kollettiv jew id-diretturi u l-azzjonisti taghha, jew id-dirigent jew it-trustee jew il-kustodju ta' skema, jew lill-ekwivalenti tagħhom, li jxolju l-iskema sa dik id-data u skond dik il-proċedura u dispożizzjonijiet oħra li jistgħu jkunu speċifikati fid-direttiva jew f'direttiva oħra wara.

(3) Is-setgha li jinghataw direttivi taht dan l-artikolu ghandha tinkludi s-setgha li tvarja, tibdel, iżżid jew tirtira kull direttiva, kif ukoll is-setgha li tohrog direttivi godda jew direttivi oħra.

14. (1) L-awtorità kompetenti u kull wiehed mill-uffiċjali, impjegati jew agenti, mal-produzzjoni jekk hekk mehtieġa tal-pożizzjoni tagħhom ma' l-imsemmija awtorità, jistgħu jidhlu f'post okkupat minn persuna li lilha jkun notifikat avviż taht l-artikolu 11 ta' dan l-Att jew li l-affarijiet taghha jkunu qed jiġu mistharrġa taht l-artikolu 12 ta' dan l-Att, sabiex minn hemm jiksbu t-tagħrif jew id-dokumenti mehtieġa b'dak l-avviż, jew xort'ohra għall-finijiet ta' l-istharrġ, u sabiex jeżerċitaw is-setghat moghtija bl-imsemmija artikoli.

Setgha għal dhul.

(2) Meta l-awtorità kompetenti jkollha raġuni biżżejjed li taħseb li jekk dak l-avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu kellu jkun notifikat ma jkunx se jithares jew li xi dokumenti li għalih jista' jirreferi jitneħhew, ikunu mbagħbsa jew distrutti, kull uffiċjal, impjegat jew agent ta' l-awtorità kompetenti jista', mal-produzzjoni jekk hekk mehtieġ ta' l-awtorità tiegħu, jidhol f'kull post imsemmi fis-subartikolu (1) ta' dan l-artikolu sabiex minn hemm jikseb kull tagħrif jew dokumenti speċifikati fl-awtorità, liema tagħrif jew dokumenti setgħu kienu mehtieġa mill-awtorità kompetenti.

(3) Għall-finijiet ta' kull azzjoni li tittiehed taht dan l-artikolu, l-awtorità kompetenti tista' titlob l-ghajnuna tal-Korp tal-Pulizija, li jista' għal dan l-ghan jeżerċita dawk is-setgħat li huma vestiti fih sabiex iharsu milli jsiru reati u sabiex jinfurzaw il-liġi u l-ordni.

Appelli.

15. (1) Bla hsara għad-dispożizzjonijiet ta' dan l-artikolu, jista' jsir appell lill-Qorti ta' l-Appell minn kull deċiżjoni ta' l-awtorità kompetenti dwar kull haġa msemmija fis-subartikolu (1) ta' l-artikolu 8 ta' dan l-Att u minn kull deċiżjoni dwar direttiva mogħtija taht l-artikolu 13 ta' dan l-Att.

(2) Appell taht dan l-artikolu jista' jsir biss għar-raġunijiet li ġejjin —

(a) li l-awtorità kompetenti tkun applikat hażin xi waħda mid-dispożizzjonijiet ta' dan l-Att; jew

(b) li d-deċiżjoni jew id-direttiva ta' l-awtorità kompetenti tikkostitwixxi abbuż ta' diskrezzjoni u tidher li ma tkunx ġusta, iżda d-diskrezzjoni ta' l-awtorità kompetenti ma tistax, sakemm tkun giet eżerċitata b' mod xieraq, tkun sugġetta għal appell lill-Qorti.

(3) Appell taht dan l-artikolu għandu jsir b'rikors ipprezentat fir-registru tal-Qorti ta' l-Appell mhux iktar tard minn tnax-il jum min-notifjka ta' l-avviż mogħti taht is-subartikolu (3) ta' l-artikolu 8 jew mill-jum li fih l-avviż ikun meqjus notifikat bis-subartikolu (6) ta' l-artikolu 6 ta' dan l-Att jew, skond il-każ, min-notifjka ta' direttiva maħruġa taht l-artikolu 13 ta' dan l-Att; u kull appell bħal dak għandu jinstema' u jkun deċiż bl-akbar urġenza, u bl-abbrevjazzjoni taż-żmien; seduti jistgħu jsiru matul il-btajjel. Fil-każijiet l-oħra kollha dawk l-appelli għandhom jitmexxew skond id-dispożizzjonijiet applikabbli tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili bħal appell minn deċiżjoni tal-Qorti tal-Kummerċ jew skond ir-regoli tal-qorti li jistgħu jsiru għal dan il-ghan taht l-artikolu 29 ta' l-imsemmi Kodiċi.

(4) Appell magħmul taht dan l-artikolu ma jissospendix it-thaddim ta' xi deċiżjoni jew direttiva li minnha jsir l-appell:

Iżda deċiżjoni għat-thassir ta' liċenza m'għandhix tibda ssehh qabel ma jgħaddi ż-żmien li fih jista' jsir appell taht dan l-artikolu u, jekk isir appell matul dak iż-żmien, id-deċiżjoni tibda ssehh fid-data tas-sentenza tal-Qorti ta' l-Appell li tiċhad l-appell.

