THE MALTA STOCK EXCHANGE ACT, 1990

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I assent.

(L.S.)

CARMELO CARUANA
Acting President

13th November, 1990

ACT No. XXXIII of 1990

AN ACT to establish the Malta Stock Exchange and to regulate its functions, to provide for orderly trading in securities and to provide for matters ancillary or incidental thereto or connected therewith.

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

PART I

Preliminary

Short title and commencement.

1. This Act may be cited as the Malta Stock Exchange Act, 1990, and shall come into force on such date as the Minister of Finance may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

Interpretation.

2. In this Act and in the Schedule thereto unless the context otherwise requires:

"Borsa" means the place where the Exchange is established by the Council for the purpose of its business;

"bye-laws" means the bye-laws made in terms of section 7 of this Act;

"Central Bank" means the Central Bank of Malta;

"company" means a limited liability company, constituted and registered in Malta in accordance with the Commercial Partnerships Ordinance and which is not, in terms of the said Ordinance, a private company;

Cap. 168.

"corporate body" means a corporation set up by any law in Malta;

"council" means the Council of the Exchange established by section 4 of this Act;

"Exchange" means the Malta Stock Exchange, established by section 3 of this Act;

"Financial Year" means any period of twelve months ending on the 31st December, provided that with regard to the first Financial Year this shall be a period of not more than twenty four months ending on the 31st December of the second year following the setting up of the Exchange;

"Governor" means the Governor of the Central Bank;

"Individual connected with the company" means an individual who is either:

(i) a director of that company or a related company, or

(ii) who is an officer or employee of that company or related company, or

(iii) occupies a position involving a business of professional relationship between himself, his employer, or a company of which he is a director, and that company or related company, or

(iv) a public officer acquiring information in an official capacity;

"Insider Dealing" means dealing in securities on the Exchange on the basis of inside, confidential and price-sensitive information acquired from or by any individual connected with the company to which the information refers, whether lawfully entitled to such information or otherwise, irrespective of how he came into possession of this information, and used by any person with the view to make a profit or take any other advantage;

"Inspector" means an inspector appointed under section 16 of this Act;

"Members" means the members of the Exchange in terms of section 6 of this Act;

"Minister" means the Minister responsible for finance;

"Orderly" means the due execution of transactions in accordance with the dealing rules and with proper regard to equitable treatment of users and participants in the market;

"Quoted Company" means a company whose securities have been admitted to dealing on the Exchange in accordance with the listing requirements, as may be specified in the Bye-Laws;

"Related company" in relation to a company, means any body corporate which is that company's subsidiary, associated or holding company, or is the manager of or managed by, or is advisor to or is advised by or otherwise controls or is controlled by that company or a subsidiary or associate of that company's holding company;

"Securities" means shares, stocks, bonds, debentures and other like instruments denoting ownership of or creating or acknowledging indebtedness by a company;

"Special Inspector" means a special inspector appointed under section 17 of this Act;

"Statute" means the statute of the Exchange made in terms of section 7 of this Act;

"Stockbroker" means an individual who is carrying out the functions of a broker for the purchase or sale of securities in terms of section 9 of this Act;

"Trading" means the activity of buying and selling of securities; and

"Tribunal" means the Tribunal established by section 20 of this Act.

PART II

Constitution, Functions and Composition of the Exchange

Establishment of the Exchange.

3. (1) There shall be a corporation to be called the Malta Stock Exchange for the purposes, and having the powers and functions as set out in this Act.

(2) The Exchange shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act and of the Statute, of entering into contracts, acquiring, holding and disposing of any property for the purpose of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

(3) Subject to the provisions of this Act the Exchange shall have the sole and exclusive authority in Malta:

(a) to provide facilities for the purchase and sale of securities;

(b) to provide the place to be known as "the Borsa" which:

(i) shall be the exclusive place for the trading of securities of quoted companies and corporate bodies as may be prescribed in the Bye-Laws; and

(ii) shall be the place in which securities issued by or guaranteed by the Government of Malta may be traded:

Provided that, securities issued by or guaranteed by the Government may also be traded outside the Exchange as the Minister may determine.

(4) The legal and judicial representation of the Exchange shall be vested in the Chairman of the Council.

4. (1) There shall be a Council of the Exchange for the management and conduct of its business. Council.

(2) The Council shall consist of a Chairman and such other members of the Council who may be appointed, elected or co-opted as may be prescribed in the Statute.

5. Without prejudice to any other power or function conferred on it by this Act or by any other law, the Council shall be responsible for and have the powers and function to — Functions of the Council.

(a) maintain the highest ethical standards in the conduct of business in the Exchange or in connection therewith;

(b) grant a listing on the Exchange in respect of stocks, shares and other securities and to promote and sustain an orderly, equitable, and visible securities market;

(c) provide facilities for the purchase and sale of stocks, shares and other securities;

(d) facilitate the flow of savings into productive enterprise in accordance with and in support of national policies;

(e) encourage a wider spread of securities ownership;

(f) keep under review the evolution of practices in the market;

(g) regulate trading in the Exchange, to maintain discipline therein and in particular to investigate cases of alleged misconduct by any person trading in securities;

(h) establish and maintain codes of conduct to be followed by members;

(i) ensure that the admission of licensed stockbrokers is consistent with this section and generally with the proper functioning of the Exchange;

(j) ascertain that members operating on the Exchange are fit and proper persons for the purpose;

(k) monitor trading and ascertain that it is conducted in an orderly fashion;

(l) ascertain that members have such financial support or guarantees as are necessary to maintain their financial integrity and that they make a proper settlement of transactions;

(m) borrow any monies required for the purpose of the Exchange and to grant such security as may be required;

(n) purchase, take on lease or otherwise acquire any property movable or immovable which the Exchange may require for any of its purposes;

(o) sell, manage, lease, hypothecate, dispose of, or otherwise deal with all or any part of the property of the Exchange;

(p) invest and deal with monies of the Exchange in such manner as it may from time to time determine;

(q) perform all other functions as are customarily performed by a Stock Exchange; and

(r) do all such other things as may be necessary or incidental for the proper performance and functioning of the Exchange.

Membership.

6. The membership of the Exchange shall consist of Licensed Stockbrokers as provided for in the Statute.

Statute and Bye-Laws.

7. (1) Subject to the provisions of this Act, the Exchange shall be governed by the Statute as set out in the Schedule to this Act.

(2) Subject to the provisions of this Act and the Statute, the Council shall have the power to make such bye-laws not inconsistent with the Act or Statute as it may deem necessary for the proper functioning of the Exchange. A copy of such bye-laws shall be posted on the Notice Board of the Borsa and another copy shall be kept in a book kept for the purpose by the Council, which book shall be open to inspection by the public at all reasonable times.

Amendments to the Statute and Bye-Laws.

8. (1) (a) The Minister may by regulations, on the recommendation of the Council, and after consultation with the Central Bank, amend, substitute or revoke the First Schedule to this Act. For the purposes of this paragraph the Council shall make its recommendations through the Central Bank which shall forthwith upon their receipt transmit the same to the Minister. The Minister may refer back to the Council any recommendation so received for further consideration by it.

(b) Nothing in paragraph (a) of subsection (1) of this section shall preclude the Minister, after consultation with the Central Bank, from referring to the Council such matters concerning the operation of the Exchange as he deems fit for its consideration.

(2) The Bye-Laws may be amended, substituted or revoked by the Council as it may deem fit. A copy of such amendment, substitution or revocation shall be posted on the Notice Board of the Borsa and shall be kept in the manner as is provided for bye-laws in sub-section (2) of section 7 of this Act. Such amendments, substitutions or revocations may not be retrospective. The Bye-Laws and any amendments, substitutions or revocations thereof shall be laid by the Minister on the Table of the House.

9. (1) No person shall act as a stockbroker in Malta unless he is in possession of a valid stockbroker's licence issued by the Council in accordance with the Statute: Authorised persons to act as stockbrokers.

Provided that this subsection shall not apply to any company licensed as an offshore company under the Malta International Business Activities Act, 1988 to act as a stockbroker in Malta, provided that it trades solely in securities issued outside Malta and acts exclusively on behalf of and in the interests of persons not resident in Malta. Act XXXIV of 1988.

(2) Any person who acts in contravention of the preceding subsection shall be guilty of an offence against this Act and shall on conviction be liable to a fine *(multa)* of five thousand liri or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

10. The Council may suspend or revoke the licence granted to any stockbroker: Suspension and revocation of licence.

(a) if the holder is no longer a fit and proper person to carry on the stockbroking business;

(b) if the holder has contravened any provisions of this Act, the Statute or Bye-Laws or in purported compliance with any such provisions has furnished the Council false, inaccurate or misleading information; or

(c) in any circumstances as may be provided for in the Statute.

11. A stockbroker shall report to the Exchange in such detail, within such time and in such manner as the Council may require any trading carried out by him outside the Exchange in securities which are not quoted. Trading outside the Exchange.

12. (1) The members of the Council, the officers and other staff of the Exchange and licensed stockbrokers shall deal with all documents and other information relating to the Exchange or to dealings therewith or therein, or otherwise coming to their notice and not yet officially divulged, and all matters and things related to such documents and information as secret and confidential. Confidentiality of Exchange information.

(2) The members of the Council, the officers and other staff of the Exchange and licensed stockbrokers are prohibited from using such documents and information and all other matters which in accordance with subsection (1) of this section they are to deal with as secret and confidential and which comes to their knowledge by virtue of their position, in order to secure any advantage for themselves or for any third parties whether such third parties are connected or not with the securities market.

(3) Any person who acts in contravention of subsections (1) and (2) of this section shall be guilty of an offence against this Act, and shall on conviction be liable to a fine *(multa)* of five thousand liri or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

(4) Any person other than those mentioned in subsections (1) and (2) of this section, who acquires any documents or any other information to which the said subsections relate and who uses such

documents or information, with intent to secure advantage either for himself or any other person, shall be guilty of an offence against this Act and shall on conviction be liable to the same penalty established for an offence against the provisions of subsection (3) of this section.

Agreements made by or through unauthorised persons.

13. (1) An agreement made by or through a person carrying on stockbroking activities in contravention of section 9 of this Act, shall be unenforceable, and any person who buys or sells securities through a person who acts in contravention of the said section shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation from the unauthorised person for any loss sustained by him as a result of having paid such money or transferred such property.

(2) The recovery of any money or other property or compensation as referred to in subsection (1) of this section shall be effected in such manner as the parties may agree or as the Tribunal may, on the application of any such party, determine.

(3) Notwithstanding the provisions of subsection (1) of this section, and without prejudice to any right for the payment of compensation in accordance with this section, the Tribunal may on the application of any party who had acted in good faith, uphold an agreement as is referred to in subsection (1) of this section if it is satisfied that it is just and equitable for the agreement to be so upheld on the grounds that any party thereto, other than the unauthorised person, acted in good faith:

Provided that in the assessment of any compensation that may be payable in accordance with this section the Tribunal shall take into account the fact that the agreement has been so enforced.

(4) Where in accordance with the provisions of this section the Tribunal on the application of any party determines that any agreement should be unenforceable and the property to which the agreement refers has been lawfully transferred to a third party, the Tribunal shall determine the value of the property so transferred and order that the party who would have been entitled to recover such property shall be paid a sum equivalent to the value so determined in lieu of the recovery of the said property.

Tribunal action to prevent contraventions.

14. The Tribunal may, upon an application by the Council, where it is satisfied that any person is acting or is about to act in contravention of this Act, the Statute or any bye-law that may be applicable, give such orders and directives as it may deem necessary to stop or prevent such contravention; and any person who acts in contravention of any such order shall be guilty of an offence against this Act and shall on conviction be liable to a fine *(multa)* of two thousand liri.

No enquiries to be made into the affairs of any individual trading on the Exchange.

15. Nothing in this Act shall authorise the Minister or the Central Bank to enquire or cause an enquiry to be made into the affairs of any individual stockbroker or person trading on the Exchange except for the purpose of ensuring compliance with the provisions of this Act.

Inspection of affairs of the Exchange.

16. (1) Without prejudice to the provisions of section 15 of this Act, the Governor may, and when so directed by the Minister shall, appoint inspectors to examine the affairs of the Exchange and its members from time to time under conditions of secrecy. Inspectors shall make a report of any inspection carried out by them and shall refer therein to the operations of the Exchange and its members, the observance of the provisions of this Act, the Statute and Bye-Laws and on any other matter that such inspectors may deem to be relevant to the proper functioning of the Exchange and to the protection of the Exchange, its members, investors and the public in general, and to any other matter as the Governor may require to secure a sound securities market.

(2) It shall be the duty of the members of the Council, members and staff of the Exchange and any other person involved in the operations of the Exchange to produce to an inspector all books and documents relevant to his inspection and to give the inspector all assistance in connection with such inspection which they are reasonably able to give.

(3) If any officer or member of the staff of the Exchange shall fail to produce any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by an inspector with respect to the affairs of the Exchange, an inspector may by means of an application refer the matter to the Tribunal and the Tribunal may thereupon inquire into the case, and after hearing all the relevant evidence, and upon determining that such failure is not justified, shall order such officer or other member of the staff to produce such book or document.

(4) The Governor shall forward a copy of any report made by the inspector to the Council which shall give its observations thereon to the Governor within two weeks of the receipt by it of the said report. If on any matter raised in any report and after considering the observations of the Council the Governor is not satisfied with any matter respecting the operations of the Exchange to which the report refers or with such action taken by the Council to remedy any short-coming, he shall make a report of the situation to the Minister together with such recommendations as he may consider necessary and the Minister may give the Council such directions which are not inconsistent with this Act or the Statute as he may deem to be appropriate.

Investigations into insider dealing.

17. (1) If it results to the Minister from any report made by the Governor in accordance with subsection (4) of section 16, that there are circumstances to suggest insider dealing, he may appoint one or more special inspectors to carry out such investigations as he may deem to be necessary to establish whether or not any insider dealing has occured, is occuring or is likely in the circumstances to occur, and to report the result of their investigations to him.

(2) In appointing any special inspector under this section the Minister may direct that the investigation shall be carried out within such time and shall be confined to such specific or general matters as the Minister may deem fit.

(3) Any special inspector may require any person who in his opinion is or may be able to give information concerning any suspected insider dealing:

(a) to produce to him any documents in his possession or under his control relating to the suspected insider dealing;

(b) to attend before him; and

(c) otherwise to give him all assistance in connection with the investigation which that person is reasonably able to give;

and it shall be the duty of that person to comply with that requirement.

(4) A special inspector may put questions to any person he considers is or may be able to give information concerning any suspected insider dealing.

(5) A special inspector shall make such interim reports to the Minister as the Minister may direct and on the conclusion of the investigation he shall make a final report to the Minister.

(6) Nothing in this section shall preclude any person with respect to any question that may be put to him by a special inspector, from claiming any privilege that would be competent to a witness before a court of civil jurisdiction in respect of any information which is secret or confidential or in respect of any question the answer to which may incriminate such person, and where any special inspector disagrees that any such claim is justified, he may by application to the Commercial Court request such Court to determine upon such claim, and the said Court shall after hearing the person who has claimed such privilege and the special inspector determine such question with urgency. No appeal shall lie from the determination of the Court.

(7) Nothing in this section shall require a person licensed to carry on the business of banking under the Banking Act to disclose any information or produce any document relating to the affairs of an individual customer, unless upon the application of a special inspector the Court of Appeal is satisfied that, notwithstanding the provisions of such Act, the disclosure or production is necessary and should be reasonably allowed for the purposes of the investigation.

Penalties for failure to comply with provisions of section 17.

18. (1) Any person who:

(a) unlawfully refuses to comply with any request under section 17 of this Act; or

(b) unlawfully refuses to answer any question put to him by a special inspector appointed under that section with respect to any matter relevant to his investigations;

shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not more than two thousand liri.

(2) Without prejudice to the provisions of subsection (1) of this section where a licensed stockbroker unlawfully refuses to comply

with any request under section 17 of this Act, or unlawfully refuses to answer any question put to him by a special inspector appointed under that section with respect to any matter relevant to his investigation, the special inspector shall make a report thereon to the Tribunal and the Tribunal shall after hearing the special inspector, the stockbroker and any relevant witness that may be produced by them, determine whether the facts adduced by the special inspector against the stockbroker subsist, and where the Tribunal finds against the stockbroker it may through the Council serve notice upon such stockbroker:

(a) cancelling any licence issued by the Council forthwith or after such period as it deems fit;

(b) restricting the said licence to the performance of contracts entered into before such time as may be specified in the notice;

(c) prohibiting him from entering into transactions of a specified kind or entering into such transactions only in specified circumstances or to a specified extent as may be determined by the Tribunal;

(d) prohibiting him from soliciting business from specified persons or persons of a specified class or from all persons.

(3) The period mentioned in paragraph (a) of subsection (2) of this section shall be such period as appears to the Tribunal reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.

(4) A person shall not be considered for the purposes of sub-section (2) of this section as having a reasonable excuse for refusing to comply with a request or answer a question in a case where the suspected insider dealing being investigated relates to dealing by him on the instructions of, or for the account of, another person, by reason that at the time of the refusal:

(a) he did not know the identity of that other person; or

(b) he was subject to the law of a country or territory outside Malta which prohibited him from disclosing information relating to the dealing without the consent of that other person.

(5) A notice served on a person under subsection (2) of this section, may be revoked in part or in full at any time by the Tribunal if it is satisfied that the stockbroker has agreed to comply with the relevant request or answer the relevant question.

(6) If it appears to the Tribunal that a person on whom a notice under subsection (2) of this section is served or revoked, is an accredited representative in terms of the Statute, such notice or revocation shall be deemed to have been served on or revoked in respect of the licensed stockbroker.

Penalties in connection with insider dealing contraventions.

19. (1) Any person who is a party to insider dealing shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of five thousand liri or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Where from a special inspector's final report it results that an offence of insider dealing has been committed the Minister shall refer and transmit a copy of the report to the Commissioner of Police.

(3) A person found guilty of insider dealing shall also be liable to pay to such persons as may be determined by the Tribunal, compensation in an amount to be fixed by the Tribunal on the application of any person who, in a transaction for the purchase or sale of securities entered into with the offender or with a person acting for or on the offender's behalf, suffers loss. In determining such compensation the Tribunal shall, among other things, consider the loss sustained by that applicant by reason of the difference between the price for which the securities were transferred in that transaction and the prices at which they would have been transferred had the confidential information also been known to the applicant.

(4) An action under this section for the recovery of a loss referred to in subsection (3) shall be barred by the lapse of two years from the date on which the judgement in which the person liable to pay compensation has been found guilty shall have become *res judicata*.

(5) The right to claim compensation under this section shall not prejudice, and shall be in addition to the right of any person to claim damages under any other law.

PART III

The Malta Stock Exchange Tribunal

Establishment and composition of the Tribunal.

20. (1) There shall be a Tribunal to be known as "The Malta Stock Exchange Tribunal" in this Act referred to as "The Tribunal", having the functions and powers assigned to it by this Act.

(2) The Tribunal shall consist of a Chairman and two other members.

(3) The Chairman and members shall be appointed by the Minister who in his opinion possess the necessary expertise and experience to deal with the cases that may be referred to the Tribunal.

(4) The Chairman shall be an advocate with a minimum of twelve years legal practice.

(5) The Chairman and other members of the Tribunal shall hold office for such period being of not less than three years as may be determined in their appointment and cannot be removed during their

term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

Remuneration of members of the Tribunal.

21. (1) The Chairman and other members of the Tribunal shall receive such remuneration as may be determined in their instrument of appointment.

(2) The remuneration referred to in subsection (1) of this section shall not be altered during the tenure of office of a member by whom it is receivable, except for such changes as may from time to time be required to preserve at all times during the tenure of the appointment the proportion of the remuneration to the salary of a Judge of the Superior Courts, as existed on the date of the appointment.

Powers.

22. The Tribunal shall have the power to summon witnesses and to administer the oath thereto, and to appoint any expert or experts as it may deem necessary for the determination of the case before it.

Tribunal to deal with cases expeditiously.

23. The Tribunal shall deal with any matter before it as expeditiously as possible and shall give its decision without delay.

Procedures.

24. Subject to the rules of Natural Justice, the Tribunal shall regulate its own procedure.

Sittings to be held in public.

25. The Tribunal shall hold its sittings in public unless having regard to the nature of the matter before it, it deems it fit and proper to conduct the proceedings or part thereof in private; in any such case the decision of the Tribunal shall always be delivered in public.

Functions of the Tribunal.

26. (1) The Tribunal shall have the function to determine all matters as may be referred to it under sections 13, 14, 16, 18, and 19 of this Act.

(2) Without prejudice to the provisions of subsection (1) hereof, the Tribunal shall also have the function to consider either of its own motion or otherwise on reports made to it by any person or upon a request to that effect by the Minister, the Central Bank, or the Council, alleged or suspected irregular practices in Exchange dealings and where the Tribunal determines that there are sufficient grounds for holding an investigation, to investigate any such allegation or suspicion and to take whatever action it deems fit and proper.

PART IV

Financial Provisions

Capital and Financial Provision.

27. (1) A sum not exceeding five hundred thousand liri, which amount shall constitute the initial capital of the Exchange, shall be paid by the Government to the Exchange out of the Consolidated Fund, and

this without further appropriation other than this Act, by warrant under the hand of the Minister authorising the Accountant General to make such payment:

Provided that only an amount of two hundred thousand liri shall become payable on the coming into force of this Act and the balance shall be paid as and when required by the Exchange.

(2) The Exchange shall endeavour to meet all expenses in connection with its operations through the income accruing to it and for this purpose the Council may by means of bye-laws impose such fees and charges, including fees for membership and listing of companies, as it deems fit.

(3) For the purpose of carrying out any of its functions under this Act, the Council may with the approval in writing of the Minister given after consultation with the Central Bank, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(4) The Minister may, after consultation with the Central Bank, make advances to the Council of such sums as he may agree to be required by the Council for carrying out any of its functions under this Act, which advances are to be repaid by the Council on such terms and conditions as the Minister, after consultation as aforesaid, may deem appropriate.

Annual accounts.

28. (1) The Council shall as soon as possible but not later than four (4) months after the closing of each financial year of the Exchange transmit to the Minister through the Central Bank a copy of the Annual Audited Accounts and the Annual Report on the activities of the Exchange and shall publish such accounts and report in at least two daily newspapers within one month thereafter. Those accounts and that report shall, as soon as may be, be laid on the Table of the House by the Minister.

(2) The Accounts of the Exchange shall be audited by auditors appointed by the Council with the approval of the Minister.

(3) All profits realised by the Exchange shall be put to a reserve fund which shall be used for such purposes as the Council may deem to be required to meet the objects of the Exchange, including the repayment of any liabilities.

PART V

Miscellaneous

Non applicability of Regulation 13 of Commercial Partnerships Ordinance. Cap. 168

29. Regulation 13 of the First Schedule to the Commercial Partnerships Ordinance shall not apply with regard to the transfer of shares in quoted companies.

30. (1) The Minister shall have the power to suspend temporarily the trading in securities on the Exchange, if in his opinion, the orderly transaction of business is being prevented, or is likely to be prevented because of the occurrence of: Temporary suspension of operations.

(a) any emergency or natural disaster;

(b) any economic, financial or political crises; or

(c) any other event which disrupts trading.

(2) In the exercise of his powers under subsection (1) of this section the Minister shall where practicable consult with the Council which shall give the Minister such assistance as may be appropriate.

(3) The Minister may not suspend trading for more than fifteen days in any period of three months unless authorised to do so by resolution of the House.

(4) The Council may recommend to the Minister the temporary suspension of trading if it is of the opinion that the orderly transaction of business of the Exchange is being disrupted because of the occurrence referred to in paragraph (a) of subsection (1) of this section or because of any economic or financial occurrence which in the opinion of the Council merits such closure.

(5) The Council may order that for such time as it may determine no trading of any kind may be transacted in one or more specified securities of quoted companies if it has reasons to believe that this would be in the interest of the Exchange, the public or investors generally:

Provided that a temporary suspension may not be of more than thirty days in a period of three months unless the Minister in consultation with the Central Bank approves such temporary suspension.

(6) No transaction may be executed at any time in the event of the temporary suspension of trading under this section. Any transaction so executed in contravention of this subsection shall be invalid.

31. (1) Notwithstanding anything contained in the Income Tax Act, or in any enactment replacing the said Act where a company acquires the status of a quoted company, the rate of income tax chargeable on the gains or profits arising to it shall be reduced in respect of the said gains or profits so arising in the year in which it acquires the status of a quoted company and in the subsequent two years as follows: Exemptions from income tax and duty on documents. Cap. 123

— by two percentage points if 20% or more but less than 30% of its issued voting share capital is offered to the publick as a listed security:

— by 3.5 percentage points if 30% or more but less than 40% of its issued voting share capital is offered to the public as a listed security;

— by five percentage points if 40% or more of its issued voting share capital is offered to the public as a listed security:

Provided that any of the percentage points reduction listed above shall be applicable on the issue of new shares or where existing shares within the percentage proportion stated are actually offered for sale to the public by the existing shareholders and shall be effective from the tax year in which the new shares or existing shares are issued as aforesaid;

Provided further that the reduction in the rate of tax shall apply only in respect of a quoted company which has been so quoted within five years from the date this Act comes into force but the Minister may, if he deems it to be in the public interest, extend this period to 10 years by notice in the Gazette;

Provided further that any one company may not benefit more than once in the said period of five or ten years as the case may be but the percentage points reduction in tax as aforesaid can increase depending on the percentage of issued voting share capital offered to the public within the three years from date the company acquired the status of a quoted company as aforesaid.

Act XXXI of 1981

(2) Notwithstanding anything contained in the Duty on Documents Act, 1981, no duty shall be payable in accordance with that Act in respect of any instrument whereby any securities of a quoted company are transferred.

Exemption from section 55 of the Central Bank of Malta Act. Cap. 204

32. Section 55 of the Central Bank of Malta Act shall not apply in respect of any offer for sale or subscription to the public of any shares, stocks, debentures, debenture stock, bonds or other participations which are listed by the Exchange.

Licence of the Central Bank for a person to act as a financial consultant and adviser.

33. (1) No person shall against payment or other consideration, without a licence of the Central Bank offer or give advice, assistance or support in any form or in any way to any other person in regard to the purchase, sale, requisition, transfer or holding of any shares, stocks, debentures, debenture stock, bonds or other participations whether in or of a company or otherwise, and whether such company is registered or incorporated in or outside Malta, or offer or give such advice, assistance or support in regard to any other financial investment or investment business.

(2) In considering any application for a licence as is referred to in subsection (1) of this section the Central Bank may require the applicant to give such proof of his ability, qualification and experience for the purpose of such licence as the Central Bank may deem fit.

(3) The Central Bank may subject any such licence to such conditions as it may deem appropriate and the applicant shall be bound to observe such conditions.

(4) The Central Bank may limit a licence to a determined period of time and may amend, suspend or revoke any such licence or any condition attached thereto as it may deem to be necessary.

(5) The Central Bank shall not be bound to give reasons for refusing the grant of any licence.

(6) Any person aggrieved by a decision of the Central Bank in connection with the grant of a licence under this section may appeal therefrom to the Minister within ten working days from the communication of the Central Bank's decision to him. The Minister shall before deciding on any such appeal hear the appellant and consult the Central Bank. The decision of the Minister shall be final.

(7) The provisions of this section shall not apply to:

(a) the Exchange;

(b) licenced stockbrokers; and

(c) any company licensed as an offshore company under the Malta International Business Activities Act, 1988, to act as a stockbroker in Malta, provided it trades solely in securities issued outside Malta and acts exclusively on behalf of and in the interest of persons not resident in Malta.

Act XXXIV of 1988.

34. In pursuance of its duty to maintain orderly conditions in the capital market the Central Bank may, without prejudice to any other power under any other law, require the Exchange to report to it on any transaction effected by licensed stockbrokers in listed and unlisted securities.

Powers of the Central Bank to demand information relative to licensed Stockbrokers.

35. In the exercise of its functions under section 33 of this Act, the Central Bank shall have access to, and the power to inspect, any books, accounts, and any other documentation relating to stockbroking or financial consultancy under whatever form in the possession of any person to whom a licence under the said section has been given and any such person shall be bound to comply with any directive given by the Central Bank for this purpose.

Powers of the Central Bank relative to financial consultants and advisers.

36. Any person who makes any act in contravention of sub-section (1) of section 33 of this Act or who fails to comply with any condition imposed in a licence issued according to that section, or fails to comply with any directive that may be given to him in accordance with section 35 of this Act, shall be guilty of an offence against this Act, and shall on conviction be liable to a fine *(multa)* of not more than five thousand liri.

Penalty for acting as financial consultant or adviser without a licence.

37. The provisions of sections 33, 34, 35 and 36 shall not, unless so expressly stated, derogate from any requirement or from any liability under any other law.

Other laws.

38. The Commercial Code shall be amended as follows:

(a) for the words "the building of the Exchange" in section 121 thereof, there shall be substituted the words "the building of the Chamber of Commerce"; and

(b) section 122 thereof shall be deleted.

SCHEDULE

(Section 7)

THE STATUTE

1. **Applicability**

This Statute applies to "the Malta Stock Exchange" as established under section 3 of the Malta Stock Exchange Act, 1990.

2. **Interpretation and General Provisions**

(i) In this Statute unless the subject or context otherwise requires:

"Accredited Representative" means an individual who has been authorised in writing by a member to represent him in respect of his activities in connection with the Exchange and for whom the member accepts full responsibility and who has been duly accepted by the Council to act as such; and

"The Act" means the Malta Stock Exchange Act, 1990.

(ii) The officers of the Exchange shall be the Chairman, the Deputy Chairman and the General Manager of the Exchange.

(iii) The General Manager shall have such duties as are assigned to him by this Statute or the bye-laws and shall act under the general direction of the Council.

3. **Membership**

Members. (i) The membership of the Exchange shall consist of licensed stockbrokers.

Application. (ii) Every candidate for admission to membership shall make an application for a licence in writing to the General Manager, in such form as the Council may from time to time by bye-laws establish.

Qualifications. (iii) No person shall be granted a licence to act as a stockbroker unless he:

(a) is, in the opinion of the Council, a fit and proper person to hold such a licence;

(b) deposits such security/indemnity as the Council may in the bye-laws establish:

Provided that the security/indemnity shall be established in an amount which shall be equal to all stockbrokers, sohowever that the Council may at any time alter the amount of the security/indemnity as it may deem fit, giving when such amount is raised at least thirty days within which licensed stockbrokers shall have to comply; and

(c) possesses such other qualifications as may from time to time be established by bye-laws.

(iv) On receipt of an application for a licence the Council shall fix a date on which it will consider such application and, at least six weeks prior to that date, the General Manager shall post a notice at the Borsa stating the name, address and other relevant details of the applicant, and giving the date, which shall not be less than 4 weeks after the date of posting of the notice by which any person may make written submissions to the Council with respect to such application. Notification.

(v) Applications for a licence shall be considered by the Council on the date fixed in accordance with paragraph (iv) hereof and subsequently at such other meeting of the Council as the Council may deem to be necessary. Consideration.

(vi) No person shall be granted a licence except by resolution of the Council supported by a majority of not less than two-thirds of those present and voting: Voting.

Provided that no such resolution may be validly passed unless it is supported by at least five votes.

(vii) The General Manager, on the direction of the Council following such voting, shall in writing inform the applicant of the decision of the Council with regard to his application. Upon the grant of such a licence by the Council the candidate shall become a member of the Exchange. Acceptance/ Rejection.

(viii) The Council shall not be required to give reasons for its decision. Disclosure.

(ix) Following the rejection of an application for the grant of a licence, the applicant may not again apply for a licence before the lapse of twelve calendar months from the date of such rejection. Rejected Applications.

(x) Every person granted a licence as aforesaid shall furnish the General Manager with a business address in Malta, not being a Post Office Box number, to which all communications and correspondence shall be sent. Members shall notify the General Manager of any change of address. Registered Addresses.

(xi) A member may appoint an accredited representative to carry on trading on the Exchange and such member shall be responsible for and be bound by all actions or omissions of such representative in his activities in connection with the Exchange. Accredited Representative.

(xii) A register of members and accredited representatives together with their registered addresses shall be kept and maintained by the General Manager and shall be open to inspection by members and the public during normal business hours. Members' Register.

(xiii) (a) A member wishing to resign his membership shall do so in writing, to the Council which shall forthwith post a notice on the notice board at the Borsa. Resignation.

(b) All stockbrokers including the member intending to resign shall within such time as may be established in the bye-laws advise the Council of any outstanding debts, obligations, or commitments of the member intending to resign and of any outstanding dealings and transactions in which he may be concerned in connection with his activities as a member of the Exchange. Such notice shall remain posted for such time as may be determined in the bye-laws.

(c) Notwithstanding his resignation a stockbroker shall retain all his obligations and liabilities under this Act unless the Council shall have discharged him in writing therefrom.

Re-admission.

(xiv) Any person who has resigned his membership may re-apply for admission; such new application shall be subject to the conditions applicable to the admission of new members at the time of its filing. No such application will be considered by the Council before the lapse of one year from the date of resignation.

4. Disciplinary Procedure

Enforcement of the Statute and Bye-Laws.

(i) (a) It shall be the duty of the Council to enforce the Statute and bye-laws and to ensure compliance therewith by the members.

(b) Any member of the Council who is directly or indirectly involved in any matter under discussion before the Council shall withdraw from the sitting of the Council when such matter is being discussed or decided upon and in such an event for all intents and purposes the Council shall be constituted of all the other members.

(c) The determination as to whether a member of the Council is directly or indirectly involved in any such matter, shall rest exclusively with the other members of the Council to the exclusion of such member.

Penalties for failing to comply with the Statute and Bye-Laws.

(ii) Where the Council finds that a member:

(a) has failed to comply with the Statute or the bye-laws; or

(b) has failed to comply with any decision of the Council; or

(c) has not acted in a fit and proper way to the detriment of the Exchange, its members or the public in general; or

(d) has been adjudged bankrupt; or

(e) has been convicted of any crime involving public trust; or

(f) has been interdicted or incapacitated,

the Council shall determine what action, (including expulsion, suspension, or the imposition of a pecuniary penalty) it shall take with regard to such member.

(iii) (a) A resolution in pursuance of paragraph (ii) of this Article involving the expulsion, suspension of or the imposition of a pecuniary penalty on a member shall require the support of not less than two-thirds of the members present at the meeting. Disciplinary procedure.

(b) Suspension of membership shall be for such period not in excess of one year provided that such suspension may be extended for a good and sufficient reason as the Tribunal on the application of the Council and after hearing the suspended member may deem to be fit in the circumstances of the case. During such period of suspension the suspended member shall not carry on the business of stockbroking. Notice of the expulsion or suspension of a member shall forthwith be posted on the notice board at the Borsa.

(c) Where a stockbroker has resigned, been expelled or is adjudged bankrupt or is convicted of any crime involving public trust, or in the event that he has become interdicted or incapacitated, and is unable to meet his liabilities to his fellow members or to the Exchange, the Council shall have the power to retain or to call in the security deposited in terms of sub-paragraph (b) of paragraph (iii) of Article 3 of this Statute and to place such monies or other sums realised thereby to such reserve or other account as the Council shall deem fit and to use all or any of such monies to discharge the liabilities of the member to his fellow members or to the Exchange, including any pecuniary penalty imposed under paragraph (ii) hereof and any surplus, if any, shall be refundable to the member.

(iv) The provisions of paragraph (ii) hereof shall *mutatis mutandis* apply to accredited representatives, and in any such case the Council may take any action referred to in the said paragraph with regard to the member and his accredited representative and in any such case the Council may determine that such person shall not act as an accredited representative for any other member for any period it may deem fit. Accredited representatives.

(v) A member or an accredited representative, whose conduct is being investigated by the Council, shall be given the opportunity of being heard by the Council in his own defence. Defence rights.

(vi) The decision of the Council in accordance with this Article shall be final. Decision final.

5. **Council**

(i) The Council established in virtue of section 4 of the Act shall be constituted in accordance with the following paragraphs of this Article. Council.

(ii) The Minister shall appoint one of the members of the Council as Chairman. Chairman.

(iii) The Council shall consist of the following members: Membership in the Council.

(a) one member nominated by the Central Bank from among its senior officers;

(b) four members appointed by the Minister from among persons who by reason of their experience in business, financial activities, the professions or academic affairs are deemed by him to be fit to be so appointed; and

(c) three other members elected annually by the members of the Exchange from among its members:

Provided that until such time as the Minister may by notice determine, such three other members shall be appointed by the Minister from any persons having the qualifications set out in sub-paragraph (b) hereof.

Co-opted members.

(iv) In addition to the above members the Council may co-opt not more than two other persons to be members of the Council as it may deem expedient.

Deputy Chairman.

(v) The Council shall elect one of its members as Deputy Chairman who shall act as chairman in the absence of the Chairman.

Term of office.

(vi) The members of the Council shall hold office for a period not exceeding three years except for the elected members who shall hold office for one year.

General Manager.

(vii) The Council shall appoint a General Manager who shall be responsible for the day to day management of the Exchange according to the policy set by the Council.

Elections.

(viii) The election of the elected members of the Council shall be conducted as follows:

(a) the election shall be held by secret ballot at the special meeting held in accordance with sub-paragraph (a) of paragraph (iv) of Article 6 of this Statute;

(b) licensed stockbrokers eligible for election to the Council are those whose names appear upon the members' register at a date not less than thirty days before the date of the special meeting at which election of members of the Council is to take place and who have not ceased to be licensed stockbrokers as at the date of such a meeting;

(c) nominations of candidates for election to the Council shall be in writing and shall state clearly the name of the licensed stockbroker proposed for election and shall be signed by at least two other licensed stockbrokers of the Exchange as proposer and seconder and endorsed by the nominee. The forms of nomination duly completed shall be lodged with the General Manager at the Borsa not less than thirty days before the date of the meeting. The General Manager shall cause the names of all licensed stockbrokers proposed for election to the Council and the names of their

proposers ans seconders to be posted on the notice board of the Borsa.

(ix) A person shall cease to be a member of the Council in the following cases: Vacancies.

(a) upon resignation notified in writing to the Minister;

(b) if he ceases to be qualified to be appointed, nominated or elected (as the case may be) as a member of the Council;

(c) in the event that he is adjudged bankrupt or is convicted of any crime involving public trust;

(d) in the event that he has been interdicted or incapacitated;

(e) upon unjustified absence from meetings of the Council on three consecutive occasions.

(x) No member of the Council shall be forced to vacate his office by reason only of his being a member, director or officer of any company which has entered into contracts with or done any work for the Exchange, but a member of the Council shall disclose any personal interest in any transaction or contract and may not vote in respect of any such contract or work. A member of the Council who acts in contravention of this paragraph shall be liable to be removed by order of the Minister and shall be liable to compensate the Exchange for any loss caused by him in consequence to such act. Personal interest.

(xi) Upon the occurrence of any circumstances mentioned in paragraph (ix) hereof the Council shall declare that the seat of the member concerned has become vacant. Removal.

(xii) Where any casual vacancy occurs among the elected or other members of the Council, such casual vacancy shall be filled by the appointment by the Minister of another person who shall hold office until the expiration of the term of office of the member in whose stead he shall have been appointed: Casual vacancies.

Provided that where the person vacating his seat was nominated by the Central Bank, such appointment shall be made by the Central Bank in accordance with subparagraph (a) of paragraph (iii) of this article; and where the person vacating his seat was elected in terms of subparagraph (c) of the said paragraph the Minister shall appoint a stockbroker to fill his seat.

(xiii) Every member of the Council shall at a Council meeting have only one vote except for the Chairman or the Deputy Chairman in the absence of the Chairman, who shall have an original and a casting vote. Decisions of the Council shall be taken by a simple majority unless otherwise provided for in the Statute. Voting.

(xiv) The Chairman and members of the Council shall be paid such remuneration as may be approved by the Minister. The remuneration of the General Manager shall be decided by the Council. Remuneration.

Indemnity.

(xv) Every member of the Council shall be indemnified by the Exchange against all liabilities, costs, losses and expenses to which any member of the Council may become liable in respect of any matter or thing done in good faith by him in the execution of his duties as a member of the Council:

Provided that no such member may accept liability without the authority of the Council.

6. Council Meetings

Frequency.

(i) Meetings of the Council shall be held on such dates and at such times and places as the Chairman shall from time to time determine sohowever that the Council shall meet at least once every calendar month.

(ii) Notice of the date, place and time of a meeting stating the business to be dealt with in a meeting shall be given in writing by the General Manager to each member at least one clear week in advance.

Quorum.

(iii) The quorum of the Council for the transaction of business shall be five members. If at any time a meeting is called the number of members of the Council present shall for any reason not be sufficient to form a quorum the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day and at such other time and place as the Chairman may determine.

Special Meetings.

(iv) (a) A special meeting convened by the Council shall be held not later than the 31st March of each financial year. The Chairman shall at such meeting make his report for the previous financial year and submit the audited accounts of the Exchange for the approval of the meeting. Licensed stockbrokers shall attend this meeting and elect from among themselves their representatives on the Council in accordance with this Statute.

(b) Other special meetings of the Council may be convened by the Chairman on the request by notice in writing of not less than three members of the Council and shall be held within one week of such request. Notice of any such special meeting, stating the objects thereof, shall be given by the General Manager in writing to each member of the Council at least seventy-two hours before the date fixed for such meeting.

Proceedings.

(v) The Council shall have power, subject to the provisions of the Statute, to fix its own meetings and regulate its own proceedings.

7. Finance

Funds.

(i) The funds of the Exchange shall be held in such banks as the Council shall from time to time determine. All cheques drawn on the accounts of the Exchange shall be signed by such person or persons as the Council may from time to time direct.

Income.

(ii) The income and property of the Exchange shall be applied solely towards the promotion of the objects and in the interest of the Exchange as the Council may deteremine.

(iii) The Council shall cause proper books of accounts to be kept with respect to: Proper books of accounts.

(a) all sums of money received and expended by the Exchange and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases by the Exchange; and

(c) the assets and liabilities of the Exchange.

(iv) Proper books of accounts shall be kept to give a true and fair view of the state of the Exchange's affairs and to explain its transactions. True and fair view.

(v) The books of accounts shall be kept at the Registered Office of the Exchange and shall always be open to inspection by the members of the Council, and as the Council may from time to time determine. Place where Accounts are kept.

(vi) Auditors shall be appointed annually by the Council during the Special Meeting convened in terms of sub-paragraph (a) of paragraph (iv) of Article 6 of this Statute and at a fee to be agreed to by the Council. Appointment of auditors.

(vii) The auditors of the Exchange shall be entitled to attend any special meeting and to receive all notices of, and other communications relating to, any special meeting, which any member of the Exchange is entitled to receive, and to be heard at any special meeting which they attend on any part of the business of the meeting which concerns them as auditors. Rights of auditors.

8. **Compensation Fund**

(i) The Council shall by bye-laws establish a Compensation Fund for the purpose of ensuring the security of Exchange transactions in the event of financial difficulties of any member to meet his obligations towards the investing public. