CHAPTER 632

INSOLVENCY PRACTITIONERS ACT

AN ACT to provide for the transposition of Directive (EU) 2019/1023, and to regulate the insolvency practitioner, and to make provision for matters ancillary or incidental thereto or connected therewith.

23rd December, 2022

ACT XXV of 2022.

PART I
Preliminary Provisions

Short title and scope.

1. (1) The short title of this Act is the Insolvency Practitioners Act.

(2) The scope of this Act is to provide for a modern framework to strengthen the efficiency and effectiveness of the existing legislative framework relating to insolvency through regulation of the activities of insolvency practitioners, and to partially transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

Interpretation.

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

S.L. 595.27.

"competent authority" means the Insolvency and Receivership Service within the Malta Business Registry established by the Malta Business Registry (Establishment as an Agency) Order;

"connected undertaking" means an undertaking which is effectively managed or promoted as one practice with the registered firm or as a related undertaking of the registered firm;

"EEA State" means a state which is a contracting party to the agreement on the European Economic Area signed in Porto on 2 May 1992 as amended by the Protocol signed in Brussels on 17 March 1993, and as amended by any subsequent Acts;

"insolvency practitioner" means a person who is authorised, by the competent authority, to carry out the functions of an insolvency practitioner in accordance with article 4(2);

"Minister" means the Minister responsible for the Malta Business Registry;

"principal" means every member of the administrative or management body of a registered firm, and shall include any person

who is authorised to represent the registered firm for any judicial or legal purpose, and any person who is responsible for directing the fulfilment of any engagements taken on by the registered firm;

"recognised jurisdiction" means a state that is a member of the European Union or an EEA State, or any other jurisdiction approved by notice of the Minister from time to time for the purpose of this definition;

"registered firm" means an entity, regardless of its legal form, formed in accordance with article 6 and any connected undertaking; and

Cap. 490.

"Tribunal" means the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act.

PART II
Authorisation to Act as Insolvency Practitioner

Eligibility for authorisation to act as insolvency practitioner.

3. (1) No person shall exercise the functions of an insolvency practitioner in terms of article 4, or hold himself out as being available to act as an insolvency practitioner, unless he is duly authorised by the competent authority.

(2) A person shall not qualify for an authorisation under article 4 unless such person:

(a) is authorised to exercise the profession of an advocate, accountant or auditor, whether in Malta or in another recognised jurisdiction, or holds such other qualification as the competent authority may, by directive, prescribe as being sufficient:

Provided that the issuance of an authorisation to act as an insolvency practitioner in terms of this Act shall not, of itself, entitle such person to carry out the functions of an advocate, accountant or auditor, whether in Malta or in another recognised jurisdiction, where the person would not otherwise be so authorised;

(b) has satisfied the competent authority that he possesses sufficient competence in the fields of expertise pertinent to the performance of the functions of an insolvency practitioner, as may, from time to time, be further defined in directives issued by the competent authority under this Act;

(c) has satisfied the competent authority that he is fit and proper to carry out the functions of an insolvency practitioner, and has not had any previous authorisation granted under this Act withdrawn due to misconduct; and

(d) has satisfied such other additional criteria or

requirements as may, from time to time, be further provided for in any regulations or directives made under this Act.

(3) A person shall not qualify for an authorisation in terms of article 4 where:

(a) he is interdicted, incapacitated or is an undischarged bankrupt;

(b) he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;

(c) he is a minor who has not been emancipated; or

(d) he is subject to a disqualification order in terms of article 320 of the Companies Act. Cap. 386.

(4) Any person who, for the purpose of obtaining an authorisation under this Act, gives any false information or otherwise acts in a deceitful or fraudulent manner, shall be guilty of an offence and shall, on conviction, be liable for each offence to a fine (*multa*) not exceeding twelve thousand euro (€12,000) or to imprisonment of not more than twelve (12) months or to both such fine and imprisonment.

(5) Subject to the provisions of article 4, any person who carries out the functions of an insolvency practitioner without being authorised to do so under this Act, or holds himself out to a third party as being a person who is authorised to act as an insolvency practitioner when he is not so authorised, shall, on conviction, be liable for each offence to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment of not less than two (2) years and not more than five (5) years, or to both such fine and imprisonment.

Authorisation to act as insolvency practitioner.

4. (1) An authorisation to exercise the functions of an insolvency practitioner shall be issued by the competent authority following an application by any person who, in the view of the competent authority, has satisfied the requirements of article 3 and such other conditions as the competent authority may, by directives, prescribe.

(2) Notwithstanding the provisions of any other law, an authorisation issued by the competent authority shall entitle the insolvency practitioner to:

(a) act as an insolvency practitioner for the purposes of the Pre-Insolvency Act; Cap. 631.

(b) act as a bankruptcy trustee for the purposes of Part III of the Commercial Code; Cap. 13.