Ċertu ftehim
li ma jistax
ikun eżegwit.

16. (1) Ftehim ta' investment li jsir —

(a) minn persuna fil-waqt li tkun qed tippovdi servizz ta' investment bi ksur ta' l-artikolu 3 ta' dan l-Att; jew

(b) mid-detentur ta' liċenza għal servizzi ta' investment minhabba xi haġa li tkun intqalet jew saret minn persuna fil-waqt li tkun qed tippovdi servizz ta' investment bi ksur ta' l-artikolu 3 ta' dan l-Att.

ma jkunx jista' jigi nfurzat kontra l-parti l-oħra; u dik il-parti l-oħra jkollha l-jedd li tiehu lura kull flus imħallsa, jew kull proprjetà oħra trasferita minnha taħt il-ftehim, jew meta dik il-proprjetà ma tkunx tista' hekk tintradd lura, dik il-parti jkollha l-jedd li minflokha tiehu lura l-valur li kellha meta sar il-ftehim, flimkien ma' kumpens għal kull telf li tkun garrbet minhabba dak il-hlas jew it-trasferiment jew minhabba li ma tkunx tista' tiehu lura l-proprjetà trasferita u kull profitti li jistgħu jkunu nqalghu minhabba li daww il-flus jew il-proprjetà l-oħra kienu għew trasferiti minnha:

Izda meta fuq talba għal radd lura taħt dan is-subartikolu, il-qorti tkun sodisfatta li —

(a) f'każ li jaqa' taħt il-paragrafu (a) ta' dan is-subartikolu, il-persuna hemm imsemmija tkun b'mod raġonevoli hasbet li ma kenitx qed tikser l-imsemmi artikolu 3 u b'mod sostanzjali tkun imxiet skond ir-regoli u r-regolamenti li kienu jkunu applikabbli fiċ-ċirkostanzi; jew

(b) f'każ li jaqa' taħt il-paragrafu (b) ta' dan is-subartikolu, id-detentur tal-liċenza la kien jaf u lanqas seta' jkun jaf li l-ftehim kien sar bil-mod kif imsemmi f'dak il-paragrafu,

il-Qorti tista' tilqa' li ftehim ta' investiment li għalih japplika dan l-artikolu jkun eżegwit u l-flus jew il-proprjetà mħallsa jew trasferita bis-saħħa tiegħu jinżammu.

17. (1) Jekk, fuq rikors ta' l-awtorità kompetenti magħmul lill-Qorti tal-Kummerċ, l-imsemmija Qorti tkun sodisfatta —

Setgħat tal-qorti f'każ li x'aktarx ikun hemm kontravvenzjoni.

(a) li jkun jidher b'mod raġonevoli li persuna tkun se tisker xi waħda mid-dispożizzjonijiet ta' l-artikoli 3 u 4 ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula tahtu; jew

(b) li persuna tkun kisret xi dispożizzjoni bħal dik u li jistgħu jittiehdu passi biex il-ksur ikun rimedjat;

il-Qorti tista' tagħti daww l-ordnijiet li jidhrilha xierqa biex ma jsirx il-ksur jew, skond il-każ, biex teħtieg lill-persuna msemmija fil-paragrafu (a) jew (b) ta' dan is-subartikolu, jew lil kull persuna oħra li fil-fehma tal-Qorti tkun xjentement imdahhla fil-ksur, biex tiehu daww il-passi li l-Qorti tista' tordna.

(2) Jekk, fuq rikors magħmul taħt is-subartikolu (1) ta' dan l-artikolu, il-Qorti tkun ukoll sodisfatta li —

(a) profitti li jkunu nqalghu minn xi persuna minhabba l-ksur; jew

(b) investitur ikun garrab telf jew xort'oħra jkun effettwat hażin minhabba dak il-ksur,

il-Qorti tista' tordna lil dik il-persuna li thallas fil-Qorti dik is-somma li jidhrilha li tkun ġusta meta tqis il-limitu tal-profitt, telf jew effett hażin kif intqal qabel, u tordna li dik is-somma tithallas kif tordna l-Qorti lill-persuni li jkunu għamlu negozju li mhabba fih ikunu nqalghu profitti jew ikun igġarrab telf jew effetti ħżiena kif intqal qabel.

(3) Għall-finijiet ta' dan l-artikolu l-Qorti tista' tordna lil kull persuna li tipproduċi dawk il-kontijiet u li tagħti dak it-tagħrif, u li jkunu verifikati b'dak il-mod, kif il-Qorti jidhrilha xieraq.

(4) Id-dispożizzjonijiet ta' dan l-artikolu huma bla ħsara għal kull jedd ta' xi persuna biex tipproċedi direttament dwar xi dritt li xort'ohra jista' jkollha.

Reati.

18. (1) Persuna li tikser jew li tonqos li thares xi waħda mid-dispożizzjonijiet ta' l-artikoli 3, 4, 9, 11, 12, 13, 17 u 21 ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula taħt l-artikolu 10 ta' dan l-Att, jew tikser jew tonqos li thares xi kondizzjoni, obbligu, hteġa, direttiva jew ordni magħmul jew mogħti taħt xi waħda mid-dispożizzjonijiet ta' dan l-Att, tkun hatja ta' reat.

(2) Persuna li għall-finijiet ta', jew b'segwitu ta', xi waħda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula bis-saħħa tiegħu, jew ta' xi hteġa, direttiva jew ordni magħmul jew mogħti kif intqal qabel, tagħti tagħrif jew tagħmel dikjarazzjoni li tkun taf li ma tkunx preċiża jew li tkun falza jew qarrieqa b'mod materjali, jew bi traskuraġni tagħti tagħrif jew tagħmel dikjarazzjoni li ma tkunx preċiża jew li tkun falza jew qarrieqa b'mod materjali, tkun hatja ta' reat.

(3) Persuna li xjentement tieħu sehem fit-tmexxija ta' xi servizz ta' investiment jew ta' xi attività minn skema ta' investiment kollettiv bi hsieb qarrieqi jew għal għan qarrieqi, tkun hatja ta' reat.

(4) Persuna li b'xi dikjarazzjoni, wegħda jew tbassira li tkun taf li tkun tiżgwida, qarrieqa jew falza, jew b'xi habi diżonest ta' fatti materjali, jew billi tagħmel bi traskuraġni (sew jekk b'mod diżonest jew xort'ohra) xi dikjarazzjoni, wegħda jew tbassira li tkun tiżgwida, qarrieqa jew falza, tipperswadi jew tipprova tipperswadi lil xi persuna ohra biex tagħmel jew toffrilha biex tagħmel ftehim ta' investiment, tkun hatja ta' reat.

(5) Persuna li bil-hsieb li ma tinqabadx li tkun għamlet reat taħt dan l-Att tneħhi, tiddistruggi, tahbi jew b'mod qarrieqi tibdel xi ktieb, dokument jew xi karta ohra, tkun hatja ta' reat.

(6) Kull persuna li xjentement tfixkel persuna milli teżercita d-dmirijiet tagħha mogħtija lilha b'dan l-Att tkun hatja ta' reat.

Pieni.

19. Persuna hatja ta' reat taħt l-artikolu 18 ta' dan l-Att teħel, meta tinsab hatja, multa ta' mhux iżjed minn mitt elf lira jew priġunerija għal żmien ta' mhux iżjed minn erba' snin, jew dik il-multu u priġunerija flimkien, kemm-il darba dik il-piena ta' multa jew priġunerija ma tkunx imposta taħt is-subartikolu (4) ta' l-artikolu 10 ta' dan l-Att.

Proċedimenti
kriminali.

20. (1) Ebda proċedimenti għal reat taht dan l-Att ma jinbdew minghajr il-kunsens ta' l-Avukat Ġenerali.

(2) Id-dispożizzjonijiet ta' dan l-Att m'għandhomx jolqtu xi proċedimenti kriminali li jistgħu jkunu kompetenti taht xi ligi oħra.

(3) Meta dwar xi reat kontra xi wahda mid-dispożizzjonijiet ta' dan l-Att, l-egħmil jew in-nuqqas li jikkostitwixxi r-reat jista' jkun attribwit direttament lil persuna jew persuni li jistgħu jkunu identifikati b'mod ċar, u dik il-persuna jew dawk il-persuni jinstabu hatja ta' dak ir-reat, il-qorti ma tkunx meħtieġa li ssib ukoll lil xi persuna oħra hatja jekk tkun sodisfatta li dik il-persuna ma kenitx parti fir-reat u li minhabba l-imġieba tagħha jew xi ċirkostanza oħra jkun jisthoqqilha li ma tinstabx hatja.

Konfidenzjalità
ta' tagħrif.

21. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, tagħrif miksub minn xi persuna għall-finijiet, jew b'segwitu ta', xi wahda mid-dispożizzjonijiet ta' dan l-Att, jew ta' xi regoli jew regolamenti magħmula tahtu, fil-qadi ta' xi funzjonijiet taht xi wahda mill-imsemmija dispożizzjonijiet, jitqies bhala konfidenzjali u m'għandux ikun mikxuf lil xi persuna oħra, li ma tkunx persuna li tista' legittimament tikseb dak it-tagħrif għall-finijiet, jew b'segwitu ta', id-dispożizzjonijiet ta' dan l-Att, hliet bil-kunsens tal-persuna li minghandha tkun kisbet it-tagħrif jew tal-persuna li għaliha jkun jirreferi.

(2) Is-subartikolu (1) ta' dan l-artikolu ma jtellifx il-kxif ta' tagħrif —

(a) sabiex jinbdew, jew xort'oħra għall-finijiet ta', proċedimenti kriminali jew ta' xi proċedimenti mill-awtorità kompetenti quddiem xi qorti taht dan l-Att;

(b) għall-fini ta' l-egħmil jew il-qadi ta' xi funzjoni taht dan l-Att;

(ċ) meta dan ikun sar magħruf lill-pubbliku minhabba li jkun inkixef taht ċirkostanzi li fihom, jew għal xi għan tagħhom, il-kxif ma jkunx prekluz b'dan l-artikolu;

(d) f'sommarju jew f'gabra ta' tagħrif hekk magħmul li ma jkunx jista' jwassal li tkun aċċertata l-identità tal-persuna li għaliha jirreferi;

(e) f'dawk iċ-ċirkostanzi u taht dawk il-kondizzjonijiet li jistgħu jkunu preskritti.

