MALTA

ATT Nru. IV ta' l-2005

ATT mahruġ b'liġi mill-Parlament ta' Malta.

ATT dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji.

ACT No. IV of 2005

AN ACT enacted by the Parliament of Malta.

AN ACT to prevent Financial Markets Abuse.

I assent.

(L.S.) EDWARD FENECH ADAMI
President

22nd March, 2005

ACT No. IV of 2005

AN ACT to Prevent Financial Markets Abuse

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

PART I

PRELIMINARY

Short title and coming into force.

1. (1) The short title of this Act is the Prevention of Financial Markets Abuse Act, 2005.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different purposes thereof.

Interpretation.

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

"accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with guidelines adopted by the Commission in accordance with the procedure laid down in article 17 (2) of the Market Abuse Directive;

"Commission Regulation (EC) No 2273/2003" means Commission Regulation (EC) No 2273/2003 of 22nd December, 2003, implementing the Market Abuse Directive as regards exemptions for buy-back programmes and stabilisation of financial instruments;

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

"company" means any company, statutory body or other entity which issues financial instruments;

"the competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act as appointed in terms of article 2 of the Financial Markets Act and article 2A of the Investment Services Act;

Cap. 330.
Cap. 345.

"counsel or procure" includes entice, encourage, advise, induce or recommend, and their grammatical derivatives shall be construed accordingly;

"credit institution" shall mean any person as defined in article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council as amended from time to time;

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

"financial instruments" shall have the meaning assigned to it in article 2 of the Financial Markets Act;

"foreign authority" means the single administrative authority appointed by any Member State or EEA State other than Malta, to ensure that the provisions adopted pursuant to the Market Abuse Directive are applied;

"implementing measures" means any European Union acts, regulations or directives implementing the Market Abuse Directive and as amended from time to time, including Commission Directive 2003/124/EC of 22nd December, 2003, Commission Directive 2003/125/EC of 22nd December, 2003, Commission Regulation

(EC) No 2273/2003 of 22nd December, 2003 and Commission Directive 2004/72/EC of 29th April, 2004;

"inside information" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, including information regarding any takeover offer for a company, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions.

For the purposes of this definition, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments; for persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuer or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions;

"investment firm" shall have the same meaning as that assigned to it in article 1(2) of Council Directive 93/22/EEC of the 10th May, 1993 on investment services in the securities field;

"Investment Services Directive" means Council Directive 93/22/EEC of the 10th May, 1993 on investment services in the securities field as amended from time to time and as superseded by Directive 2004/39/EC of the European Parliament and of the Council of the 21st April, 2004 on markets in financial instruments;

"issuer" means any person who issues one or more financial instruments;

"Listing Authority" means the Listing Authority in terms of article 2 of the Financial Markets Act;

"market abuse" means both the prohibited use of inside information and the practice of market manipulation;

"Market Abuse Directive" means Directive 2003/6/EC of the European Parliament and of the Council of 28th January, 2003 on insider dealing and market manipulation and includes any implementing measures issued thereunder;

"the Minister" means the Minister responsible for finance;

"Member State" means a Member State of the Community;

"person closely associated with a person discharging managerial responsibilities within an issuer" means:-

(a) the spouse of the person discharging managerial responsibilities, or any common law spouse or partner of that person considered as equivalent to the spouse by the law of that person's domicile;

(b) dependent children of the person discharging managerial responsibilities, according to the law of that person's domicile;

(c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned; or

(d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in (a), (b) and (c); or by a person discharging managerial responsibilities within an issuer; or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person;

"person discharging managerial responsibilities within an issuer" means a person who is:

(a) a member of the administrative, management or supervisory bodies of the issuer; or

(b) a senior executive, who is not a member of the bodies as referred to in paragraph (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of the issuer;

"person professionally arranging transactions" means an investment firm or a credit institution;

"public employee" means -

(a) a public officer;

(b) a member, officer or employee of the Malta Financial Services Authority or the Central Bank of Malta;

"recognised investment exchange" means a person in respect of whom the competent authority has issued a recognition order in terms of article 4 of the Financial Markets Act";

"regulated market" means:

(a) in the case of Malta, a recognised investment exchange which appears on the list of regulated markets prepared and published by the European Commission in terms of the Investment Services Directive; or

(b) in the case of any other Member State or EEA State, any entity which appears on the list of regulated markets prepared and published by the European Commission in terms of the Investment Services Directive;

"share" has the same meaning in relation to companies not incorporated under the Companies Act as it has in relation to companies so incorporated; Cap. 386.

