L.N. 6 of 2003

INVESTMENT SERVICES ACT
(Cap. 370)

Investor Compensation Scheme Regulations, 2003

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(Cap. 370)

Investor Compensation Scheme Regulations, 2003

IN exercise of the powers conferred by article 12 of the Investment Services Act, 1994, the Minister of Finance, acting on the advice of the Malta Financial Services Authority, as the competent authority appointed for the purposes of that Act, has made the following regulations:-

Citation and date of commencement.

1. The title of these regulations is the Investor Compensation Scheme Regulations, 2003, and shall come into force on such date as the Minister may by Order in the Gazette establish, and different dates may be appointed for different provisions or different purposes of these regulations.

Interpretation.

2. In these regulations, unless the context otherwise requires -

"Act" means the Investment Services Act, 1994; Cap. 370.

"Branch" means a place of business which forms a legally dependent part of a licence holder and from which some or all of the activities for which the licence holder has been authorised is conducted; all the places of business set up in any one country by a licence holder whose head office is in Malta or in another country shall be regarded as a single branch;

"competent authority" means the competent authority under the Act;

"Financial Services Tribunal" means the Tribunal established in terms of the Malta Financial Services Authority Act; Cap. 330.

"the Fund" means the Compensation Fund established under regulation 10 of these regulations;

"instruments" shall have the same meaning as that assigned to the words in article 2 of the Act;

"investor" means a person who has entrusted money or instruments to a licence holder in connection with licensed business;

"joint account" means an account opened in the names of two or more persons or over which two or more persons have rights that may be exercised under the signature of one or more of those persons;

"licensed business" means the carrying out of any activity in regard to which there is a licence or an equivalent authorisation under the Act;

"licence holder" means any person who holds a licence to carry out investment services business in terms of the Act;

"Management Committee" means the Compensation Schemes Management Committee established under regulation 3 of these regulations;

"Relevant Income" is all gross income received or receivable which is commission, brokerage fees or other earnings arising from the licence holder's business activities, whether those activities are licensed under the Act or not, for the last accounting year or on the basis of the business plan agreed with the competent authority in respect of the relevant year or period:

Provided that any income received or receivable in the form of bank or bond interest and dividends shall not be taken into account for the purpose of computing "Relevant Income";

"Scheme" means the Investor Compensation Scheme established under regulation 3 of these regulations;

"Total Revenue" means all gross income received or receivable from the licence holder's business activities.

Establishment of the Investor Compensation Scheme.

3. (1) There shall be established an Investor Compensation Scheme.

(2) The Scheme shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Act and of these regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purposes of its functions, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing or being sued and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions.

(3) The Scheme shall be managed and administered by and be under the general control of the Management Committee appointed in terms of regulation 5 of these regulations.

(4) The legal and judicial representation of the Scheme shall vest in the chairperson of the Management Committee:

Provided that and without prejudice to the foregoing, that the Management Committee may vest any one or more of its members or of the officers or agents of the Scheme with legal or judicial representation.

Functions of the Scheme.

4. (1) Without prejudice to any other power or function conferred on it by these regulations or by any other law, it shall be the function of the Scheme -

(a) to establish and maintain, after consultations with the competent authority, arrangements for the making of payments to investors in accordance with these regulations;

(b) to maintain a fund or funds out of which payments shall be made to investors and to meet such other payments or expenses as may be paid out of the fund or funds in accordance with these regulations;

(c) to place contributions made by participants and any other funds managed and administered by the Scheme on deposit or to invest such contributions and funds;

(d) to advise the competent authority on matters relating to compensation of investors; and

(e) to process claims for compensation by investors as expeditiously as possible and to ensure that compensation is paid out without undue delay.

Composition of the Management Committee.