Esklużjoni ta'
responsabbiltà.

22. L-awtorità kompetenti u kull membru, uffiċjal jew impjegat tagħha, u kull persuna oħra mahtura biex taqdi funzjoni taht dan l-Att, jew taht xi regoli jew regolamenti magħmula bis-saħħa tiegħu, ma jkunux responsabbli għal danni għal xi haġa li tkun saret jew li naqset milli ssir fil-qadi jew f'dak li kien jidher li jkun il-qadi ta' xi funzjonijiet taht dan l-Att, jew ta' xi regoli jew regolamenti kif intqal qabel, kemm-il darba l-egħmil jew in-nuqqas ma jintweriex li jkun sar in *mala fede*.

Avvizi, eċċ.

23. Avviż jew dokument iehor li għandu jinghata jew li għandu jkun notifikat taht dan l-Att, jew xi regoli jew regolamenti magħmula bis-saħħa tiegħu, għandu jitqies li jkun inghata jew li jkun notifikat kif imiss lil persuna jekk —

(a) ikun konsenjat lilha; jew

(b) ikun tħalla fl-indirizz mogħti minnha lill-awtorità kompetenti, jew fl-indirizz tagħha l-aħħar magħruf; jew

(ċ) ikun intbagħtilha bil-posta f'xi wiehed mill-imsemmija indirizzi; jew

(d) fil-każ ta' korp ta' persuni, sew jekk magħqud jew le jew ta' skema jew ta' *trust*, jekk ikun inghata jew ikun notifikat b'wiehed mill-mezzi msemmija qabel jew lil segretarju, skrivan, dirigent, *trustee* jew lil ekwivalenti tagħhom, jew lil xi membru tal-korp amministrattiv jew lil rappreżentant mahtur.

Applikazzjoni
tal-Kontroll
fuq il-Kambju.
Kap. 233

24. L-Att dwar il-Kontroll fuq il-Kambju għandu japplika għal skemi ta' investiment kollettiv li għandhom liċenza taht dan l-Att daqslikieku kienu persuni mhux residenti f'Malta, u kull negozju f'dawk l-iskemi, kumpanniji jew *trusts* għandu jitqies bl-istess mod:

Iżda skema ta' investiment kollettiv tkun eżentata mill-htigiet ta' l-imsemmi Att dwar kull passi li jistgħu jittiehdu kif provdut fis-subartikolu (2) ta' l-artikolu 4 ta' dan l-Att.

Emendi
bi Skeda.

25. Il-ligijiet speċifikati fl-ewwel kolonna tat-Tielet Skeda li tinsab ma' dan l-Att għandu jkollhom effett skond l-emendi murija dwarhom fit-tieni kolonna ta' dik l-Iskeda.

SKEDI

L-EWWEL SKEDA

(Artikolu 2)

Servizzi

1. Negozju bhala Prinċipal jew bhala Aġent

Xiri, bejgh, sottoskrizzjoni jew *underwriting* ta' istrumenti bhala prinċipal jew bhala aġent.

2. Arranġamenti għal Negozju

Arranġamenti biex persuna ohra tixtri, tbiegh, tissottoskrivi jew tagħmel *underwriting* ta' istrumenti.

3. Tmexxija u Amministrazzjoni

Xogħol bhala dirigent, amministratur, segretarju jew registratur dwar xi istrument, jew dwar xi skema jew arrangament li jinvolvi istrument, jew dwar xi wiehed mill-attivi jew investimenti rappreżentati minn jew li xort'ohra ghandhom x'jaqsmu ma' istrument.

4. Kustodja

Xogħol bhala *trustee* jew kustodju ta' istrument, jew ta' attivi rappreżentati minn jew li xort'ohra ghandhom x'jaqsmu ma' istrument, jew dwar xi skema jew arrangament li jinvolvi istrument.

5. Pariri fuq Investiment

Ghoti ta' pariri dwar xiri, bejgh, sottoskrizzjoni jew *underwriting* ta' istrumenti, jew dwar l-eżerċizzju ta' xi dritt mogħti b'istrument, jew dwar xi skema jew arrangament li jinvolvi istrument.

IT-TIENI SKEDA

(Artikolu 2)

Istrumenti

1. (1) Titoli, maghduda azzjonijiet u *stock* f'kapital ta' kumpannija, *debentures*, *debenture stock*, *loan stock*, *certificates of deposit*, *bonds*, *notes* u kull istrumenti ohra li joholqu jew jirrikonoxxu debitu.