(c) act as a liquidator, special controller, administrator, provisional administrator, or special manager in terms of the Companies Act; and

Cap. 386.

(d) carry out any other function requiring the competence of an insolvency practitioner as may be provided for in any other law, or as the competent authority may, by directives, prescribe.

(3) Notwithstanding the provisions of this article, the competent authority may at its own discretion provide for different categories of authorisations.The competent authority may also, at its own discretion, limit the provision of services by the insolvency practitioners so authorised to one (1) or more categories only.

(4) The Minister, acting on the recommendation of the competent authority, may, from time to time, make regulations to ensure that any function performed by the insolvency practitioner in terms of sub-article (2)(c) is subject to oversight, supervision and regulation that is at least commensurate with the provisions of this Act.

(5) For the purposes of this Act, a person shall not be deemed to be exercising the functions of an insolvency practitioner where such person is acting as the employee or assistant of an insolvency practitioner and takes no material decisions without the express direction of the insolvency practitioner:

Provided that such a person may not hold himself out as an insolvency practitioner in terms of article 5.

Designation of insolvency practitioner.

5. (1) An insolvency practitioner shall be entitled to use the designation "insolvency practitioner" and the abbreviation "IP".

(2) Any person who, not being an insolvency practitioner, assumes the title or designation of "insolvency practitioner" or its abbreviation "IP", or in any other manner falsely indicates entitlement to exercise the functions of an insolvency practitioner in Malta, shall be guilty of an offence and shall, on conviction, be liable for each offence to a fine (*multa*) not exceeding two thousand and three hundred euro (€2,300) and in respect of a second or subsequent offence to imprisonment for not more than three (3) months or to both such fine and imprisonment:

Provided that the use on any card, letterhead, sign, board, plate, or other written, printed or engraved device, instrument or document, of the words "insolvency practitioner" or the abbreviation "IP", whether in the singular or plural form, in relation to a name, shall be sufficient evidence of the knowledge of such use by the person in relation to whose name the said words or abbreviations are used, unless such person proves that the use was made without his

knowledge and that, upon becoming aware of the use, he took adequate steps to stop it.

Registered firms.

6. (1) Any entity which provides evidence to the satisfaction of the competent authority that it is capable of satisfying the requirements of this Act, shall be entitled to be registered with the competent authority as a registered firm and, subject to compliance at all times with the requirements of this Act, shall, upon registration, be authorised to carry out the functions of an insolvency practitioner in terms of article 4(2):

Provided that the competent authority may, at its own discretion, provide for different categories of authorisations. The competent authority may also, at its own discretion, limit the provision of services by the insolvency practitioners so authorised to one (1) or more categories only.

(2) The responsibility for the performance of any act or function referred to in article 4(2) by a registered firm shall, at all times, be assumed by at least one (1) principal, being an insolvency practitioner, who shall be the person under whose instruction that act or function shall be carried out. Upon assuming such responsibility a principal or insolvency practitioner, shall become, and at all times remain, jointly and severally liable with the registered firm for any act or function carried out by the registered firm or by any officer, principal, agent, or employee thereof:

Provided that, where more than one (1) principal or insolvency practitioner has assumed the said responsibility, such persons shall be jointly and severally liable:

Provided further that the registered firm shall, without undue delay, furnish the competent authority with such information as the competent authority may reasonably require or as may be prescribed in this Act and any regulations or directives issued in terms of this Act, or any other relevant law regarding the insolvency practitioner or insolvency practitioners who are responsible for any act or function carried out by a registered firm in terms of article 4(2).

(3) A registered firm may hold itself out as being a registered firm in, or together with, its name, as the case may be.

(4) Upon the registration of the registered firm in terms of this article, the principals shall, for so long as the registered firm is registered, be authorised to act in the name and on behalf of the registered firm.

Designation of registered firms.

7. (1) A registered firm shall be entitled to use the designation of "insolvency practitioners" and the abbreviation "IPs".

(2) Any entity which makes use of the designation of

"insolvency practitioners" or the abbreviation "IPs", in relation to a firm or entity that is not registered in terms of article 6 or which does not satisfy the requirements of article 6, or which knowingly makes use of a name falsely implying the existence of a registered firm, or which does any other act with the intention to create the belief that any one of the facts aforesaid exists when in fact it does not, shall be guilty of an offence and shall, on conviction, be liable for each offence, in respect of a first offence to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500), and in respect of a second or subsequent offence to a fine (*multa*) not exceeding twelve thousand euro (€12,000) or to imprisonment for not more than three (3) months or to both such imprisonment and fine, and in the case of a continuing offence to an additional fine (*multa*) not exceeding two hundred and fifty euro (€250) for each day during which the offence continues:

Provided that the use on any card, letterhead, sign, board, plate, advertisement or other written, printed or engraved device, instrument or document, of the words "insolvency practitioners" or the abbreviation "IPs", whether in the singular or plural form, in relation to a name, shall be sufficient evidence of the knowledge of such use by the person in relation to whose name the said words or abbreviations are used, unless such person proves that the use was made without his knowledge and that, upon becoming aware of the use, he took adequate steps to stop it.