"takeover offer for a company" means an offer made:

(a) to all the holders of the shares in the company to acquire those shares or a specified proportion of them;

(b) to all the holders, other than the person making the offer and his nominees, of the shares in the company to acquire those shares or a specified proportion of them;

(c) to all the holders of a particular class of those shares going to acquire the shares of that class or a specified proportion of them; or

(d) to all the holders, other than the person making the offer and his nominees, of a particular class of those shares to acquire the shares of that class or a specified proportion of them;

"Tribunal" means the Financial Services Tribunal established in terms of article 21 of the Malta Financial Services Act.

(2) In this Act and in any regulations or rules made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

(3) Save where the context otherwise requires, words and expressions used in this Act shall have the same meaning and the same interpretation as the meanings and interpretations given to those words and expressions in the Companies Act.

PART II

GENERAL PROVISIONS

Purpose.

3. The purpose of this Act is to safeguard the integrity of Maltese and Community financial markets and to enhance investor confidence in those markets. For this object, this Act transposes and implements the Market Abuse Directive and its Implementing Measures, and consequently this Act and any regulations adopted thereunder, shall be interpreted and applied accordingly.

Scope.

4. (1) The provisions of this Act shall apply to financial instruments admitted to trading on a regulated market in Malta or in any other Member State or EEA State or for which a request for admission to trading on such a market has been made. The fact that the transaction itself does not take place on such regulated market or constitutes an off-exchange deal in terms of the Off-Exchange Trading Regulations, 2004 shall not exclude the applicability of this Act to such transaction.

L.N. 286 of 2004.

(2) Article 6 of this Act shall also apply to any financial instrument not admitted to trading on a regulated market in Malta or any other Member State, but whose value depends on a financial instrument as referred to in sub-article (1) hereof.

(3) The provisions of this Act shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by Malta, by the European System of Central Banks, by officers or employees of the Central Bank of Malta, or by any other officially designated body, or by any person acting on their behalf.

(4) The provisions of this Act shall not be deemed to prohibit an individual from doing anything for the purposes of stabilising the price of financial instruments or from trading in own shares in "buy-back" programmes provided it is done in accordance with Commission Regulation (EC) No 2273/2003 implementing article 8 of the Market Abuse Directive.

(5) The provisions of article 9 shall not apply to any issuer who has not requested or approved admission of his financial instruments to trading on a regulated market in Malta or in any other Member State or EEA State.

Jurisdiction.

5. The prohibitions and requirements laid down in this Act shall apply to acts carried out:-

(a) by any person in Malta or outside Malta concerning financial instruments that are admitted to trading on a regulated market in Malta, including admission to a recognised investment exchange situated or operating in Malta or for which a request for admission to trading on such market in Malta has been made; or

(b) by any person in Malta concerning financial instruments that are admitted to trading on a regulated market in any other Member State or EEA State or for which a request for admission to trading on such market has been made.

PART III

MARKET ABUSE AND PREVENTIVE MEASURES

Prohibited use of inside information.

6. (1) No person shall use inside information to trade in any financial instrument admitted to a regulated market or in any other way to acquire or dispose of, or attempt to acquire or dispose of such financial instrument, whether for his own account or for the account of a third party, either directly or indirectly, if he is in possession of information related to such financial instrument by virtue of :

(a) his membership of the administrative, management or supervisory bodies of the issuer;

(b) his holding in the capital of the issuer;

(c) his having access to the information through the exercise of his employment, profession or duties; or

(d) his criminal activities.

(2) Any person who possesses inside information by virtue of any of the reasons listed in sub-article (1) (a) to (d) shall be prohibited from:

(a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties, whether or not he knows or has

reasonable cause to believe that such person or any other person will make use of the information for the purpose of dealing;

(b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates;

(c) counselling or procuring any other person to deal, on a regulated market in those financial instruments.

(3) The prohibitions of sub-articles (1) and (2) shall also apply to an individual who is in possession of inside information even if this is not derived by virtue of any of the circumstances listed in sub-article (1) (a) to (d), in the event that such individual obtained or received such information directly or indirectly, from another person where the individual knew that he was receiving inside information or had reasonable cause to believe or ought reasonably to have known that he was receiving inside information.