(2) Is-sub-paragrafu (1) ta' hawn fuq ma japplikax għal:

(a) xi istrument li jirrikonoxxi jew johloq debitu għal, jew għal flus mislufa biex tithallas, il-konsiderazzjoni pagabbli taħt kuntratt għall-provvista ta' oġġetti jew servizzi;

(b) ċekk jew kambjala ohra, *draft* tal-bank jew ittra ta' kreditu; jew

(ċ) biljett tal-flus, prospett li juri bilanċ f'kont kurrenti, ta' depożitu jew ta' tiftil jew (minhabba xi obbligu finanzjarju li jkun jinsab fiha) għal kiri jew disponiment iehor ta' proprjetà, sigurtà li tintiret jew poloz ta' assigurazzjoni.

2. Unitajiet fi skema ta' investiment kollettiv.

3. *Warrants*, *options*, ċertifikati jew istrumenti ohra, inkluż kull *record* sew jekk f'forma ta' dokument sew jekk le, li jagħti l-jedd lid-detentur tiegħu biex jissottoskrivi għal, jakkwista, ibiegh jew xort'ohra jiddisponi minn, jagħmel *underwriting* ta' jew jikkonverti xi istrument jew interess f'xi istrument li jaqa' taħt din l-iskeda, jew għal xi flus.

4. Ċertifikati jew istrumenti ohra li jagħtu drittijiet ta' proprjetà dwar xi istrument li jaqa' taħt din l-iskeda.

5. *Futures* u kuntratti ta' kambju barrani li jsiru għal finijiet ta' investment.

6. Drittijiet taht kuntratt għal differenzi jew taht xi kuntratt iehor li l-għan tiegħu jew l-għan maħsub tiegħu huwa li jiżgura profitt jew jevita telf b'riferenza għal varjazzjoni fil-valur jew fil-prezz ta' proprjetà ta' kull deskrizzjoni jew f'indici jew f'fattur iehor maħsub għal dak l-għan fil-kuntratt.

IT-TIELET SKEDA

(Artikolu 25)

Emendi

L-Ewwel Kolonna

It-Tieni Kolonna

L-Att dwar il-Bank Ċentrali ta' Malta. Kap. 204.

L-artikolu 55 għandu jiġi emandat biż-żieda tas-subartikolu ġdid li ġej fit-tarf tiegħu:

“(5) Id-dispożizzjonijiet ta' dan l-artikolu ma japplikawx għal xi offerta kif imsemmi fis-subartikolu (1) ta' dan l-artikolu magħmula minn skema għal investment kollettiv li għandha liċenza taht l-Att ta' l-1991 dwar Servizzi ta' Investment jew minn kumpannija li dwarha l-htieġa li tkun kumpannija privata tkun tnehhiet taht is-subartikolu (10) ta' l-artikolu 22 ta' l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.”.

Att ta' l-1990 dwar il-Borsa ta' Malta. Att Nru. XXXIII ta' l-1990.

L-artikolu 3 għandu jiġi emandat bid-dhul minnufih wara l-proviso għas-subartikolu (3) tiegħu tal-provisos ġodda li ġejjin:

“Iżda wkoll in-negozjar ta' unitajiet kif imfisser fl-Att ta' l-1991 dwar Servizzi ta' Investment, ta' skema ta' investment kollettiv li jkollha liċenza taht dak l-Att jista' jsir barra mill-Borsa jew mid-dirigent ta' l-iskema jew minn persuna oħra li tagħxi minfloku jew taht l-awtorità tiegħu:

Iżda wkoll id-dispożizzjonijiet ta' dan is-subartikolu m'għandhomx japplikaw għal titoli, hlief unitajiet li għalihom japplika l-proviso li jahbat minnufih qabel dan, ta' kumpannija li dwarha l-htieġa li tkun kumpannija privata tkun tnehhiet taht l-artikolu 22 ta' l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.”.

Fl-artikolu 9 minflok il-proviso li hemm ghas-subartikolu (1) tiegħu għandu jidhol il-proviso li ġej:

“Izda dan is-subartikolu m'għandux japplika għal persuna li jkollha liċenza valida għal servizzi ta' investiment maħruġa taħt l-Att ta' l-1991 dwar Servizzi ta' Investiment li tawtorizzaha tagħmilha ta' sensal —

(i) jekk tikkonkludi n-negozju ma' *stockbroker* liċenzjat taħt dan l-Att, jew

(ii) jekk it-titoli jkunu unitajiet kif imfisser fl-imsemmi Att dwar Servizzi ta' Investiment u n-negozju jkun konkluz mad-dirigent ta' l-iskema jew ma' persuna li taġixxi minflok u jew taħt l-awtorità tiegħu; jew

(iii) jekk it-titoli, hliet unitajiet li għalihom japplika s-sub-paragrafu (ii) ta' dan il-proviso, ikunu maħruġa minn kumpannija li dwarha l-htieġa li tkun kumpannija privata tkun tneħħiet taħt l-artikolu 22 ta' l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.”.

L-artikoli 33, 35 u 36 għandhom jithassru u kull riferenza għal dawk l-artikoli għandha tithassar.”