5. (1) The Management Committee shall be appointed by the competent authority and shall consist of a chairperson and not more than six other members including:

(a) an officer, not below managerial grade, performing duties with the competent authority possessing the necessary expertise and experience in financial services;

(b) one person nominated by an association or other body representing persons holding a licence under the Act and recognised for such purpose by the competent authority;

(c) one person nominated by an association or other body representing credit institutions and recognised for such purpose by the competent authority;

(d) an officer, not below managerial grade, performing duties with the Central Bank; and

(e) a person, who because of his experience, qualifications or activities is considered as being able to state and represent the point of view of consumers:

Provided that whenever, for any reason whatsoever, the associations or other bodies representing licence holders and credit institutions referred to in (b) and (c) of sub-regulation (1) of this regulation fail to nominate, within the time given to it by the competent authority, the person it is required to nominate, the competent authority shall appoint the persons, or the remaining person, at its discretion.

(2) The members of the Management Committee shall be appointed from among persons who, in the view of the competent authority, have proven experience and are qualified in financial services, management, or possess any other relevant professional or commercial knowledge and experience.

(3) The member of the Management Committee nominated by an association or other body representing licence holders and the member nominated by an association or other body representing credit institutions shall not be eligible for appointment if he has a financial or other interest as is likely to affect prejudicially the discharge by him of his functions under these regulations.

(4) Every member of the Management Committee, including the chairperson, shall hold office, for such period and upon such terms and conditions as may be determined by the competent authority and indicated in the letter of appointment. Such term of office shall be of not less than three years and not more than five years. Every member of the Management Committee, including the chairperson, shall be eligible for re-appointment.

(5) A member of the Management Committee may be relieved of office by the competent authority on the grounds of inability to perform the functions of his office, whether due to infirmity of mind or of body, or of misbehaviour; and for the purposes of this paragraph repeated and unjustified non-attendance of meetings of the Management Committee may be deemed to amount to misbehaviour.

(6) A member of the Management Committee may resign from office by letter addressed to the competent authority.

(7) The competent authority may fill any vacancy occurring in the Management Committee for any reason whatsoever, but having regard to the provisions of sub-regulation (1) of this regulation.

(8) Notice of the names of the members of the Management Committee (and any resignation, dismissal and new appointment) shall be published in the Gazette.

(9) The competent authority shall establish any remuneration to be paid to the members of the Management Committee.

(10) The Consumer Complaints Manager appointed in terms of Article 20 of the Malta Financial Services Authority Act shall serve as secretary to the Management Committee and shall be responsible to make the necessary preparations for the meetings of the Committee and to keep the minutes thereof. Cap. 330.

Powers and duties of the Management Committee.

6. (1) The Management Committee shall have the power to appoint officers and agents of the Scheme and to grant them such powers or authority as it may deem appropriate. In consultation with the competent authority, the Management Committee may, for the better fulfilment of its purpose, delegate specific parts of its business to be conducted on its behalf by such body or person and under such arrangement or arrangements as it may deem appropriate.

(2) The Management Committee may place contributions made by licence holders in terms of regulation 11 of these regulations and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(3) The Management Committee may take out insurance policies, borrow or otherwise incur indebtedness on behalf of the Scheme for the purposes of the Scheme's functions, in any way and under any terms it may consider appropriate, provided such borrowings do not exceed 30 per cent of the net asset value of the Scheme.

(4) The Management Committee shall cause proper books of account to be kept so that the financial position of the Scheme can be ascertained with reasonable accuracy at any time.

Investment management and administrative support agreements.

7. Without prejudice to sub-regulation (1) of regulation 6 the Management Committee shall enter into such investment management and administrative support agreements as may be approved by the competent authority by not later than three months from the coming into force of these regulations.

Publication of Financial Statements.

8. (1) The Management Committee shall prepare annual forecast statements of the expected costs and revenues of the Scheme, and shall make available such forecast statements to all participants.