PART III
The Competent Authority

The competent authority.

8. (1) The competent authority shall be vested with the responsibility and authority to regulate the activities of insolvency practitioners and registered firms in the performance of their functions in terms of article 4(2). The competent authority may also appoint committees, of which the chairman shall be a member of the competent authority, thereby establishing their remit and remuneration, and shall otherwise assume competence for such other functions as may be specified by this Act or as may by notice be prescribed by the Minister from time to time.

(2) In the performance of its functions in terms of this Act, the competent authority:

(a) shall make its own rules and otherwise regulate its own procedure; and

(b) shall make use of such funds as the Minister or the Malta Business Registry may from time to time make available to it, as well as such funds as it may collect from any administrative penalties or fees or otherwise in terms of any regulations made under this Act.

Functions of the competent authority.

9. (1) The competent authority shall regulate the activities of insolvency practitioners and registered firms in the performance of their functions in terms of article 4(2), and shall also have the following functions:

(a) to consider applications for the issuance of authorisations in terms of article 4 and registrations in terms of article 6;

(b) to oversee and regulate the conduct of insolvency practitioners and registered firms in the exercise of their functions in terms of article 4(2), and to establish appropriate mechanisms and procedures as the competent authority may deem conducive to the efficient and effective oversight and regulation of the activities thereof;

(c) to collaborate with the Judicial Studies Committee or any other body responsible for the training of members of the judicial authorities to ensure that members of the judicial authorities responsible for adjudicating matters in relation to those functions listed in article 4(2), receive suitable training;

(d) to ensure that insolvency practitioners receive, and are compelled to attend, suitable training on an ongoing basis that shall be conducive to the effective performance of their functions. In the event of a failure by the insolvency practitioner to comply with any requirements as may be prescribed by the competent authority from time to time in this regard, the competent authority shall impose any administrative penalties, other measures, or take any further action in terms of articles 18 or 19 as the competent authority may deem appropriate;

(e) to publish supplementary rules regulating the manner in which insolvency practitioners and registered firms are to be remunerated in connection with the performance of their functions in terms of article 4(2), if and as the competent authority deems necessary;

(f) to develop, publish, and maintain or adopt, a code of practice providing guidance on the required conduct of insolvency practitioners in the fulfilment of their functions in terms of article 4(2) and their adherence to the provisions of this Act, if and as the competent authority considers necessary;

(g) to initiate and conduct investigations, as and when necessary, in relation to the compliance of insolvency practitioners and registered firms with the provisions of this Act;

(h) to address cases of professional misconduct and

other disciplinary proceedings in respect of insolvency practitioners or registered firms who, by act or omission, violate the provisions of this Act, any regulations or directives made under it and, or any rules which the competent authority adopts by directive, including rules contained in a published code of conduct;

(i) to distribute and disseminate knowledge to the public about the role and functions of the insolvency practitioner and registered firms and the options available to debtors in financial distress, and any other matter as the competent authority may deem relevant;

(j) to take such measures as may be reasonably necessary to protect the public interest and the integrity of the role of insolvency practitioners, including the placing of restrictions, the imposition of administrative penalties and other similar measures on insolvency practitioners and registered firms, or upon any person holding itself out as an insolvency practitioner, or upon any person performing such functions whether subsequent to an authorisation by the competent authority or not, which unless otherwise stated in this Act shall not exceed, for each individual incident, twelve thousand euro (€12,000) for an insolvency practitioner or twelve thousand euro (€12,000) for a registered firm, and, in addition, the competent authority may also impose daily administrative penalties, not exceeding one hundred and fifty euro (€150) per day on insolvency practitioners who fail to comply with the orders or directions of the competent authority;

(k) to advise, make recommendations or otherwise express its views to the Minister on how the procedures made available in terms of the Pre-Insolvency Act, Part III of the Commercial Code, or insolvency proceedings in terms of the Companies Act or the Civil Code as applicable, may be conducted in an efficient manner to expedite treatment of procedures;

Cap. 631.
Cap. 13.
Cap. 386.
Cap. 16.

(l) to advise, or make recommendations or otherwise express its views to the Minister on any other matter which the Minister is to consult with the competent authority, or on which the competent authority is to make recommendations to the Minister, or on which the views of the competent authority are sought by the Minister;

(m) to facilitate the inclusion, by promoting in any manner it may deem necessary, the use of electronic means of communication in the course of the procedures in terms of article 4(2), including with respect to:

(i) the filing of claims and applications;

(ii) the submission of a proposed restructuring plan, in terms of the Pre-Insolvency Act or the submission of the proposed terms of a debt agreement or bankruptcy order in terms of the Commercial Code; Cap. 631. Cap. 13.

(iii) the notifications to creditors;

(iv) the holding of sittings and meetings;

(v) voting at all such sittings or meetings; and

(vi) the lodging of challenges, objections and appeals.

(n) to inform any authority that it deems appropriate of any sanctions or restrictions imposed by it or any other matters that the competent authority considers necessary to protect the public interest, on any insolvency practitioner or registered firm;

(o) to publish guidelines on the interpretation of this Act and any regulations or directives issued under it, if and as the competent authority may deem necessary; and

(p) to collect and aggregate data in accordance with Part VII of this Act.

(2) The competent authority shall also publish annual reports intended to summarise its annual activities and the performance of its functions during the respective year, covering also the development of the role and functions of insolvency practitioners in Malta, and to provide information on recommendations issued and the results thereof, as well as on the current supervisory and oversight mechanisms employed by the competent authority, and such other things as the competent authority may deem relevant.

Register of insolvency practitioners.

10. (1) The competent authority shall establish and maintain a public register to be known as the Register of Insolvency Practitioners, hereinafter referred to as the "Register", that shall separately identify the following:

(a) the insolvency practitioners;

(b) the registered firms;

(c) any categorisation of the functions of each insolvency practitioner, and the extent of the authorisation of each insolvency practitioner and registered firm;

(d) the insolvency practitioners whose authorisation has been suspended, revoked or withdrawn in full or in part by reference to any category of authorisation;

(e) the registered firms whose registration has been suspended, revoked or withdrawn in full or in part by reference to any category of authorisation; and

(f) the insolvency practitioners or registered firms who are deemed by the competent authority to be in default of their obligations in terms of this Act or of any regulations or directives made under it.

(2) The details kept in the Register shall include the following details:

(a) the name and surname, in the case of an insolvency practitioner, or the name and designation of the type of legal entity of the registered firm, in the case of a registered firm;

(b) the office address and electronic mail address of each insolvency practitioner and registered firm; and

(c) in the case of a registered firm, a list of the insolvency practitioners and the information of the insolvency practitioners employed or otherwise connected with that registered firm in terms of paragraph (a):

Provided that the Minister may, upon the recommendation of the competent authority, prescribe further details to be kept in the Register.

(3) The competent authority shall be authorised to receive further information from insolvency practitioners including:

(a) the date of birth, and identity card number or passport number of the insolvency practitioners, and in the case of the registered firms the registration number of the registered firm, and the information in terms of this article in relation to any insolvency practitioner employed or otherwise connected with the registered firm;

(b) the warrant or licence number of the insolvency practitioners.

(4) Every insolvency practitioner and registered firm shall submit to the competent authority any information required in terms of this article, and shall update the competent authority of any changes without unnecessary delay and in no case later than fourteen (14) days of such change.

(5) Any change in the office address or electronic mail address of an insolvency practitioner or registered firm shall become effective against the competent authority within fourteen (14) days from the day it notifies the competent authority with the change.

Powers of the competent authority.

11. (1) The competent authority shall have all the supervisory and investigatory powers that are necessary for the exercise of its functions under this Act, including but not limited to the power:

(a) to request data, information, or documentation held by any person in any form, as may be relevant to the carrying out of the competent authority's functions and to receive or take a copy thereof;

(b) to obtain information related, in any manner, to the performance, by any person, of functions pertaining to an insolvency practitioner or registered firm;

(c) to carry out on-site inspections of the working premises of the insolvency practitioners or registered firm;

(d) to appoint experts to carry out verifications or investigations;

(e) to impose the administrative penalties, and other measures available to it in terms of article 18; and

(f) to refer matters for criminal prosecution:

Provided that the powers made available to the competent authority in terms of this article may be exercised by the competent authority alone, or in collaboration with other authorities, or by application to any competent judicial authority.

(2) In the exercise of its functions in terms of article 9, the competent authority may consult with such persons as it may deem appropriate, and may also appoint committees, of which the chairman shall be a member of the competent authority, thereby establishing their remit and remuneration, for the carrying out of such studies or other work as the competent authority may assign to them, including but not limited to, the establishment and operation of a system of quality assurance.

(3) The competent authority shall be empowered to exchange confidential information with the competent authorities of other Member States.

(4) The processing of personal data processed in the exercise of the supervisory and investigatory powers pursuant to this article shall be carried out in accordance with the Data Protection Act and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Cap. 586.

Regulations.

12. The Minister may, on the recommendation of the competent authority, make regulations not inconsistent with the provisions of this Act, to give better effect to any of such provisions and generally to regulate the role and functions of insolvency practitioners and registered firms, and, without prejudice to the generality of the foregoing, such regulations may in particular include provisions with respect to the punishments or administrative penalties to which a person may become liable, or other consequences or effects in the event of any violation or non-compliance with any provision of this Act or of any regulation or directive issued under it.

Directives.

13. (1) The competent authority may issue directives or guidelines regulating the activity of insolvency practitioners or registered firms on the following:

(a) the establishment and definition of procedures and generally accepted procedures applicable in the performance of the functions of an insolvency practitioner in terms of article 4(2);

(b) criteria for eligibility to receive an authorisation in terms of this Act and the manner in which the competent authority shall determine the competence of applicants for an authorisation in the pertinent fields of expertise;

(c) conduct of insolvency practitioners and registered firms and the required standards of quality control, competence, integrity and independence;

(d) clients' accounts and monies held on behalf of clients and third parties;

(e) continued professional education;

(f) the provision of such information as may be required from insolvency practitioners and registered firms by the competent authority in order to enable it to carry out any of its functions under this Act;

(g) the establishment of a system of registration and renewals for an authorisation or registration issued in terms of this Act;

(h) the meaning and interpretation of any provision of this Act and of any regulations or directives issued under it; or

(i) such other matters as may be prescribed by regulation.

(2) Directives and guidelines issued in terms of sub-article (1) shall be published by the competent authority in such manner so as to

ensure effective dissemination thereof.

(3) Directives and guidelines issued in terms of sub-article (1) shall not become operative before the lapse of one week from the publication made in terms of sub-article (2), or such later date as may be specified therein.

PART IV
Conduct of Insolvency Practitioners

Duty to provide information.

14. (1) Every insolvency practitioner or registered firm shall provide the competent authority with such information as the competent authority may reasonably require, or as may be prescribed in directives issued by the competent authority under this Act, and shall give notice to the competent authority of any relevant change in any information previously given to it within fourteen (14) days after the date on which the change occurs.

(2) Where, in the course of an investigation carried on by the competent authority, an insolvency practitioner or registered firm intentionally alters, hides or fails to disclose, or otherwise suppresses information relevant to an investigation or that the competent authority demands to see in pursuance of its functions under article 11, the insolvency practitioner, or insolvency practitioners being responsible for the performance of a registered firm's functions in terms of article 4(2), shall on conviction be liable to a term of imprisonment of not less than three (3) months and not more than two (2) years, or to a fine (multa) not exceeding fifty thousand euro (€50,000), or to both such fine (multa) and imprisonment.

Removal or resignation of an insolvency practitioner.

15. (1) Without prejudice to any other law regulating the removal, resignation or substitution of an insolvency practitioner or registered firm, an insolvency practitioner or registered firm shall, in the case of their removal or resignation from an engagement to carry out a function listed in article 4(2) during their term of appointment, inform the competent authority in writing of such removal or resignation, and shall, in the event of a resignation, give adequate explanations for the reasons thereof.

(2) The notification referred to in sub-article (1) shall be made within fourteen (14) days#from the removal or resignation as the case may be.

Breach of professional duty.

16. Every person who acts in breach of his professional duties in the exercise of his functions as an insolvency practitioner, shall, if such act or omission amounts to gross negligence, bad faith or serious misconduct, be liable on conviction to imprisonment for a period of not less than one (1) year and not exceeding five (5) years, and the court may also inflict on such person a fine (multa) not exceeding sixty thousand euro (€60,000).

Exemption from liability or responsibility.

17. Any agreement or arrangement purporting to exempt an insolvency practitioner or registered firm from any liability, responsibility or duty relative to the execution of the functions in terms of article 4(2), except under a policy of insurance to indemnify the insolvency practitioner against any such liability or responsibility, shall be null and void.

Administrative penalties, and other measures.

18. (1) In the case of a breach of any of the provisions of this Act, or of any regulations or directives issued under it, the competent authority shall have the power to issue administrative penalties and reprimands, and to take such other measures as it may deem appropriate according to the circumstances of the case.

(2) The competent authority shall have the power to take, or impose, at least the following administrative penalties and other measures for breaches of the provisions of the rules under this Act or any regulations or directives issued under it:

(a) a notice requiring the person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct, which notice shall also be communicated to any other regulatory or supervisory authority to whose regulation such person may be subject;

(b) a public statement which indicates the person responsible and the nature of the breach, published on the website of the competent authority;

(c) a temporary prohibition, of up to three (3) years' duration, banning the insolvency practitioner or registered firm from acting as an insolvency practitioner in terms of article 4(2); and

(d) the imposition of administrative penalties in accordance with article 9(1)(j).

(3) When determining the type and level of administrative penalties and other measures mentioned in sub-article (2) or otherwise in terms of this Act, the competent authority shall take into account all relevant circumstances, including, without limitation to:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible person;

(c) the financial strength of the responsible person, by reference to the annual income or total turnover thereof, as the case may be;

(d) the level of cooperation of the responsible person with the competent authority; and

(e) previous breaches by the responsible legal or natural person.

Revocation, suspension and cancellation of authorisation.

19. (1) Without prejudice to any administrative penalties, or other measures that may be imposed in terms of article 18, the competent authority may order that an authorisation or registration issued in terms of this Act may be revoked, cancelled, suspended, or subjected to other conditions or restrictions ordered by the competent authority, in accordance with the provisions of this article, if the person to whom such authorisation was issued or the registered firm or any of the principals of the registered firm:

(a) has been found, in the course of an investigation conducted by the competent authority, to have acted, including through omissions, in:

(i) bad faith, serious misconduct or gross negligence in the exercise of his functions as an insolvency practitioner or registered firm;

(ii) violation of any regulation made or directive issued in terms of this Act, where the regulation or directive provides for the suspension, cancellation, withdrawal or subjection to conditions of an authorisation or registration as a consequence of such violation;

(iii) violation of any regulations or directives with respect to professional standards, practices or integrity;

(iv) violation of any code of conduct issued or adopted by the competent authority;

(v) a grievous discreditable manner to insolvency practitioners; or

(vi) a manner which fails to comply with any condition attached to an authorisation or registration when such failure is of a material nature;

(b) has been found guilty by a court of law:

(i) of an offence under this Act or any regulations made thereunder;

(ii) of an offence under the Companies Act; or Cap. 386.

(iii) of a crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud or of any crime punishable by a term of imprisonment exceeding one (1) year.

(2) Without prejudice to the provisions of sub-article (1):

(a) an authorisation may be withdrawn or cancelled by the competent authority at the request of the insolvency practitioner;

(b) the registration of a registered firm may be cancelled by the competent authority at the request of the registered firm;

(c) an authorisation may be revoked or cancelled by order of the competent authority, whenever the competent authority is of the opinion that there are material circumstances concerning the insolvency practitioner that, had the authorisation not been issued, would disqualify such person from being eligible in terms of article 3; and

(d) the registration of a registered firm may be revoked or cancelled by order of the competent authority whenever the competent authority is of the opinion that there are material circumstances concerning the registered firm that, if the registered firm had not been registered, would disqualify it from being registered.

(3) Where an authorisation or registration is suspended for a time or subjected to conditions, the suspension or the conditions may be lifted by the competent authority at any time.

(4) Where an authorisation is withdrawn in terms of sub-article (2)(a), or where a registration is cancelled under sub-article (2)(b), a new authorisation may be issued, or a new registration may be made, at any time if the conditions for such issue or registration are satisfied.

(5) Upon the revocation or withdrawal of an authorisation issued under this Act, or during such period when the authorisation is suspended, the person to whom the authorisation was issued shall not be authorised to carry out the functions of an insolvency practitioner in terms of article 4(2), and upon the cancellation of any registration of a registered firm, or for such period when such registration is suspended, the firm shall cease to be registered.

PART V
Appeal

Appeals.

20. (1) There shall lie a right of appeal to the Tribunal on any decisions made by the competent authority as listed in article 21(1), which right shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Tribunal shall also explain his juridical interest in impugning the decision appealed from.

(2) Unless otherwise provided by the Administrative Justice Act or any regulations made thereunder, an appeal from the decisions or orders referred to in article 21(1) shall be made by application and shall be filed in the registry of the Tribunal within twenty (20) days from the date of the said decision. Cap. 490.

Decisions of the competent authority that may be appealed from.

21. (1) Unless otherwise provided by law, an appeal shall lie to the Tribunal from the following decisions or orders made under this Act:

(a) any decision of the competent authority pursuant to the issue of an authorisation in terms of article 4;

(b) any decision of the competent authority to revoke, withdraw, or suspend an authorisation, or subject such authorisation to other conditions in terms of article 19;

(c) any decision of the competent authority to refuse to register a firm in terms of article 6;

(d) any decision of the competent authority to revoke, suspend, cancel or subject to other conditions the registration of a registered firm in terms of article 19;

(e) any decision of the competent authority which acquits or is decided against an insolvency practitioner or registered firm in cases of professional misconduct, following an investigation carried out by the competent authority;

(f) any decision of the competent authority pursuant to a measure taken to protect the public interest and the integrity of the role of the insolvency practitioner in terms of article 9(1)(j);

(g) any decision of the competent authority to impose administrative penalties or reprimands or other measures in terms of this Act;

(h) any decision taken in terms of any regulations or directives issued under this Act, when the regulation or directive explicitly grants a right of appeal in terms of this article; and

(i) any other decision of the competent authority that the appellant may reasonably demonstrate, to the satisfaction of the Tribunal, to have materially and unfairly aggrieved the appellant.

(2) The decision of the competent authority shall not be suspended pending appeal, and shall, in the interim, be adhered to by all the parties to whom the decision applies.

(3) The Tribunal, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision of the competent authority, pending the final determination of the appeal. The Tribunal, in deciding to suspend the decision, shall state its reasons for doing so.

General provisions relating to offences.

22. (1) The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the same acts or omissions and shall not, in particular, affect the application of any higher punishments under any other law.

(2) Any actions taken by the competent authority with respect to professional misconduct or other proceedings pursuant to a violation of the provisions of this Act or of any regulations or directives made under it, shall be without prejudice to any proceedings which may be taken against the person concerned under the provisions of the Criminal Code or of any other law, and any proceedings so taken shall be without prejudice to any proceedings that may be taken by the competent authority.

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PART VI
Discipline

Disclosure of measures and decisions.

23. (1) The competent authority shall appropriately disclose to the public all the measures taken and the administrative penalties imposed on insolvency practitioners or registered firms in terms of this Act or the regulations or directives issued under it including the appropriate disclosure of administrative penalties imposed. The disclosure required by this article may take place through a website maintained by the competent authority, or through the Registry established in terms of article 10.

(2) Without prejudice to the generality of sub-article (1), the competent authority shall notify, by registered mail, or by electronic mail any decision taken by it, from which there shall lie the right of appeal in terms of article 21, to any person to whom such decision applies:

Provided that, in the event that the person to whom such decision applies cannot be reached or found, the person shall be deemed to have been validly notified by leaving a copy of such decision at the office address, place of business, or place of work of such person, or with a person in his service, or with his attorney or person authorized to receive his mail, or through a notice published within a website maintained by the competent authority.

Publication of administrative penalties and other measures.

24. (1) The competent authority shall publish on its website at least any administrative penalties or other measures imposed for breach of the provisions of this Act, or of the directives or regulations made under it, in respect of which all rights of appeal have been

exhausted or have expired, as soon as reasonably practicable immediately after the person concerned has been informed of that decision, including information concerning the type and nature of the breach and the identity of the person on whom the administrative penalty or other measure has been imposed.

(2) The competent authority shall publish on its website the administrative penalties or other measures imposed on an anonymous basis, and in a manner which is in conformity with Maltese law, in any of the following circumstances:

(a) where, the administrative penalty or other measure is imposed on a natural person, the required publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation; or

(c) where publication would cause disproportionate damage to the institutions or individuals involved.

(3) The competent authority shall ensure that any publication in accordance with sub-article (1) is of proportionate duration and that it remains on its website for a minimum period of five (5) years after all rights of appeal have been exhausted or have expired.

Reporting of breaches.

25. (1) The competent authority shall establish effective mechanisms that encourage reporting of breaches of this Act, or of the regulations or directives made under it.

(2) The mechanisms referred to in sub-article (1) shall include at least:

(a) specific procedures for the receipt of reports of breaches and their follow-up;

(b) protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in the Data Protection Act and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and

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(c) appropriate procedures to ensure the right of the accused person to a defence and to be heard before the adoption of a decision concerning him, and the right to seek an effective

remedy before a tribunal against any decision or measure concerning him.

(3) Registered firms shall establish appropriate procedures for their employees to report potential or actual breaches of this Act, or of the regulations or directives made under it through a specific channel or channels.

PART VII
Data Collection

Data collection.

26. (1) The competent authority shall be responsible to collect and aggregate, on an annual basis, national data on procedures concerning:

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(a) applications for preventive restructuring procedure in terms of the Pre-Insolvency Act

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(b) applications for the declaration of bankruptcy and a discharge of debt in terms of Part III of the Commercial Code; and

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(c) applications for winding up due to insolvency, by companies or commercial partnerships in terms of the Companies Act or by legal organisations in terms of the Civil Code.

(2) The type of information that shall be collected by the competent authority shall be sorted with respect to each procedure listed in sub-article (1), and shall include, but not be limited to:

(a) the number of procedures that were applied for or opened, and of procedures that are pending or were closed;

(b) the average length of procedures from the submission of the application for the commencement of court proceedings, or from the opening thereof, to their closure;

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(c) the number of applications for preventive restructuring procedures in terms of the Pre-Insolvency Act that were declared inadmissible, were rejected or were withdrawn before a preventive restructuring order was issued in terms thereof; and

(d) the number of procedures other than those required under paragraph (c), sorted by the outcome of the respective procedures.

(3) The competent authority shall sort any data that shall be collected and aggregated in terms of sub-article (2)(a), (b) and (d), by reference to:

(a) the size of the debtors, not being natural persons;

(b) whether debtors subject to procedures concerning preventive restructuring proceedings in terms of the Pre-Insolvency Act, or insolvency proceedings in terms of the Companies Act or the Civil Code as applicable, are natural or legal persons; and

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(c) whether the procedures leading to a discharge of debt in terms of Part III of the Commercial Code concern only natural persons in the course of a trade, business, craft or profession, or all natural persons.

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(4) The competent authority shall also collect and aggregate, on an annual basis, data on the number of debtors which were subject to preventive restructuring proceedings in terms of the Pre-Insolvency Act, or insolvency proceedings, and which, within the three (3) years prior to the submission of the application or the opening of such proceedings, had a restructuring plan confirmed in terms of the Pre-Insolvency Act.

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(5) Any data to be collected and aggregated in terms of this article shall be compiled for full calendar years ending on 31 December of each year, starting with the first full calendar year following the date of application of the implementing acts referred to in Article 29(7) of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

(6) The Minister may, acting on the recommendation of the competent authority, make regulations as may be conducive to the fulfilment of the Article 29(7) of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

(7) Every insolvency practitioner or registered firm shall be required to maintain a record of the data set out in terms of this article, in respect of their own functions, and the competent authority may, at its own discretion, request the provision of such data from the insolvency practitioner or registered firm by not less than fourteen (14) days from the date of such request.

(8) Where the competent authority makes a request to a relevant person, body or authority to provide information that is materially necessary for the fulfilment of the competent authority's data

collection functions in terms of this article, the relevant person, body or authority shall, to the extent that is permissible, provide the requested information to the competent authority without undue delay.

(9) Any person who breaches the provisions of this article which impose upon him an obligation to collect, aggregate, store, or sort data, or communicate that data to the competent authority, shall be guilty of an offence and shall be liable on conviction for each offence, in respect of the first offence to a fine (multa) not exceeding one thousand and two hundred euro (€1,200) and in respect of a second or subsequent offence to a fine (multa) not exceeding six thousand euro (€6,000), and in the case of a continuing offence to an additional fine (multa) not exceeding one hundred and twenty euro (€120) for each day during which the offence continues.

PART VIII
Miscellaneous

Exclusion of liability.

27. (1) The competent authority, when acting in any function assigned to it under any provision of this Act, including the officers and employees of the competent authority, and any body established by this Act and any member, officer or employee of that body, and any other person appointed to perform a function on the competent authority's behalf under this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any such function or otherwise in the exercise of their duties in terms of this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, through wilful misconduct.

(2) No decision of the competent authority taken in accordance with this Act or any regulations or directives made under it may be suspended by use of the warrant of prohibitory injunction, except to the extent that such decision infringes a fundamental human right of the applicant as protected by the Constitution of Malta or the European Convention Act.

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Notices.

28. A notice or other document to be given or served under this Act, or any regulations or directives made under it, shall be deemed to have been duly given or served on a person if, and on:

(a) the day it has been delivered personally to such person;

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

(c) the following day after it has been sent to him by post at any of the aforesaid addresses or by electronic mail; or

(d) the day as prescribed in paragraphs (a), (b) and

(c) to or on a secretary, clerk, manager or their equivalent, or to any principal, with regards to a registered firm:

Provided that a certificate issued by the competent authority certifying that it has sent the notice or other document that shall be given or served under this Act, or any regulations or directives made under it, on a particular date shall be proof of its content.

PART IX
Transitory Provisions

Transitory provisions.

29. (1) Any person who, on the date of the coming into force of this Act, is authorised to exercise the profession of an advocate, accountant or auditor, and has been appointed as a provisional administrator, liquidator, or a special controller within the meaning of the Companies Act, or has otherwise served as an expert or practiced as a lawyer within the Civil Court (Commercial Section), or the Civil Court, First Hall in commercial law or shipping law related cases within the preceding five (5) years from the coming into force of this Act, or otherwise proves to the satisfaction of the competent authority, that he has adequate experience in pre-insolvency, corporate restructuring, business finance, or liquidation, may apply to the competent authority to receive a provisional authorisation to carry out the functions of an insolvency practitioner in terms of article 4(2).

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(2) An applicant shall annex to the application any documentation or information as the competent authority may deem relevant, and shall furnish any further information as the competent authority may subsequently request.

(3) The competent authority shall, if it is satisfied that the applicant in terms of sub-article (1) has the necessary knowledge, competence, experience and resources as it may consider to be appropriate to carry out the functions of an insolvency practitioner, issue to the applicant a provisional authorisation that shall entitle the recipient to carry out the functions of an insolvency practitioner in terms of article 4(2), and, provided that the conditions in article 6 subsist, to act as the principal for a registered firm.

(4) Any person being provisionally authorised in terms of this article shall be subject to the full scope and application of the provisions of this Act, and the competent authority shall act in his respect as though he was an insolvency practitioner and otherwise in terms of this Act and any regulations or directives issued under it.

(5) Without prejudice to the provisions of this article, all provisional authorisations granted in terms of this article, irrespective of the date of issuance thereof, shall expire within twenty four (24) months from the date of coming into force of this Act.