Għanijiet u Raġunijiet

L-Għan ta' dan l-Abbozz huwa li jirregola l-provdiment ta' servizzi ta' investiment, u skemi ta' investiment kollettiv stabbiliti f'Malta, u biex jipprovdi għall hwejjeġ li huma aċċillari jew inċidentali għal dan jew konnessi miegħu.

**A BILL
entitled**

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

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

Short title and commencement.

1. (1) This Act may be cited as the Investment Services Act, 1991.

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

Interpretation.

2. In this Act, unless the context otherwise requires —

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

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

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

(c) units are or are to be re-purchased or redeemed, at the request of the holders or otherwise, and whether directly or indirectly, out of the assets of the scheme or arrangement; or

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

and includes a transferable securities scheme and a non-transferable securities scheme;

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

“competent authority” means either the Malta International Business Authority established by the Malta International Business Activities Act, 1988 or the Central Bank of Malta established by the Central Bank of Malta Act, 1967, as the Minister, with the concurrence of the Minister responsible for finance, may, from time to time prescribe indicating their respective areas of competence, and any reference to competent authority in this Act shall be construed accordingly:

Provided that in section 10 of this Act that expression means both the Authority and Bank aforesaid;

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

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

“investment service” means any service falling within the First Schedule to this Act when provided in relation to an instrument or right included in the Second Schedule to this Act;

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

“licence” includes a collective investment scheme licence and an investment services licence;

“Minister” means the Minister responsible for international business activities;

“non-transferable securities scheme” means a collective investment scheme the principal object of which is the collective investment of capital other than in transferable securities;

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

“prescribed” means prescribed by rules or regulations made under this Act;

“transferable securities scheme” means a collective investment scheme the principal object of which is the collective investment of capital in transferable securities;

“transferable security” means any instrument falling within paragraph 1 or 2 of the Second Schedule to this Act, other than an instrument title to which either cannot be transferred or can be transferred only with the consent of a third party other than, in the case of an instrument falling within paragraph 1 of the said Schedule, either the body corporate which issued the instrument or any members or debenture holders of that body corporate;

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

Requirement of licence for investment services.

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

(2) No individual ordinarily residing in Malta and no body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta shall provide, or hold himself or itself out as providing, an investment service in or from within a country, territory or other place outside Malta unless he or it is in possession of a valid investment services licence or of a valid licence or other authorisation issued or given by the appropriate authorities of the country, territory or other place in or from within which he or it is providing the service, which licence or other authorisation must, however, be acceptable to the competent authority.

(3) The foregoing provisions of this section shall not apply to —

(a) the competent authority;

(b) the Malta Stock Exchange established by the Malta Stock Exchange Act, 1990;

(c) any activity carried on by a person acting as a servant or agent of another person if that other person —

(i) is the holder of an investment services licence; and

(ii) is responsible, under the terms of his agreement with that servant or agent, for that activity; and

(iii) has complied with all the requirements of this Act and of any rules or regulations made thereunder, as well as with any conditions likewise imposed, and which relate to that servant or agent;

(d) a person who is the holder of a valid stockbroker's licence issued under the Malta Stock Exchange Act, 1990:

Provided that:

Act XXXIII of 1990.

(i) if the service provided by such person is one in respect of which the competent authority is the Malta International Business Authority, and the service is not that of broker for the purchase or sale of an instrument or right included in the Second Schedule to this Act, a licence under this Act shall be required for such other service, and in any such case the licence shall not be issued unless the application therefor has been endorsed by the Council of the Malta Stock Exchange established under the said Act;

(ii) if the service provided by such person is one in respect of which the competent authority is the Central Bank of Malta, and the service is not that of a broker as aforesaid or that of an investment adviser within the meaning of paragraph 5 of the First Schedule to this Act, a licence under this Act shall be required for such other service;

(e) a person who on the date of the coming into force of this section was providing an investment service, to the extent of the service then provided and only until such time as an investment service licence is granted to him or is refused or until the expiration of six months from the date aforesaid, whichever is the shorter period, and on condition that such person has applied for an investment services licence in accordance with the provisions of this Act not later than one month after the date aforesaid.

4. (1) Subject to the provisions of subsection (2) of this section, **no** collective investment scheme formed in accordance with or existing **under** the laws of Malta shall issue or create any units or carry on any activity unless there is in respect of it a valid collective investment scheme licence.

Requirement of licence for collective investment schemes.

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

5. (1) An application for a licence shall be made in the form and manner required by the competent authority, or as may be prescribed, and shall furthermore —

Applications for a licence.

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

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

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

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

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

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

Power of the competent authority in respect of licences.

6. (1) The competent authority may grant or refuse to grant a licence applied for under this Act and need not give reasons for its decision:

Provided that the competent authority shall not —

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

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

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

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

(a) the protection of the public;

(b) the protection of the reputation of Malta;

(c) the best economic interests of Malta; and

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

(4) Every licence shall specify the investment service which the holder thereof has been authorized to provide or, as the case may require, the class of collective investment scheme to which the licence relates, and in particular whether it is a transferable or non-transferable securities scheme; and where the licence is issued by the Malta International Business Authority it shall extend and apply exclusively to the schemes and investment services in respect of which that Authority

is the competent authority and where the licence is issued by the Central Bank of Malta it shall extend and apply exclusively to the schemes and investment services in respect of which the said Bank is the competent authority.

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

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

(6) Where the applicant for a licence has not been notified by the competent authority of its decision whether to grant or refuse to grant the licence applied for within six months from the receipt of an application made in compliance with the applicable provisions of this Act, the application shall be deemed to have been refused and the provisions of this Act shall apply as if notice of such refusal had been given on the expiration of the period aforesaid.

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

Power of competent authority to cancel or suspend licences.

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

- (a) if it considers that the holder thereof is not a fit and proper person to provide the investment service he is authorised to provide; or
- (b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened any of the provisions of this Act or of any rules or regulations made thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the licence is subject by virtue of or under this Act; or
- (c) if the competent authority has been furnished by or on behalf of the holder of the licence with information which is false, inaccurate, or misleading; or
- (d) if the holder of the licence has not commenced to provide the service he has been authorised to provide within one year after the date of the licence or has ceased to provide such service; or
- (e) if it considers it desirable to cancel or suspend the licence for the protection of the public or the reputation of Malta; or

(f) at the request of the holder of the licence.

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

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

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

(c) if the scheme has not commenced the activities which it was authorised to carry on within one year after the date of the licence or has ceased to carry on such activities; or

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

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

Procedure to be followed in relation to licence.

8. (1) Where the competent authority proposes —

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

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

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

(3) The competent authority shall notify its final decision in writing to any of the persons to whom notice is to be given under subsection (1) of this section.

Obligations of the holder of a licence.

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

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

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

Power
to make
rules or
regulations.

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

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

(c) prohibit, restrict or control or otherwise regulate the promotion or sale by or on behalf of any person, and by any means, of an investment service or of a collective investment scheme or of any instrument included in the Second Schedule to this Act;

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

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

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

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

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

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

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

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

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

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

Power of competent authority to require information.

11. (1) The competent authority may, by notice in writing, require any person who is or was providing, or who appears to be or to have been providing, an investment service, or a collective investment scheme and any person who is or was carrying on, or who appears to be or have been carrying on activities in connection with such a scheme, and any other relevant person, to —

(a) furnish to it, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such service or scheme as aforesaid;

(b) furnish any information or documentation aforesaid verified in such manner as it may specify;

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

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

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

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

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

Cap. 9

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

12. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any person or scheme referred to in subsection (1) of section 11 of this Act.

Appointment
of inspectors.

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

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any other person or scheme;

(b) shall have and may exercise all the powers conferred on the competent authority by section 11 of this Act, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;

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

13. (1) Without prejudice to any of its powers conferred by sections 11 and 12 of this Act, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under section 12 of this Act or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person or scheme as is referred to in subsection (1) of section 11 of this Act to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive.

Powers of
intervention.

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

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

(b) require a collective investment scheme and the manager of such a scheme, or his equivalent, to cease the issue or redemption, or both the issue and redemption, of units under the scheme as may be specified in the directive or further directive;

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

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

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

Right
of entry.

14. (1) The competent authority and any of its officers, servants, or agents, on producing if required evidence of his position with the said authority, may enter premises occupied by a person on whom a notice has been served under section 11 of this Act or whose affairs are being investigated under section 12 of this Act, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purposes of the investigation, and of exercising any of the powers conferred by the said sections.

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

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

Appeals.

15. (1) Subject to the provisions of this section, an appeal shall lie to the Court of Appeal from any decision of the competent authority with respect to any matter referred to in subsection (1) of section 8 of this Act and from any decision concerning a directive given under section 13 of this Act.

(2) An appeal under this section shall lie only on any of the following grounds —

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

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

(3) An appeal under this section shall be made by means of an application filed in the registry of the Court of Appeal not later than twelve days from the service of the notice given under subsection (3) of section 8 or from the day notice is deemed to have been served under subsection (6) of section 6 of this Act or, as the case may require, from the service of a directive issued under section 13 of this Act; and any such appeal shall be treated and decided with utmost urgency, and with the abbreviation of time; sittings may be held during vacations. In all other matters such appeals shall be governed by the applicable provisions of the Code of Organization and Civil Procedure as if it were an appeal from a judgement of the Commercial Court or by such rules of court as may be made for the purpose under section 29 of the said Code.

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

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

16. (1) An investment agreement which is entered into —

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

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

Unenforceability
of certain
agreements.

shall be unenforceable against the other party; and such other party shall be entitled to recover any money paid, or other property transferred by him under the agreement, or where such property cannot be so recovered, such party shall be entitled to have it replaced by its value at the time of the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him:

Provided that where on demand for a recovery under this subsection, the court is satisfied that —

(a) in a case falling under paragraph (a) of this subsection, the person therein mentioned reasonably believed he was not contravening the said section 3 and acted substantially in accordance with the rules and regulations that would have been applicable in the circumstances; or

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

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

Powers of the Court in case of a likely contravention.

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

(a) that there is reasonable likelihood that a person will contravene any of the provisions of sections 3 and 4 of this Act or of any rules and regulations made under it; or

(b) that a person has contravened any such provision and that steps could be taken to remedy the contravention;

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

(2) If, on an application made under subsection (1) of this section, the Court is further satisfied that —

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

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

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

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

(4) The provisions of this section are without prejudice to any right of any person to bring proceedings directly in respect of any right he may otherwise have.

Offences.

18. (1) A person who contravenes or fails to comply with any of the provisions of sections 3, 4, 9, 11, 12, 13, 17 and 21 of this Act or of any rules or regulations made under section 10 of this Act, or contravenes or fails to comply with any condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

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

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

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

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

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

19. A person guilty of an offence under section 18 of this Act shall be liable on conviction to a fine (*multa*) not exceeding one hundred thousand liri or a term of imprisonment not exceeding four years, or to both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed under subsection (4) of section 10 of this Act. Penalties.

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

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

(3) Where in respect of any offence against any of the provisions of this Act, the act or omission constituting the offence can be attributed directly to a person or persons clearly identifiable, and such person or persons are convicted of that offence, the court shall not be required to convict also any other person if it is satisfied that such person had no part in the offence and that by reason of his behaviour or other circumstance he deserves not to be convicted.

21. (1) Subject to the provisions of subsection (2) of this section, information obtained by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any rules or regulations made thereunder, in the discharge of any functions under any of the said provisions, shall be treated as confidential and shall not Confidentiality of information.

be disclosed to any other person, not being a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, except with the consent of the person from whom he obtained the information or the person to whom it relates.

(2) Subsection (1) of this section shall not preclude the disclosure of information —

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

(b) with a view to the performance or discharge of any function under this Act;

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

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

(e) in such circumstances and under such conditions as may be prescribed.

Exclusion of liability.

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

Notices etc.

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

(a) it has been delivered to him; or

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

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

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

24. The Exchange Control Act shall apply to collective investment schemes licensed under this Act as if they were persons not resident in Malta, and any dealings with such schemes, companies or trusts shall be treated accordingly:

Application of
Exchange Control.
Cap. 233

Provided that a collective investment scheme shall be exempt from the requirements of the said Act with respect to any steps which may be taken as provided in subsection (2) of section 4 of this Act.

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

Amendments
by Schedule.

SCHEDULES

FIRST SCHEDULE

(Section 2)

Services

1. Dealing as Principal or as Agent

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

2. Arranging Deals

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

3. Management and Administration

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

4. Safekeeping

Acting as trustee or custodian of an instrument, or of the assets represented by or otherwise connected with an instrument, or in relation to any scheme or arrangement involving an instrument.

5. Investment Advice

Giving advice in connection with buying, selling, subscribing for or underwriting instruments, or in connection with the exercise of any right conferred by an instrument, or in relation to any scheme or arrangement involving an instrument.

SECOND SCHEDULE

(Section 2)

Instruments

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

(2) Sub-paragraph (a) above shall not apply to:

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) a cheque or other bill of exchange, a banker's draft or a letter of credit;
or

(c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

2. Units in a collective investment scheme.

3. Warrants, options, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire, sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument falling within this schedule or for any currency.

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

5. Futures and foreign exchange contracts entered into for investment purposes.

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

THIRD SCHEDULE

(Section 25)

Amendments

First Column

Second Column

Central Bank of Malta
Act.
Cap. 204

Section 55 shall be amended by the addition at the end thereof of the following new subsection:

“(5) The provisions of this section shall not apply to any offer as is mentioned in subsection (1) of this section made by a collective investment scheme licensed under the Investment Services Act, 1991 or by a company in respect of which the requirement that it be a private company has been waived under subsection (10) of section 22 of the Malta International Business Activities Act, 1988.”.

Malta Stock
Exchange Act, 1990.
Act XXXIII
of 1990.

Section 3 shall be amended by the insertion immediately after the proviso to subsection (3) thereof of the following new provisos:

“Provided further that units as defined by the Investment Services Act, 1991, of a collective investment scheme licensed under that Act may be traded outside the Borsa by or with the manager of the scheme or a person acting for him and under his authority:

Provided also that the provisions of this subsection shall not apply to securities, other than units to which the immediately preceding proviso applies, of a company in respect of which the requirement that it be a private company has been waived under section 22 of the Malta International Business Activities Act, 1988.”

In section 9 for the proviso to subsection (1) thereof there shall be substituted the following proviso:

“Provided that this subsection shall not apply to a person in possession of a valid investment services licence issued under the Investment Services Act, 1991 authorising him to act as a broker —

(i) if he closes the deal with a stockbroker licensed under this Act, or

(ii) if the securities are units, as defined by the said Investment Services Act and the deal is closed with the manager of the scheme or a person acting for him or under his authority, or

(iii) if the securities, other than units to which sub-paragraph (ii) of this proviso applies, are issued by a company in respect of which the requirement that it be a private company has been waived under section 22 of the Malta International Business Activities Act, 1988.”.

Sections 33, 35 and 36 shall be repealed and any reference to these sections shall be deleted.”.

Objects and Reasons

The object of this Bill is to regulate the provision of investment services, and collective investment schemes established in Malta, and to provide for matters ancillary or incidental thereto or connected therewith.