

FINANCIAL INSTITUTIONS ACT 1994

ARRANGEMENT OF ACT

Preliminary

1. Short title and commencement
2. Interpretation

Licensing Requirements

3. Licensing for business of financial institutions
4. Application for a licence
5. Issuing of a licence
6. Restriction and revocation of a licence
7. Notification of proposed variation, restriction or revocation of a licence

Obligations of Licence Holders and others

8. Opening of Branches
9. Notification of new or variation in participation or control
10. Prohibited transactions
11. Financial institutions unable to meet obligations

Regulatory and Investigatory Powers

12. Power and duties of the Minister
13. Power and duties of the Competent Authority
14. Power of Competent Authority to require information
15. Appointment of Inspectors
16. Right of entry
17. Power of the Central Bank to take control of financial institutions

Auditors

18. Appointment and duties of Auditors
19. Communication by Auditors, etc. with the Competent Authority

Co-operation and Sharing of Information

- 20. Co-operation and sharing of information

Appeals, Remedies, Disqualification and Confidentiality

- 21. Appeals
- 22. Offences
- 23. Penalties
- 24. Disqualification of officers
- 25. Confidentiality

Miscellaneous

- 26. Application of Exchange Control Act, Cap 233
- 27. Application of Act to the Central Bank
- 28. Transitory provision

Schedule

Activities of Financial Institutions

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XXII of 1994

AN ACT to regulate the business of financial institutions.

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: -

PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Financial Institutions Act, 1994, and shall come into force on such date as the Minister responsible for finance may, by notice in the Gazette, appoint.

Interpretation.

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

"body corporate" means a body of persons having a legal personality distinct from that of its members;

"branch" means premises of a financial institution, other than its head office, from which the business of the institution is undertaken;

Cap. 204

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;

"company" means a limited liability company or a commercial partnership constituted in Malta in accordance with the Companies Act, 1994 or any law which from time to time may be in force, or a company or commercial partnership registered or incorporated outside Malta under the laws of any country provided that such company or commercial partnership has complied with the provisions of any law which may from time to time be in force in Malta relating thereto;

"Competent Authority" means the body referred to in subsection (2) of section 12 of this Act;

"control" is the power to determine the financial and operating policies of a body corporate;

"controller" is a person who, alone or together with others, exercises control in relation to a body corporate;

"Court" means the Commercial Court;

"credit facility" means the lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances, bills of exchange endorsed "pour aval" and financial leasing;

"director" includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director and in respect of a company registered or incorporated outside Malta includes a member of a local board or agent or representative of that company;

"equity share" means a nominal share in a company when the shareholding entitles the shareholder to a right to vote, to profits available to shareholders for distribution and to assets available for distribution on a winding up of the company, and "equity shareholding" shall be construed accordingly;

"financial institution" means any person whose regular occupation or business is the carrying out of:

- (a) any activity listed in the Schedule to this Act;
- (b) any other activity defined by the Minister as such by an order published in the Gazette amending the Schedule to this Act,

for the account and at the risk of that person carrying out such business:

Provided that these activities are not funded through the taking of deposits or other repayable funds from the public as defined in the Banking Act, 1994;

Provided further that this Act shall not apply to any activity under (a) or (b) above which is regulated under the Investment Services Act, 1994;

"Financial Institutions Directive" means a Directive issued by a Competent Authority;

"group of companies" means companies having a common holding company, including the holding company;

"holding company" has the same meaning as is assigned to the term "parent company" in the Companies Act, 1994;

"licence" in relation to the business of a financial institution means a licence granted under this Act;

"Minister" means the Minister responsible for finance;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act, 1994;

"officer", in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"own funds" has the same meaning as is assigned to it by a Financial Institutions Directive;

"person" includes a person or body of persons whether a body corporate or not;

"qualifying shareholding" means a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate and "qualifying shareholder" shall be construed accordingly;

"reconstruction" has the same meaning as is assigned to it by the Companies Act, 1994;

"subsidiary" has the same meaning as "subsidiary undertaking" in the Companies Act, 1994;

"trade bills" means bills of exchange and promissory notes.

(2) A person shall not be deemed to be a financial institution by reason of the fact that that person either:

(a) belongs to a group of companies and manages the financing of companies which are not banks or financial institutions and which belong to the same group of companies; or

(b) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due.

(3) Any reference in this Act to a share or shareholding of a company shall, when applied to a commercial partnership, include a reference to the interest of a partner in such partnership.

LICENSING REQUIREMENTS

3. (1) No business of a financial institution shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the Competent Authority. Licences for business of financial institutions.

(2) In the event of reasonable doubt as to whether an activity constitutes the business of a financial institution, or whether the business of a financial institution is or is not being transacted in or from Malta by any person, the matter shall be conclusively determined by the Competent Authority.

(3) The granting of a licence shall be subject to an annual fee as the Competent Authority may determine from time to time.

4. (1) Any company desirous of commencing the business of a financial institution in Malta shall, before commencing any such business, apply in writing to the Competent Authority for a licence under this Act. Application for a licence.

(2) All applications for a licence shall be in such form and accompanied by such information as shall be prescribed from time to time by a Financial Institutions Directive and an application may only be withdrawn by written notice to the Competent Authority at a time before it has been granted or refused.

(3) The Competent Authority shall have the power to require any person to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

5. (1) No company shall be granted a licence unless: Issuing of a licence.

(a) its own funds, whether in Maltese liri or in another currency acceptable to the Competent Authority are equal to such amount established by the Competent Authority as appropriate for the activities to be undertaken by the applicant;

(b) there are at least two individuals who will effectively direct the business of the financial institution in Malta;

(c) all qualifying shareholders, controllers and all persons who will effectively direct the business of the financial institution are suitable persons to ensure its prudent management.

(2) The Competent Authority shall determine each application for a licence within three months of receipt of the application or, if the application does not comply with subsection (2) of section 4 of this Act or additional information is required, within three months of compliance with the said subsection or the furnishing of the information as the case may be, whichever be the later. In any event an application shall be determined within six months of its receipt.

(3) The Competent Authority may grant or refuse to grant a licence applied for under this Act.

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

(5) Where the Competent Authority for any reason fails to determine an application for a licence within the time prescribed under subsection (2) of this section, such fact shall be deemed to constitute a refusal to grant a licence.

Restriction and
revocation
of a licence.

6. (1) A licence shall automatically cease to have any effect if the holder:

(a) renounces the licence; or

(b) does not commence business pursuant to the licence within six months of its issue, or within such other period of time as may be specified in the licence; or

(c) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or

(d) has ceased to operate as a result of a merger with another financial institution; or

(e) is a branch of an institution incorporated outside Malta and the competent authorities in the country of incorporation withdraw the authorisation to the institution.

(2) The Competent Authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances:

(a) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the Competent Authority any document or information or change therein which it was its duty to reveal or notify under this Act; or

(b) if the holder ceases to carry on the business of a financial institution in Malta for more than three months; or

(c) if the holder fails to comply with any of the provisions of this Act or with the conditions under which the licence is granted; or

(d) if the holder no longer possesses sufficient own funds; or

(e) if the holder is likely to become unable to meet its obligations; or

(f) if the holder has insufficient assets to cover its liabilities; or

(g) if the Competent Authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, the integrity of the country's financial system is threatened.

(3) Restrictions imposed by the Competent Authority pursuant to subsection (2) of this section shall be such restrictions as the Competent Authority shall consider appropriate for the proper compliance by the financial institution with the provisions of this Act and the conditions, if any, of its licence and for the protection of the integrity of the country's financial system and may include (without prejudice to the generality hereof):

(a) the removal of any officer of the financial institution or the replacement of any officer by such person as the Competent Authority may designate;

(b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the financial institution to divest himself of all or part of that holding;

(c) the requirement for the financial institution to take or refrain from taking any action;

(d) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the Schedule to this Act or be permitted to undertake any transaction or transactions or any activity listed in the Schedule to the Act only upon such terms as the Competent Authority may prescribe.

(4) The Competent Authority shall have the power to vary or remove any restrictions imposed under this section.

(5) A licence granted to a branch of an institution incorporated outside Malta may only be revoked after consultation with the competent authorities of the country of incorporation, unless the Competent Authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(6) Upon the restriction or revocation of a licence of a financial institution incorporated in Malta, the Competent Authority shall inform the competent authorities of the country of any foreign states in which the financial institution or its subsidiaries are carrying on any activity under the Schedule to this Act or any other activity as the Competent Authority may deem complementary to the institution's activities in Malta.

Notification of proposed variation, restriction or revocation of a licence.

7. (1) Where the Competent Authority intends:

- (a) to vary any condition to which the licence is subject or to impose a condition thereon; or
- (b) to restrict or revoke a licence or to vary any restriction thereon,

it shall serve written notice of its intention on the financial institution and shall specify the grounds upon which it intends to take such action.

(2) Every notice given under subsection (1) of this section shall specify a period in which the financial institution shall be entitled to make representations to the Competent Authority as to why such action should not be taken and the Competent Authority shall consider any representations so made before arriving at a final decision.

(3) Unless the Competent Authority decides that the matter is urgent, it shall not impose or vary any restriction or condition or revoke a licence before the expiry of the period as set under subsection (2) of this section.

(4) The Competent Authority shall notify its final decision in writing to the financial institution to whom notice under subsection (1) of this section was served.

OBLIGATIONS OF LICENCE HOLDERS AND OTHERS

Opening of branches.

8. (1) A financial institution shall inform the Competent Authority in writing before opening a new branch in Malta.

(2) Unless with the written consent of the Competent Authority, no financial institution incorporated in Malta may open a branch agency or office, or set up or acquire any subsidiary in any place outside Malta.

9. (1) If:

(a) any person takes or intends to take any action to acquire or dispose of a qualifying shareholding in a financial institution or to increase or reduce such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 per cent, 33 per cent or 50 per cent or so that the financial institution becomes or ceases to be the subsidiary of such person; or

(b) any financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital or effect any material change in voting rights,

Notification of new
or variation in
participation
or control.

without obtaining the prior consent of the Competent Authority, then, without prejudice to any other penalty which may be imposed under this Act, the Competent Authority shall have the power to make an order:

- (i) restraining the person or financial institution from taking the action;
- (ii) declaring the action to be void and of no effect;
- (iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment;
- (v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraph (a) and (b) of this subsection.

(2) Subsection (1) of this section shall apply whether or not any of the relevant shares are shares listed on the Malta Stock Exchange.

(3) Where a person intends to take any action as set out in paragraphs (a) and (b) of subsection (1) hereof, he shall before taking such action notify the Competent Authority. The Competent Authority shall within two months of receiving such notification give its consent or otherwise and if that period elapses without the Competent Authority having given its decision such fact shall be deemed to be a refusal.

(4) If the Competent Authority is of the opinion that any person who is or is proposed to become a controller of a financial institution without being or becoming a qualifying shareholder is not a suitable person to be a controller, the Competent Authority may make an order requiring such a person to cease to be a controller or restraining such a person from becoming a controller.

Prohibited transactions. 10. (1) A financial institution shall not:

(a) grant any credit facility against the security of its own shares or against any other securities issued by the financial institution itself or against any shares or any other securities of another body corporate in which the financial institution has control;

(b) grant or permit to be outstanding, unsecured credit facilities which in the aggregate exceed the sum of five thousand Maltese liri -

(i) to any one of its directors or their spouses whether jointly or severally as well as with third parties;

(ii) to any person in whom or in which the financial institution or any one or more of its directors is interested as a director, partner, manager, agent or member (other than as a shareholder in a company listed on the Malta Stock Exchange), or to any person of whom or of which any one or more of the financial institution's directors is a guarantor;

(iii) to any body of persons in which the financial institution or any one or more of its directors jointly or severally maintains control, not being itself a financial institution or the parent undertaking of the financial institution, a subsidiary of this parent undertaking or a subsidiary of the financial institution;

(c) grant to or permit to be outstanding in respect of any officer, other than a director, or any employee, unsecured credit facilities which in the aggregate exceed twelve months' emoluments of such officer or employee.

(2) In paragraphs (b) and (c) of subsection (1) of this section the expression "unsecured credit facilities" shall mean credit facilities made without security or, in respect of any credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Competent Authority is satisfied that there is no established market value, on the basis of a valuation approved by the Competent Authority itself.

11. Notwithstanding any investigation provided for in this Act,

Financial institutions
unable to meet
obligations

(a) where a financial institution considers that it is likely to become unable to meet its obligations it shall forthwith inform the Competent Authority and the Central Bank in writing;

(b) where the Competent Authority becomes aware that a financial institution is likely to become unable to meet its obligations it shall forthwith inform the Central Bank in writing;

(c) where the Central Bank becomes aware that a financial institution is likely to become unable to meet its obligations it shall forthwith inform the Competent Authority in writing.

REGULATORY AND INVESTIGATORY POWERS

12. (1) It shall be the duty of the Minister to exercise the powers conferred upon him by this Act to ensure compliance by financial institutions with the provisions of this Act and conditions of their licences.

Powers and duties
of the Minister

(2) The Minister shall by Order in the Gazette nominate a body to be the Competent Authority for the purposes of this Act to carry out the functions of the Competent Authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act. Such body shall be nominated for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such nomination by Order in the Gazette.

(3) The Minister may make regulations as may be required for carrying into effect any of the provisions of this Act and may amend or revoke such regulations.

13. (1) It shall be the duty of the Competent Authority to carry out the functions prescribed by this Act and to ensure that financial institutions carrying on business in Malta comply with this Act, Regulations and Directives issued under this Act and with the conditions of their licences. In pursuance of that duty the Competent Authority shall at all times afford such co-operation to the Central Bank as the Central Bank may require in the discharge of its duties.

Powers and duties
of the Competent
Authority

(2) The Competent Authority may make Financial Institutions Directives as may be required for carrying into effect any of the provisions of this Act. The Competent Authority may amend or revoke such Financial Institutions Directives.

(3) Financial Institutions Directives and any amendment or revocation thereof shall be officially communicated to all financial institutions and the Competent Authority shall make copies thereof available to the public.

(4) Financial Institutions Directives made under this Act may provide for different regulatory requirements to be applicable to different classes of financial institutions, licensed under this Act, to ensure that business is conducted in a prudent manner.

Power of Competent Authority to require Information.

14. (1) A financial institution shall submit such information and statements relating to its branches in or outside Malta as the Competent Authority may require in the discharge of its duties under this Act or any other law.

(2) All statements required under subsection (1) of this section shall be submitted in such form and at such periods the Competent Authority may from time to time prescribe by Financial Institutions Directives.

(3) The provisions of this section shall also apply to all branches in Malta of a financial institution which is not incorporated in Malta.

(4) All statements and other information furnished by any financial institution under subsection (1) of this section shall be regarded as secret and confidential except as between that financial institution and the Competent Authority save that;

(a) the Competent Authority shall furnish such information under this section as may be required by the Minister or the Central Bank and shall inform the Minister and the Central Bank if at any time in its opinion there is concern regarding the state of affairs of that financial institution;

(b) the Central Bank shall prepare and publish consolidated statements aggregating the information furnished under paragraph (a) of this subsection.

(5) The Competent Authority may, by notice in writing, require a financial institution or any of its officers to do all or any of the following:

(a) to furnish to the Competent Authority, at such time and place and in such form as it may specify, such information and documentation as it may require and of such description as may be so specified in the notice;

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

(c) to attend before the Competent Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation as the Competent Authority may reasonably require for the performance of its functions under this Act.

(6) The Competent Authority may take copies of any documents furnished or provided under this section.

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

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

(9) Where the Competent Authority has appointed a person under paragraph (c) of subsection (5) of this section, such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Competent Authority by this section and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority.

(10) The Competent Authority may require a person it has appointed under paragraph (c) of subsection (5) of this section to submit a report in such form as it may specify.

(11) The Competent Authority may also exercise the powers conferred by subsections (1) and (5) of this section in relation to any person who is or has at any relevant time been -

(a) a holding company, subsidiary or a company which is a connected person of that financial institution;

(b) a subsidiary or a company which is a connected person of a holding company of that financial institution;

(c) a holding company of a subsidiary of that financial institution;

(d) a controller of that financial institution; or

(e) a qualifying shareholder of that financial institution

and the provisions of this section shall apply to that person.

(12) The Competent Authority may also exercise its powers under this section where it has reasonable grounds for suspecting that a person is guilty of committing any offence under this Act.

Appointment of
Inspectors.

15. (1) The Competent Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of a financial institution.

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

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any other person as prescribed under subsection (11) of section 14 of this Act;

(b) shall have and may exercise all the powers conferred on the Competent Authority by section 14 of this Act, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority;

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

(3) The Competent Authority shall have the power to order that all expenses of, and incidental to, an investigation pursuant to this section be paid by the persons or financial institution concerned.

Right of entry

16. (1) Any officer, employee or agent of the Competent Authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under section 14 of this Act or whose affairs are being investigated under section 15 of this Act, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said sections.

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

(3) For the purposes of any action taken under the provisions of this section, 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 for the prevention of offences and the enforcement of law and order.

Provided that where an entry as is mentioned in this section involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of Inspector and shall moreover not take place between nine in the evening and five in the morning.

17. (1) If, whether from any report made under section 14 or section 15 of this Act or otherwise, it appears to the Competent Authority or the Central Bank, that any of the circumstances indicated in subsection (2) of section 6 of this Act apply, the Central Bank may -

Power of the Central Bank to take control of financial institutions.

(a) require the financial institution forthwith to take such steps as the Central Bank may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to advise the financial institution in the proper conduct of its business;

(c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;

(d) appoint a competent person to assume control of the business of the financial institution and either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the Central Bank may direct;

(e) require the Competent Authority to revoke or restrict a licence according to the provisions of section 6 of this Act;

(f) require the financial institution to wind up its business or to wind up its business in Malta.

(2) Upon receipt of a report or information otherwise received as is mentioned in subsection (1) of this section, the Central Bank shall inform the Competent Authority on whether it intends to take any action pursuant to such report and of any action it intends to take thereon.

AUDITORS

18. (1) (a) Every financial institution shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the financial institution examined by them and on all financial statements prepared by the financial institution;

Appointment and duties of Auditors.

(b) For the purpose of this section an approved auditor shall be a person who is qualified to be an auditor in accordance with the Companies Act, 1994:

Provided that in the case of a financial institution not incorporated in Malta the Competent Authority may grant exemption from paragraph (b) of this subsection subject that the same does not materially detract from the main objects of this section.

(2) If a financial institution fails to appoint an auditor under subsection (1) of this section or, at any time fails to fill any vacancy in the office of an auditor, the Competent Authority shall have the power to appoint an auditor for that institution and shall fix the remuneration to be paid by that financial institution to such auditor.

(3) A financial institution shall forthwith give written notice to the Competent Authority:

- (a) on the appointment of its auditors;
- (b) if it proposes to give notice to its shareholders to:
 - (i) replace its auditors at the expiration of their term of office;
 - (ii) remove its auditors before the expiration of their term of office;
- (c) if the auditors cease to be auditors of the financial institution for any reason other than those in paragraph (b) of this subsection.

(4) The Competent Authority may require a financial institution to change its appointed auditors where, in the Competent Authority's opinion, such auditors are considered unfit for this appointment, at any time during their term of office.

(5) An auditor shall immediately inform the Competent Authority in writing if:

- (a) he resigns;
- (b) he does not seek to be re-appointed; or
- (c) he decides to qualify the audit report.

(6) If, in his capacity as an auditor of a financial institution or due to a direct request by the Competent Authority under section 14 or under section 15 of this Act, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the financial institution or a branch in Malta of a financial institution not incorporated in Malta or the integrity of the financial system in Malta he shall immediately inform the Competent Authority through the financial institution's management or, if circumstances so warrant, directly to the Competent Authority.

(7) In so far as the provisions of this section are inconsistent with the provisions of the Companies Act 1994, the provisions of this section shall prevail and the provisions of the said Act shall, to the extent of the inconsistency, not apply to financial institutions.

19. No duty (including the duty of professional secrecy) to which:

Communication by
Auditors, etc. with the
Competent Authority.

(a) an auditor of a financial institution may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Competent Authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that institution and which is relevant to any functions of the Competent Authority under the provisions of this Act or is required to be communicated by virtue of this Act;

(b) a person appointed to make a report under section 14 or section 15 of this Act may be subject, shall be regarded as contravened by reason of communicating in good faith to the Competent Authority any matter which relates to the business or affairs of the financial institution in relation to which the report is made.

CO-OPERATION AND SHARING OF INFORMATION

20. (1) On the basis of international agreements, or upon reciprocity agreements, the Competent Authority may share its supervisory duties with other foreign competent authorities in the case of a financial institution or branch operating in Malta which is fully or partly owned by a foreign person or in the case of a financial institution fully or partly owned by Maltese residents which is operating abroad.

Co-operation and
sharing of
information.

(2) A person appointed under section 14 or section 15 of this Act shall be given access to any accounts, returns, or other information with regard to any financial institution which are in the possession of the Central Bank.

(3) There shall be meetings held between a financial institution, its appointed auditors and the Competent Authority on a trilateral or bilateral basis as circumstances may warrant. These meetings may be called by any of the parties concerned but shall always be chaired by the Competent Authority.

(4) The Competent Authority and the Central Bank shall discuss matters of mutual interest on financial institutions under the Joint Banking Committee as constituted under section 27 of the Banking Act, 1994.

APPEALS, REMEDIES, DISQUALIFICATION AND CONFIDENTIALITY

Appeals.

21. (1) In this section, the "Financial Services Tribunal" means the Tribunal established in terms of section 10 of the Banking Act, 1994, and "Tribunal" shall be construed accordingly; and the provisions of section 10 of the Banking Act shall except in so far as any of them is incompatible with the provisions of this section, apply to appeals made to the Financial Services Tribunal under this Act.

(2) Any person who is aggrieved by a decision of the Competent Authority:

- (a) to impose or vary any condition of the licence;
- (b) to impose or vary any restriction;
- (c) to revoke a licence;
- (d) to make any order under section 9 of this Act,

may appeal against the decision to the Financial Services Tribunal.

(3) An appeal against a decision of the Competent Authority shall not suspend the operation of that decision.

22. (1) Any person who -

Offences.

(a) contravenes or fails to comply with any of the provisions of this Act;

(b) contravenes or fails to comply with the provisions of any Financial Institutions Directive, regulations or licence condition;

(c) fails to comply with any lawful order or requirement of the Competent Authority or the Central Bank;

(d) fails to comply with any lawful order or requirement of the Financial Services Tribunal;

(e) fails to comply with any lawful order or requirement of any other person made under this Act;

(f) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act,

shall be guilty of an offence.

(2) Any person who is knowingly a party to, or procures or aids, and abets the commission of any offence under subsection (1) of this section shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

23. (1) A person guilty of an offence under the provisions of section 22 of this Act shall be liable on conviction to a fine (*multa*) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding two years, or to both such fine and imprisonment. Penalties.

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

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

24. (1) No person -

Disqualification of officers.

(a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a financial institution which has had its licence revoked under subsection (2) of section 6 of this Act and who has not been exempted in writing by the Competent Authority from the provision of this section; or

(b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud,

shall act or continue to act as an officer of a financial institution.

Confidentiality.

25. (1) Nothing in this Act shall authorise the Competent Authority to enquire or cause an enquiry to be made in a financial institution into the affairs of any individual customer of a financial institution except:

(a) for the purpose of ensuring compliance with any of the provisions of this Act; or

(b) where it is believed that the customer's exposure could contribute a threat to the integrity of the country's financial system.

(2) No person, including past and present officers or agents of a financial institution, shall disclose any information relating to the affairs of that institution or of a customer of that institution which he has acquired in the performance of his duties or the exercise of his functions under this Act except:

(a) when authorised to do so under any of the provisions of this Act;

(b) for the purpose of the performance of his duties or the exercise of his functions;

(c) when lawfully required to do so by any court or under a provision of any law.

(3) When an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with the regulations laid down under the Prevention of Money Laundering Act, 1994 and any guidelines provided by the Competent Authority. Compliance with the provisions of this subsection shall not constitute a breach of confidentiality.

(4) Exchange of information on mutual or connected customers between the financial institution, its holding company or its subsidiaries where a credit facility has been or may be granted to that customer shall not constitute a breach of confidentiality.

MISCELLANEOUS

26. The Central Bank may exclude the Application of the Exchange Control Act to transactions carried out by licence holders with persons not resident in Malta for the purposes of the said Act. Application of Exchange Control Act, Cap. 233.

27. The provisions of this Act shall not apply to the Central Bank, save where and to the extent that the Central Bank is referred to by name. Application of Act to the Central Bank.

28. Financial institutions that were operating immediately prior to the coming into force of this Act, may continue to operate for a period of three months after the coming into force of this Act, without the need of a licence under this Act. Transitory provision.

SCHEDULE

(Section 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);
2. Financial leasing;
3. Venture or risk capital;
4. Money transmission services;
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposits etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
8. Underwriting share issues and the participation in such issues;
9. Money broking.

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