(2) The Management Committee shall submit to the competent authority an annual report on the discharge of its functions and on the operation of the Scheme within two months from the financial year end of the Scheme. Such annual report shall give details of the exercise by the Management Committee of its powers of management and shall include, *inter alia* -

(a) a statement showing the payments in and payments out of the Scheme during its immediate previous financial year; and

(b) annual audited financial statements prepared in accordance with International Accounting Standards, and the provisions of the Companies Act, 1995, where relevant.

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(3) The Management Company shall publish, in at least two daily newspapers, one of which shall be in the Maltese language, its annual report and audited financial statements within four months from the financial year end of the Scheme.

(4) The Management Committee shall prepare a half yearly report to the competent authority giving details of the exercise of its powers of management, together with a report on the financial situation of the Scheme but which need not be accompanied by an auditors' report.

(5) The books of account shall be kept at the offices of the Scheme or at such other place or places as the Management Committee thinks fit, and shall be made available to participants and to the public on request.

Meetings of the Committee.

9. (1) The meetings of the Management Committee shall be held as often as may be required but not less frequently than once every three calendar months.

(2) Meetings of the Management Committee shall be convened by the chairperson either on his own initiative or at the written request of any two members of the Management Committee.

(3) The Management Committee shall only conduct business if at least four members (which shall include the chairperson or, in his absence, the member nominated by the competent authority) are present.

(4) For the purpose of decisions of the Management Committee, each member shall have one vote. Voting shall be by simple majority of the members present, save that in the case of sub-regulation (3) of regulation 6 and sub-regulation (1) of regulation 8, where a majority vote shall be equivalent to at least two-thirds of the votes of those present. In the event of an equality of votes, the chairperson shall have a second or casting vote.

(5) Subject to the foregoing provisions of this regulation, the Management Committee shall have power to regulate its own proceedings and may also establish such procedures or make such rules as it may deem appropriate for the better fulfilment of its purposes.

(6) The Management Committee may invite any person who in its opinion possesses specialised knowledge or expertise on a particular subject, to attend any meeting and take part in the discussions.

The Fund.

10. (1) In terms of regulation 4 of these regulations, the Scheme shall establish and maintain a fund or a number of funds out of which payments shall be made in accordance with these regulations to investors.

(2) The sources of funding shall include:

(a) contributions levied from participants of the Scheme by the Management Committee;

(b) money paid as administrative fees by all participants, as may be prescribed;

(c) money received as income from the investment of the assets of the fund;

(d) money borrowed by the Management Committee for the purposes of the Scheme;

(e) money received by the Management Committee on any insurance policy it takes out; and

(f) any other money required to be paid in to the fund or funds, received or recovered by the Management Committee for the purposes of the Scheme.

(3) There shall be paid out of the funds:

(a) money determined by the Management Committee as compensation for investors;

(b) money required for the repayment of (or interest on or charges in connection with) any money borrowed or for the payment of premia on any insurance policies taken out, for the purposes of the Scheme;

(c) the costs incurred in administering and managing the Scheme; and

(d) any other money paid out by the Management Committee for the purposes of the Scheme.

(4) The Management Committee shall hold, manage and apply the fund or funds in accordance with these regulations.

Participants.

11. (1) Every licence holder in possession of a Category 2 or Category 3 licence in terms of the Investment Services Act (Licence and Other Fees) Regulations, 1995 shall participate in and contribute to the Scheme, including branches of licence holders operating in other countries:

Provided that licence holders providing investment services solely and exclusively to clients falling within the First Schedule to these regulations shall not be required to participate in and contribute to the Scheme.

(2) In the case of a participant whose head office is situated in a country outside Malta, as well as branches of a licence holder having their head office in Malta but operating outside Malta, and where there is supplementary cover by a corresponding scheme in that other country, the Management Committee shall enter into a bilateral agreement with the authority responsible for the management and administration of the scheme in that other country stipulating, *inter alia*, the rules and procedures to be followed for the payment of compensation to claimants.