(4) Where the person referred to in sub-article (1) is a legal person, the prohibition laid down in that sub-article shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

(5) This article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement such as an agreement granting a share option concluded before the person concerned possessed inside information.

(6) In relation to derivatives on commodities, inside information shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets. Users of markets on which derivatives on commodities are traded, are deemed to expect to receive information relating, directly or indirectly, to one or more such derivatives which is routinely made available to the users of those markets or required to be disclosed in accordance with legal or regulatory provisions, market rules, contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(7) The provisions of this article shall also apply to:

(a) any public employee or former public employee who holds inside information by virtue of his position or former position as a public employee; or

(b) any person who directly or indirectly obtained or received information from a public employee or former public employee who he knows or has reasonable cause to believe held the information by virtue of any such position.

Fair disclosure.

7. Public institutions officially disseminating statistics liable to have a significant effect on financial markets, shall disseminate them in a fair and transparent way.

Market manipulation.

8. (1) No person shall manipulate a regulated market by disseminating false, exaggerated or misleading information, spreading false rumours, or putting into effect simulated or artificial operations or transactions or orders as provided for in this article.

(2) A person shall be deemed to have committed market manipulation if he is responsible for :

(a) transactions or orders to trade:-

(i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments; or

(ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level:

Provided that no market manipulation shall be deemed to have been committed where the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

(3) Without prejudice to the generality of sub-article (2) above, the following conduct shall be deemed to amount to market manipulation:

(a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions;

(b) the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, or indirectly about its issuer, while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; or

(d) engaging in any activity so as to otherwise manipulate the financial instruments market by the employment of artificial devices, fictitious transaction or other deceptive or manipulative conduct including new patterns of activity which may arise from time to time that in practice constitute market manipulation.

Issuers of financial instruments.

9. (1) An issuer shall be obliged to inform the general public of inside information which directly concerns the said issuer.

(2) An issuer may delay public disclosure of inside information at his own responsibility such as not to prejudice his legitimate interests and related obligations.

(3) Whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure:

Provided that the provisions of this sub-article shall not apply if the person receiving the information owes a duty of confidentiality, irrespective of whether such duty is provided for by law or arises from articles of association or a contract.

(4) Issuers or persons acting on their behalf or for their account shall draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.

Duties of persons with managerial responsibilities within issuer and persons closely associated to them.

10. Any person discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer or to derivatives or other financial instruments linked to them.

Duties of investment firms and credit institutions.

11. Any person professionally arranging transactions in financial instruments who has a reasonable suspicion that a transaction might constitute the prohibited use of inside information or market manipulation, shall be obliged to notify the competent authority without delay.

Duties of journalists, researchers and disseminators of financial recommendations.

12. Any person who produces or disseminates research concerning financial instruments or issuers of financial instruments and any person who produces or disseminates other information recommending or suggesting investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is fairly presented and shall disclose his interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

Investigations into market abuse.

13. (1) Without prejudice to any other functions of the competent authority under this Act or any other law, the competent authority shall have the function of monitoring any regulated market in Malta and of detecting instances of market abuse.

(2) Where the competent authority suspects that circumstances may exist to indicate that the conduct of a person amounts to market abuse, it shall in terms of its powers under this Part, cause an investigation to be carried out with the purpose of determining whether or not the said behaviour amounts to market abuse.

(3) A foreign authority may request that the competent authority carry an investigation in Malta and may further request that its officials be allowed to accompany the officials of the competent authority during the course of the investigation.

(4) The competent authority may refuse to act on a request made in pursuance of sub-article (3) hereof only where:

(a) such an investigation might adversely affect the sovereignty, security or public policy of Malta;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same person before the Courts of Malta; or

(c) a final judgment has already been delivered by the Courts of Malta in relation to such person for the same actions in Malta.

In any of the cases above-mentioned, the competent authority shall notify the requesting foreign authority accordingly, providing information, as detailed as possible, on those proceedings or judgment.

(5) Upon receipt of a request in terms of sub-article (3), the investigation shall be subject to the overall control of the competent authority and be subject to the provisions of this Act and the laws of Malta.

Power to demand access to documents and telephone records.

14. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its functions under this Act the competent authority shall have the power to have access to any documentation in any form whatsoever and to receive a copy of it and to demand the aforesaid documentation from any person, including:

(a) any person who is or was carrying on, or who appears to be or to have been carrying on a transaction or activity regulated or prohibited by any of the provisions of this Act;

(b) any other person who appears to be in possession of relevant information or documentation; or

(c) any persons who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals.

(2) The competent authority may, by notice in writing, require any person referred to in sub-article (1):

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such documentation as it may require including existing telephone and existing data traffic records; and

(b) to furnish to the competent authority any aforesaid documentation verified in such manner as it may specify.

In both of the above cases, the person addressed shall comply with the request of the competent authority promptly by providing the competent authority with any documentation in his possession.

(3) The competent authority may take copies of any documentation furnished or provided to it or to which it has access under this article.

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

(5) Any person requested to provide information by virtue of sub-article (2), in particular the directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities at issue shall assist and shall promptly collaborate with the competent authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information as the competent authority may reasonably request from time to time.

Power to demand information and assistance and to summon persons for hearing.

15. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its functions and powers under this Act the competent authority shall have the power to demand information in any form whatsoever and to receive a written statement of it and to demand by notice in writing the aforesaid information promptly from any person. In particular, the competent authority may require any person referred to in sub-article (1) of article 14:

(a) to furnish to the competent authority, at such time and place and in such form as it may specify, such information as it may require;

(b) to furnish to the competent authority any information in the form of a written statement or any information verified in such manner as it may specify;

(c) to attend before the competent authority, or before a person appointed by it as an inspector in terms of article 16, at such time and place as it may specify, to answer questions and provide information and documentation; and

(d) to give the competent authority any assistance which it may require and which that person is reasonably able to give.

(2) Any person requested to provide information by virtue of sub-article (1), in particular the directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities at issue shall assist and shall promptly collaborate with the competent authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information as the competent authority may reasonably request from time to time.

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

Power to appoint inspectors and to conduct onsite inspections.

16. (1) (a) Without prejudice to any powers of the competent authority arising under any other law, in the exercise of its powers under this Act, the competent authority may either act directly or it may act indirectly by appointing an inspector or inspectors being any officer or employee of the competent authority or any other person whom the competent authority deems competent for this purpose to investigate and report on the affairs of any person whose affairs or actions are being investigated in relation to a possible breach of this Act.

(b) When appointing an inspector the competent authority may direct that the investigation shall be carried out within such time and shall be confined to such specific or general matters as the competent authority may deem fit.

(2) In the exercise of his functions, an inspector upon producing, if required, evidence of his authority shall have the power:-

(a) to investigate the affairs of any person mentioned in articles 14 and 15 if he thinks it necessary or expedient for the purposes of an investigation under this Act;

(b) to exercise all the powers, conferred on the competent authority by articles 14 and 15;

(c) to carry out on-site inspections and to have reasonable access and entry to the business premises, offices, documentation and other information necessary or expedient for the purposes of an investigation under this Act;

(d) to enter premises occupied by a person for the purpose of obtaining there the information or documents required by the notice in terms of articles 14 or 15, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles:

Provided that where the inspector has reasonable cause to believe that if any notice as is referred to in articles 14 or 15 were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, the inspector may enter any premises referred to in sub-article (2) for the purpose of obtaining there any information or documents that could have been required under such notice referred to in articles 14 or 15.

(3) An inspector appointed in terms of this article shall:

(a) have the power to make interim reports and on the conclusion of his investigation he shall make a final report to the competent authority if so directed by the competent authority; and

(b) be subject to professional secrecy.

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

(5) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him by law in relation to the investigation of criminal offences.

(6) In the event that it results that the investigated person may have been in breach of this Act, the competent authority shall have power to order that all reasonable expenses incurred as a result of an investigation pursuant to this article be paid by such person. Any such order which shall be communicated to the person concerned by a notice for payment shall:

(a) be in writing; and

(b) require the addressed person to pay the expenses of and incidental to the investigation before the end of such period being

not less than fourteen days from the date of service of the notice, as may be specified in the notice:

Provided that any person who feels aggrieved by an order served on him in terms of this sub-article may appeal to the Tribunal against the decision of the competent authority in accordance with article 23 of this Act.

Powers to give certain orders.

17. (1) Without prejudice to any powers of the competent authority arising under any other law, in the exercise and for the purposes of its functions under this Act and for the better implementation thereof, the competent authority shall have the power to issue such orders by notice in writing as it may deem appropriate and any person to whom the order is given shall comply with and otherwise give effect to any such order promptly or within the time and in the manner otherwise stated in the order.

(2) An order by the competent authority under this article may require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever. Without prejudice to the generality of the aforesaid, an order may:

(a) require the cessation of any practice that is contrary to the provisions of this Act, or of any rules or regulations issued thereunder;

(b) require the suspension or discontinuance of trading of the financial instruments concerned, including in particular a suspension or discontinuance of trading in exercise of the powers assigned to the competent authority by articles 17 and 18 of the Financial Markets Act; and

Cap. 345.

(c) give effect to a temporary prohibition of professional activity, in particular in the exercise of the powers assigned to the competent authority by article 7 of the Investment Services Act as applicable.

Cap. 370.

(3) The power to issue orders under this article shall include the power to vary, alter, add to or withdraw any such order, as well as the power to issue new or further orders.

(4) Where under any of the provisions of any order issued pursuant to this article, a person is prohibited from carrying out any act, he shall be prohibited from doing any such act directly or indirectly, and whether personally or through the use of intermediation of another person.

(5) For the better information of the public, where the competent authority is satisfied that the circumstances so warrant, it may at any time:-

(a) make public any order it has given under any of the provisions of this article; and, or

(b) issue a public statement regarding any matter falling within its functions or powers under this Act.

(6) A person who feels aggrieved by an order served on him in terms of this article may appeal to the Tribunal against the decision of the competent authority in accordance with article 23 of this Act.

Attachment orders.

18. (1) Where, in the course of an investigation conducted pursuant to this Act, the Attorney General has upon information received from the competent authority reasonable cause to suspect that a person (hereinafter referred to as "the suspect") may be responsible for a breach of this Act, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as an "attachment order"):

(a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and

(c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(2) Before making an attachment order, the Criminal Court may require hearing the Attorney General in chambers and shall not make such order unless it concurs with the Attorney General that there is reasonable cause as provided in sub-article (1).

(3) The provisions of paragraphs (a), (b) and (e) of sub-article (1) of article 381 and of sub-article (1) of article 382 of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order.

Cap. 12.

(4) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(5) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in sub-article (4), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regard to the breach of this Act is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from Malta and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in sub-article (4).

(6) In the course of any investigation of an offence in terms of article 24 of this Act the Executive Police may request to hear on oath any person who they believe may have information regarding such offence; and the Magistrate shall forthwith hear that person on oath.

(7) For the purpose of hearing on oath a person as provided in sub-article (6) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

Cap. 9.

Freezing of Funds.

19. (1) (a) Where a person (hereinafter referred to as "the person charged") has been charged either criminally or administratively with being in default of any provision of this Act and upon receiving a request from the competent authority, the Attorney General may where he deems it appropriate request that the Criminal Court issue a written order to any person (hereinafter referred to as a " freezing order"):

(i) attaching in the hands of third parties all moneys and other movable property due or pertaining to the person charged; and

(ii) prohibiting the person charged from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the Criminal Court shall in such order determine what moneys may be paid to or received by the person charged during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the person charged, to allow him and his family a decent living in the amount, where the means permit, of six thousand liri every year:

Provided further that the Criminal Court may also -

(i) authorise the payment of debts which are due by the person charged to bona fide creditors and which were contracted before such order was made; and

(ii) on good grounds authorise the person charged to transfer movable or immovable property.

(b) Any addressee shall promptly comply with any written order issued by the Criminal Court in accordance with the provisions of this article with regard to such funds and assets.

(2) A freezing order shall -

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(b) remain in force until the final determination of the administrative or criminal proceedings against the person charged, as the case may be.

(3) The Criminal Court may for particular circumstances vary such freezing order, and the provisions of the foregoing sub-articles shall apply to such order as so varied.

(4) To the extent possible, a freezing order shall contain the name and surname of the person charged, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and the number of his identity card or other identification document, if any.

(5) Where any money is or becomes due to the person charged from any person while such order is in force, such money shall, unless otherwise directed in the freezing order, be deposited in a bank to the credit of the person charged.

(6) When such freezing order ceases to be in force as provided in sub-paragraph (b) of sub-article (2) hereof, the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

(7) The competent authority shall liaise with the Attorney General on matters arising under this article and article 18 of this Act

and may, exchange information, subject to the obligation of professional secrecy.

Coordination with other authorities.

20. (1) For the purpose of securing compliance with this Act, the competent authority may coordinate its efforts and exchange information with and otherwise collaborate with:

(a) any body or authority formed or established under Maltese law on matters in respect of which such body or authority may have a regulatory, supervisory, judicial or licensing function in terms of law, including in particular the Listing Authority within the meaning of the Financial Markets Act and with the Registrar of Companies;

(b) any authority, foreign authority or body carrying out similar or equivalent functions or which has the responsibility to monitor the market and to detect, prevent or prosecute acts related to market abuse; and

(c) any other local or foreign supervisory, enforcement or judicial authorities whose functions include the detection, prevention or prosecution of acts related to market abuse.

(2) The competent authority shall exercise powers by virtue of this article:

(a) for preventing, investigating or detecting activities which amount or are likely to amount to market abuse under Maltese or foreign law;

(b) where the assistance is requested by a foreign authority for the purposes of the exercise of one or more of its regulatory functions under the Market Abuse Directive;

(c) where so required within the terms of Malta's international commitments; or

(d) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a memorandum of understanding concluded with the competent authority.

(3) Upon receipt of a request from a foreign authority for the purpose of carrying out its duties in the investigation and detection in terms of the Market Abuse Directive, the competent authority shall immediately take the necessary measures in order to gather the

information required by the foreign authority. If the competent authority is not able to supply the required information immediately, it shall notify the requesting foreign authority of the reasons.

(4) The competent authority may refuse to act on a request for information where:

(a) communication might adversely affect the sovereignty, security or public policy of Malta;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of Malta; or

(c) where a final judgment has already been delivered in relation to such persons for the same actions in Malta.

In any case above-mentioned, the competent authority shall notify the requesting foreign authority accordingly, providing as detailed information as possible on those proceedings or the judgment.

(5) Where the competent authority is convinced that acts contrary to the provisions of the Market Abuse Directive are being, or have been, carried out on the territory of another Member State or EEA State, it shall give notice of that fact to the relevant foreign authority in as specific a manner as possible.

(6) Any person, body or authority receiving information exchanged pursuant to this article shall be subject the obligation of professional secrecy. Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, when the relevant person, body or authority receives information pursuant to this article, it may use it only for the exercise of its functions within the scope of this Act and in the context of administrative or judicial proceedings specifically related to the exercise of those functions:

Provided that where the foreign authority communicating information consents thereto, the competent authority receiving the information may use it for other purposes or forward it to any other foreign authority.

Power of competent authority to issue rules.

21. (1) For the better carrying out of the provisions of this Act and to better implement the provisions of the Market Abuse Directive, the competent authority may, from time to time, issue rules which shall be binding on persons specified therein and such rules shall be published in the Gazette.

(2) Without prejudice to the generality of sub-article (1) hereof, with a view to ensuring compliance with paragraphs 1 to 5 of Article 6 of the Market Abuse Directive, the competent authority may issue rules and take all necessary measures to ensure the proper dissemination of timely and correct information to the public.

Administrative sanctions.

22. (1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or rules issued thereunder, the competent authority may by notice in writing and without recourse to a court hearing impose on any such person an administrative sanction, consisting of a fine which may not exceed forty thousand liri.

(2) A person upon whom a notice is served may apply to the Tribunal to appeal against the decision of the competent authority in accordance with article 23 of this Act.

(3) Upon the conclusion of any appeal proceedings in terms of article 23 of this Act, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or rules issued thereunder, and the administrative sanction imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

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

Cap. 12.

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

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

taken or continued against the said person in respect of such criminal offence.

Appeals.

Cap. 330.

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

(2) An appeal shall lie to the Tribunal against any decision or action taken by the competent authority with respect to:

(a) any administrative sanction imposed under article 22; or

(b) any order in writing issued in terms of sub-article (6) of article 16 or in terms of article 17.

Offences, punishments and remedies.

24. (1) Any person who contravenes or fails to comply with any of the provisions of articles 6, 8, 14, 15, 16, 18 or 19 of this Act, shall be guilty of an offence.

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

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

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

(5) A person found guilty of an offence under the provisions of sub-articles (2) to (4) of this article or under the provisions of articles 6, 8, 14, 15 or 16 of this Act shall be liable on conviction to a fine (*multa*) of not less than one thousand liri and not exceeding four hundred thousand liri or up to three times the profit made or the loss avoided by

virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(6) Any person who acts in contravention of an attachment order mentioned in article 18 shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in sub-paragraph (a) of sub-article (1) of article 18 or in the transfer or disposal by the suspect of any movable or immovable property in contravention of sub-paragraph (c) of sub-article (1) of article 18, the fine shall always be at least twice the value of the money or property in question.

(7) Any addressee of an order regarding the freezing of funds who acts in contravention of a court order mentioned in article 19 shall on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law.

(8) A person whose actions are found to amount to market abuse whether under criminal or administrative proceedings under this Act shall be liable to pay compensation to any person suffering a loss from such action in the amount as may be determined by the Tribunal.

(9) Any person suffering a loss as a consequence of a transaction in relation to financial instruments, entered into with a person whose actions have been determined as amounting to market abuse under this Act, may apply for compensation, payable to him by the said person, to the Tribunal. On such application, the Tribunal shall determine the extent to which the applicant suffered a loss and the applicable amount of compensation which is due to him:

Provided that an action for compensation shall be barred by the lapse of two years from the date on which the administrative decision or judgement finding that person liable to pay compensation has committed market abuse has become final and conclusive:

Provided further that the right to claim compensation under this sub-article shall not prejudice the rights of the person claiming compensation under any other law.

(10) There shall be an appeal on questions of law only from a decision of the Tribunal taken pursuant to this article to the Court of Appeal (Inferior Jurisdiction).

(11) Where the Tribunal has determined an amount of compensation to be paid in terms of sub-article (9) of this article and where this decision has not been appealed or, where such decision has been appealed within fifteen days of the determination of such appeal, the compensation as determined in the decision of the Tribunal shall be due and upon the service of a copy of notice of the decision by means of a judicial act on the person indicated in the decision, the decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

Minister's power to make regulations.

25. (1) The Minister may, acting on the advice of the competent authority, make regulations for the purposes of prescribing the price stabilisation operations permitted by this Act, and such regulations may be prescribed for particular categories of financial instruments or dealers, and different regulations may be prescribed for different categories of financial instruments or dealers. Cap. 370.

(2) The Minister may, acting on the advice of the competent authority, make regulations to better implement the provisions of this Act and to better transpose the Market Abuse Directive and any implementing measures. In particular the Minister may prescribe regulations under this Act to better regulate or define: -

(a) the duties of issuers of financial instruments, in terms of article 9 of this Act and the relevant implementing measures;

(b) the duties of persons with managerial responsibilities within an issuer and persons closely associated to them, in terms of article 10 of this Act and the relevant implementing measures;

(c) the duties of persons professionally arranging transactions in financial instruments in terms of article 11 of this Act and the relevant implementing measures;

(d) the duties of fair presentation of financial information and the indication of conflicts of interests in terms of article 12 of this Act and the relevant implementing measures;

(e) the proper application of the prohibition of market manipulation in terms of article 8 of this Act and acceptable market practices and manipulative behaviour in terms of the relevant implementing measures; and

(f) the imposition of administrative penalties by the competent authority in terms of article 22 of this Act.

(3) Regulations made under this article may establish offences and may impose administrative sanctions or other administrative measures in respect of any contravention thereof or failure of compliance therewith, not exceeding:

(a) in the case of a criminal infringement, a fine (*multa*) of forty thousand liri or imprisonment for a term not exceeding one year, or both such fine and imprisonment, as the case may be; or

(b) in the case of an administrative infringement, a fine of forty thousand liri.

(4) Regulations made under this article may also provide for the assignment of power and authority to the competent authority in order to enable it to ensure that the provisions of the regulations are properly implemented.

PART V

MISCELLANEOUS PROVISIONS

Void or voidable transactions.

26. No transaction shall be deemed to be void or voidable by reason only that it was entered into in contravention of the provisions of this Act.

Language of regulations.

27. Rules and regulations made under this Act and any amendment or revocation of such rules and regulations, may be published in the English language only.

Criminal proceedings.

28. No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

Repeal of Cap. 375.

29. (1) The Insider Dealing and Market Abuse Offences Act is hereby repealed without prejudice to anything done or which may be done under that Act.

(2) Subject to sub-article (1) hereof, unless the context otherwise requires, any reference to the Insider Dealing and Market Abuse Offences Act used in any law, regulation, rule or other document before the coming into force of this Act, shall be deemed to be a reference to this Act.

Consequential amendments to the Financial Markets Act, Cap. 345.

30. The Financial Markets Act, hereinafter in this article referred to as "the principal Act", shall be amended as follows:-

Substitution of terms.

(1) (a) Any reference to "securities", other than as used in the term "central securities depositary", wherever used in the principal Act or in any regulation issued thereunder before the

coming into force of this Act, shall be substituted by the word "financial instruments".

(b) Any reference to "securities" other than as used in the term "central securities depositary", in any guideline, directive, rule, licence, approval, authorization, appointment, notice, decision or any other act made or issued under the principal Act before the coming into force of this Act, shall be read and interpreted as referring to "financial instruments";

Amendment of article 2 of the principal Act.

(2) Article 2 of the principal Act shall be amended as follows:

(a) for the definition of "central securities depository" there shall be substituted the following:

" "central securities depository" means the depository or register for financial instruments established in accordance with regulations governing the authorization, operations, functions and supervision of the depository or register as may be made by the Minister acting on the advice of the competent authority, which regulations may also provide for transitional arrangements;"

(b) for the definition of "market abuse" there shall be substituted the following:

" "market abuse" means conduct amounting to the prohibited use of inside information or market manipulation in terms of the Prevention of Market Abuse Act.";

(c) for the definition of "securities" there shall be substituted the following -

" "securities" means :-

(a) shares or stock in companies and other securities equivalent to shares in companies;

(b) bonds, debentures and other forms of securitised debt which are negotiable on the capital market; and

(c) any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement excluding instruments of payment; and

(d) immediately after the definition "Exchange", there shall be inserted the following new definition -

"financial instruments" means any of the following instruments issued or to be issued by a commercial partnership, a corporate body established by law, the Government of Malta or other issuers:-

(a) securities;

(b) units in collective investment undertakings or schemes as defined in the Investment Services Act;

Cap. 370.

(c) money-market instruments, including those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(d) derivatives including:

(i) futures and foreign exchange contracts entered into for investment purposes or foreign exchange acquired or held for investment purposes, including equivalent cash-settled instruments;

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

(iii) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments, specifically including options on currency and on interest-rates; and

(iv) derivatives on commodities;

(e) warrants, certificates or other instruments, including any record whether or not in the form of a document, entitling the holder to subscribe for, acquire,

sell or otherwise dispose of, underwrite or convert any instrument or an interest in any instrument falling within this definition or for any currency;

(f) certificates or other instruments which confer property rights in respect of any instrument falling within this definition;

(g) financial instrument as defined by Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on Insider Dealing and Market Manipulation (market abuse) including, inter alia, any other instrument admitted to trading on a regulated market in a State to which the said Directive applies or for which a request for admission to trading on such a market has been made in terms of the aforesaid Directive.";

(3) Article 3 of the principal Act shall be amended as follows: Amendment of article 3 of the principal Act.

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

(b) immediately after paragraph (h) there shall be inserted a new paragraph (i) as follows:-

"(i) exemptions from the requirement for a recognition order under sub-article (1) of article 4 of the Act which may be subject to such variations, additions, adaptations and modifications as may be prescribed and which may be subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed."; and

(c) For the marginal note there shall be substituted the following:

"Minister's power to issue regulations.";

(4) For article 36 of the principal Act there shall be substituted the following:- Amendment of article 36 of the principal Act.

"36. Where the Exchange or any recognised investment exchange suspects that there may exist circumstances to indicate that any violation of the provisions of the Prevention

of Financial Markets Abuse Act may have been committed, is being committed or is likely in the circumstances to be committed, it shall without undue delay report such suspicion to the competent authority."; and

Amendment of article 2 of Schedule of the principal Act.

(5) Article 2 of the Schedule to the principal Act shall be amended as follows:

(a) for the definition "securities", there shall be substituted by the following:–

" "securities" shall have the meaning assigned to it in Article 2 of the Act." ; and

Cap., 345.

(b) immediately after the definition "Committee", there shall be inserted the following new definition -

" "financial instruments" shall have the meaning assigned to it in article 2 of the Act.".

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Passed by the House of Representatives at Sitting No. 250 of 16th March, 2005.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

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