(3) Participation in the Scheme does not exclude the possibility that particular licence holders may have to participate also in another compensation or similar schemes set up under a different law and governed by another competent authority or other body.

(4) When a licence holder becomes a member of the Scheme after the coming into force of these regulations, the Management Committee shall determine all the relative obligations and conditions of the new participant.

Contributions to the Scheme.

12. (1) Participants shall pay such contributions to the Scheme on such terms and conditions as to the allocation of such contributions, as are prescribed in the Second Schedule to these

regulations as the same may be amended or varied from time to time by the competent authority, in consultation with the Management Committee.

(2) The Management Committee may specify different rates or amounts of contributions or different bases for the calculation of contributions for different classes or categories of licence holders.

(3) Without prejudice to the generality of sub-regulation (2) of this regulation, the Management Committee, when specifying different rates or amounts of contributions or bases for the calculation of contributions for different classes or categories of licence holders or for different licence holders within the same class or category, may take into account any money or investment instruments entrusted to such a licence holder and any financial or accounting records as may be specified from time to time, before or after the coming into force of these regulations.

13. (1) The competent authority shall make a determination where: Determination.

(a) it appears to the competent authority that a participant is unable, for the time being, for reasons which are directly related to its financial circumstances to meet its obligations arising from claims by its investors and to have no early or foreseeable prospect of being able to do so, or has otherwise suspended payment; or

(b) in respect of a participant which has its head office in Malta and, in respect of which an order has been made by the Courts in Malta for its winding-up or liquidation under the laws of Malta;

whichever is the earlier.

(2) The competent authority may, by way of guidelines, establish those circumstances or criteria which it may consider in arriving at a decision as to whether it will make a determination in terms of sub-regulation (1) of this regulation.

(3) On the day the determination is made, the competent authority shall inform the Management Committee in writing of its determination. The Management Committee may take additional measures it deems necessary or appropriate within its powers under these regulations.

(4) The competent authority shall immediately inform any other compensation scheme relating to financial services activities, as

may be established under any other law and regulated by other competent authority or other body, which it believes may be effected by such determination.

(5) In making a determination in accordance with sub-regulation (1) of this regulation, the competent authority shall have regard to any report of an officer or officers authorised by it on the state of affairs of the licence holder, and any other information in its possession.

Application for Compensation.

14. (1) On being informed by the competent authority that a determination has been made under regulation (1) of regulation 13 the Management Committee shall publish a notice in at least two local newspapers, informing investors of the licence holder concerned of such determination and of the manner in which claims supported by documentary evidence are to be submitted.

(2) The right of an investor for compensation shall not be forfeited if the investor has been unable to assert his right to compensation within any prescribed time-limits as may be announced.

(3) The Management Committee may, following an application for compensation being made to it by an investor, accept or refuse to provide compensation in accordance with these regulations.

(4) The Management Committee shall proceed to pay compensation for verified claims within three months of the date of the determination given in terms of sub-regulation (1) of regulation 13:

Provided that the Management Committee may, in exceptional circumstances, apply to the competent authority for an extension of this period by a further period of up to three months, and up to two further periods of up to three months each thereafter.

Verification of claims.

15. (1) The Management Committee shall make its own administrative arrangements for verifying claims. These arrangements shall include:

(a) providing a clearly understandable application form for claimants (in English and Maltese in Malta, and in the official language or languages of a third country where a branch of a licence holder is established);

(b) providing for the exercise of the Management Committee's right of subrogation under regulation 22 of these regulations; and

(c) requiring claimants to give:

(i) their identity and address;

(ii) the capacity in which they claim;

(iii) evidence of the eligible investments; and

(iv) any other matter reasonably required by the Management Committee.

(2) The Management Committee may refuse to make a payment for compensation in respect of an investment until the person claiming to be entitled to the investment informs the Management Committee as to the capacity in which he is the beneficial owner of the investment and provides satisfactory documentary evidence and information to allow the Management Committee to determine the amount of compensation payable.

(3) The Management Committee may decide to delay payment to a claimant until determination of any criminal charge brought against the claimant, investor, or any person entitled to or interested in respect of an investment under the provisions of the Prevention of Money Laundering Act or a corresponding law of a country outside Malta. Cap. 373.

When funds appear to be inadequate.

16. Whenever it appears to the Management Committee that the funds for the time being held by the Scheme are inadequate for the Management Committee to exercise its functions, the Management Committee may require a contribution to be made to the Scheme by licence holders out of, but not exceeding, funds reserved for this purpose by the licence holder in accordance with the Second Schedule to these regulations. Such further contributions shall be provided to the Scheme within 30 calendar days of their being requested.

Limit of Compensation.

17. The total amount of compensation that may be paid out to any investor shall be the lesser of ninety per cent (90%) in respect of all claims which have been made by each investor, or up to the Maltese liri equivalent of 20,000 Euros converted on the basis of the official closing middle rate issued by the Central Bank of Malta prevailing on the date of settlement of the claim:

Provided that the total compensation paid by the Scheme in any one year shall not exceed 75 per cent of the net asset value of the Scheme as shown in the latest audited financial statements.

Claimants.

18. (1) Investors may make a claim against the Scheme in terms of these regulations. Investors listed in the First Schedule to these regulations are excluded from submitting claims to the Scheme.

(2) In the event of doubt as to whether an investor is excluded from submitting a claim to the Scheme the matter shall be conclusively determined by the Management Committee for all purposes of these regulations.

(3) Claimants will not be able to claim against more than one scheme in respect of a single claim. Where a claim has been made under two or more compensation schemes, the Management Committee shall conclusively determine under which scheme the claimant is eligible for compensation.

(4) Claims shall be made in such form, and shall be accompanied by such documentation or information, as the Management Committee may determine and make public from time to time.

Claims.

19. (1) Cover shall be provided for claims arising out of a licence holder's inability to:

(a) repay money owed to or belonging to investors and held on their behalf in connection with licensed business; or

(b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with licensed business or, where this is not possible, their monetary equivalent or value.

(2) The amount of an investor's claim shall be calculated by the Management Committee after taking into account any or all of the following factors:

(a) legal and contractual conditions;

(b) counterclaims;

(c) market value; and

(d) surrender value.

(3) Claims arising out of transactions in connection with which a criminal conviction has been obtained for money laundering in terms of the Prevention of Money Laundering Act, 1994 shall be excluded from any compensation.

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Eligibility for compensation.

20. (1) Where the Management Committee is of the opinion that an investor is not eligible for compensation in whole or in part because such investor falls within the list of exclusions in the First Schedule to these regulations, the Management Committee shall give notice in writing to such investor of that opinion and the reasons therefor and the steps that may be taken by the investor under sub-regulation (2) of this regulation.

(2) An investor to whom a notice under sub-regulation (1) of this regulation has been given in accordance with this regulation may, within 21 calendar days of being so given, apply to the Financial Services Tribunal to have the relevant exclusion or deduction to which the notice relates revoked or amended.

Compensation paid to be deducted from compensation payable.

21. (1) In considering compensation to any investor for any payment under these regulations, the Management Committee shall take into account any payments made under a policy of professional indemnity insurance held by the licence holder in terms of regulation 26 of these regulations; or any payments made under any other law in respect of the same losses.

(2) The Management Committee shall deduct such amount of compensation paid from the amount of compensation that may be payable to the investor in respect of any or all of the circumstances arising from this regulation.

Subrogation.

22. (1) Where the scheme has made a payment to an eligible investor, the Scheme shall be subrogated to the rights and remedies of that eligible investor against the licence holder.

(2) Prior to or simultaneously with payment, investors shall confirm in writing to the Management Committee that:

(a) they have not received any payment from any other scheme or from the licence holder concerned in respect of the same loss;

(b) they will provide any assistance the Management Committee may ask to enable the Management Committee to exercise its rights and remedies against the licence holder; and

(c) their rights in respect of any money or instruments comprising the claim are subrogated in favour of the Management Committee.

Establishment of the level of compensation.

23. (1) Where two or more persons are jointly entitled to an investment account, each of these persons shall be treated as having a separate account of an amount produced by dividing the amount of the investment to which such persons are jointly entitled by the number of persons so entitled, unless there exists specific evidence or special contractual provisions determining the particular entitlements of such persons in which case such evidence shall be taken into account in determining their entitlements.

(2) Where a person is acting as trustee or nominee for one or more persons under a deed of trust or other similar agreement, the amount comprising the claim shall be deemed to belong to the beneficial owners equally, unless there exists specific evidence or special contractual provisions determining the beneficial interests of such persons in which case such evidence shall be taken into account in determining their entitlements, and provided in any event that ownership is proved to the entire satisfaction of the Management Committee.

Consumer information.

24. The Management Committee shall ensure that the general public is fully informed about the operation of the Scheme arrangements and that such information is imparted to the public as widely and effectively as possible, and as determined by the Management Committee.

Advertisements.

25. (1) Licence holders shall make available to actual and intending investors adequate and clear information concerning the applicability of the Scheme together with such other particulars as may from time to time be specified by the competent authority in a manner and form specified by the competent authority:

Provided that a licence holder shall not advertise or cause to be advertised the fact that money or instruments placed with a licence holder are protected by or through the Scheme except with the prior written consent of the competent authority.

(2) The competent authority may, from time to time, specify the information that licence holders are to provide to investors regarding the Scheme and its operations, as well as the manner and form in which such information should be provided.

Power of the Management Committee to obtain information.

26. (1) The Management Committee shall have the right to request participants, either directly or through the competent authority, to submit such data and information in the form it requests relevant for the proper administration of the Scheme, within such time as the Management Committee may require. The duty of co-operation extends to any successor of the participant, including any person or persons who have continuing responsibility for the affairs of the participant.

(2) Without prejudice to any other regulation contained in these regulations, licence holders who fail to comply with the Management Committee's request for information or data within 15 calendar days shall be liable to an administrative penalty not exceeding Lm1,000 as may be imposed by the competent authority.

Respect for confidentiality.

27. (1) Members of the Management Committee and persons appointed under sub-regulation (1) of regulation 6 shall be subject to the provisions of the Professional Secrecy Act and shall keep confidential any information obtained by them in the course of performing their duties under these regulations, and shall not reveal any information to any person, credit institution, association or entity except as may be allowed by these regulations or any other law or by Court order.

Cap. 377.

(2) The duty of confidentiality shall not be contravened in the case of:

(a) exchange of information between the Management Committee and competent authorities in other countries, or the competent authorities for the management and administration of corresponding schemes in other countries, provided that the relevant information is necessary for the discharge of their duties under these regulations; and

(b) any use or disclosure as is otherwise reasonably needed to enable the Management Committee and its officers or agents to perform their duties under and carry out the functions contemplated by these regulations.

Failure to comply with obligations.

28. (1) The Management Committee shall notify the competent authority where a licence holder fails to comply with the obligations imposed on it by and under these regulations and in co-operation with the competent authority shall take all measures appropriate, including the imposition of penalties to ensure that the licence holder meets its obligations.

(2) If these measures fail to secure compliance on the part of the licence holder, the scheme shall with the express consent of the competent authority, give not less than twelve months' notice of the competent authority's intention to restrict or withdraw the licence holder's licence under the Act. The Scheme shall continue to provide cover during such period.

(3) After the restriction or withdrawal of a licence, cover shall continue to be provided in respect of licensed business up to the date of restriction or withdrawal of the licence.

Compulsory insurance of licence holders.

29. In accordance with the Third Schedule, the competent authority may require licence holders to effect a policy of professional indemnity insurance in a form specified by the competent authority (and different forms may be specified for different classes of licence holders), indemnifying the licence holder up to such sum, in such manner, in respect of such matters and valid for such minimum period as the competent authority may specify from time to time.

Procedures to investigate complaints.

30. The Scheme shall establish and maintain adequate internal procedures to investigate complaints against it by licence holders and by investors.

Power to issue directives and guidelines.

31. (1) The competent authority may issue directives and guidelines to licence holders for the purposes of these regulations.

(2) Such directives and guidelines may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for any purpose of these regulations.

Exemption from liability for damages.

32. The Management Committee and officers and agents of the Scheme shall not be liable in damages for anything done or omitted in the discharge of functions under these regulations unless it is shown that the act or omission was in bad faith.

Financial Year end of the Scheme.

33. The financial year end of the Scheme shall be an accounting period of twelve months ending on the thirty-first day of December of each year.

Audit.

34. The accounts of the Scheme shall be audited by auditors appointed by the Management Committee from among persons who are qualified to be appointed as auditors of a company under the law for the time being in force in Malta, as if the Scheme were such a company.

Cooperation with other authorities.

35. The competent authority and the Management Committee shall consult the relevant competent authorities and the persons responsible for compensation schemes in other countries outside Malta and seek to reach agreement with those authorities and persons about:-

(a) the procedures to be followed if a participant defaults;

(b) the amounts of compensation payable, after deductions if any, under each scheme; and

(c) any other aspect which is deemed appropriate for the proper management and administration of the schemes.

36. All contributions made to the Scheme and any income of any funds belonging to the Scheme shall be exempt from any liability for the payment of income tax, duty or any other charge due under any fiscal law for the time being in force.

Exemption from tax.

First Schedule

List of Exclusions
(Regulation 11, 18, 20(1))

The following shall be excluded from claiming against the Scheme:

(a) Professional and institutional investors, including:

(i) Persons holding an investment services licence under article 6 of the Investment Services Act;

(ii) Credit Institutions carrying on the business of banking under the Banking Act;

(iii) Financial Institutions as defined in article 2 of the Financial Institutions Act;

(iv) Insurance undertakings licensed to carry on the business of insurance under the Insurance Business Act;

(v) Collective investment schemes as defined in article 2 of the Investment Services Act;

(vi) Pension and retirement funds as defined in the Special Funds Act; and

(vii) Other categories of local and/or foreign professional and institutional investors, whether resident or non-resident in Malta, as may be determined by the competent authority from time to time.

(b) National and international institutions, governments and administrative authorities;

(c) Local and municipal councils or authorities;

(d) Directors and managers of the relevant licence holder and members of the licence holder with personal liability, persons holding 5% or more of the capital of such licence holder, the auditors of the licence holder and persons of the same description with respect to a company forming part of the same group of companies as the licence holder;

(e) Close relatives, that is, ascendants or descendants or spouse and third parties acting on behalf of the investors referred to in (d) above;

(f) Other companies in the same group of companies as the licence holder;

(g) Debt securities issued by the same licence holder and liabilities arising out of own acceptances and promissory notes;

(h) Investors who, in the view of the Management Committee, have any responsibility for or have taken advantage of certain facts relating to a licence holder which gave rise to the licence holder's financial difficulties or contributed to the deterioration of its financial situation; and

(i) Companies of such a size that they do not qualify as small companies in terms of sub-article (1) of article 185 of the Companies Act.

Second Schedule

Contributions
in terms of regulation 12

The Total Contribution of a licence holder to the Scheme in any one year shall be divided into two: Fixed and Variable.

The Total Contribution is, essentially, a notional amount because a part of such contribution (the Variable Contribution) will be held by the licence holder until a call is made by the Management Committee in terms of regulation 16 of these regulations.

The other part (the Fixed Contribution) is, however, paid to the Scheme annually.

The use of a bankers' guarantee for the purposes of the Scheme shall not be acceptable.

Fixed Contribution

The Fixed Contribution is calculated by applying a rate of 2.5 *per centum* to the minimum Net Tangible Asset requirement which licence holders are required to maintain.

In case where a licence holder has a derogation from maintaining minimum Net Tangible Assets under its investment services licence because it is required to maintain financial resources requirements under another licence, the Fixed Contribution is calculated on the minimum Net Tangible Asset as if the licence holder is deemed to maintain such requirements under its relevant investment services licence category.

Payment of the Fixed Contribution to the Scheme shall be within four months from the licence holder's financial year end.

Variable Contribution

The Variable Contribution is calculated by applying a percentage rate to the Total Revenue of the licence holder on an annual basis. The percentage rate for the Variable Contribution is set at 0.1 *per centum*.

The Variable Contribution shall be accounted for in the financial year when the Fixed Contribution is paid.

Investor Compensation Scheme Reserve

The Variable Contribution shall be held by the licence holder in a reserve so that the funds will be made available within 30 calendar days from the time when the Scheme makes a call on such funds in terms of regulation 16.

Funds in this reserve, which shall be called the "Investor Compensation Scheme Reserve" in all accounts and documents, may be invested by the licence holder having regard to the need for prudence and within specified parameters, as specified hereunder.

If the Investor Compensation Scheme Reserve is more than the Variable Contribution then no transfer to the Investor Compensation Scheme Reserve will be made. This implies that when a Variable Contribution is higher than the Investor Compensation Scheme Reserve, the licence holder shall be required to make a Variable Contribution for the difference to ensure that the higher amount is always on reserve.

The Investor Compensation Scheme Reserve shall never be less than Lm300.

Investments of funds on reserve by the licence holder

Funds comprising the Investor Compensation Scheme Reserve can only be invested in listed bonds (debt instruments) and/or placed in an interest bearing bank account subject to the following:

• Minimum 25 per cent of the total amount has to be maintained in an Lm-denominated interest bearing bank account (maximum 60 day call).

• Maximum 75 per cent invested in listed debt instruments of which:

– minimum 50 per cent (in this case 37.5% of the total Reserve) has to be invested in Malta Government Stocks;

– the balance (37.5 per cent of the total Reserve) may be invested in debt instruments issued by local or international entities, with an investment grade of not lower than A (Moody's or Standard & Poor's), where applicable.

The above parameters are only indicative and may be changed by a directive by the competent authority, upon consultation with the Management Committee and licence holders.

Financial reporting of the reserve

The licence holders shall be required to insert a suitable note in the annual financial statements as to the market value of the instruments in which the reserve has invested, together with a maturity schedule according to the type of instrument.

The amount on reserve will be deducted in full as a liquid capital adjustment (thus reducing liquid capital) for the purposes of calculating the licence holder's financial resources in its financial return submitted in terms of its licence conditions.

Maximum limit of payment

Licence Holders will be required to contribute to their Investor Compensation Scheme Reserve each year until such time that aggregate fixed contributions paid to the Scheme and accumulated reserves held by licence holders by way of the Variable Contribution amount to Lm1,000,000.

Third Schedule

Professional Indemnity Insurance
(Regulation 29)

Professional Indemnity cover is reduced to twice the relevant income for the next 3 years, after which another review of the operation of the Scheme is conducted. However, the competent authority should reserve the right to require licence holders to increase indemnity to three times the relevant income where considered appropriate. Moreover, the minimum indemnity limits as set out in the Investment Services Guidelines will be retained (Lm 50,000 per claim and Lm250,000 in aggregate).

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – 3, Pjazza Kastilja – *Published by the Department of Information – 3, Castille Place*
Mitbugħ fl-Istamperija tal-Gvern – *Printed at the Government Printing Press*

Prezz 50c – *Price 50c*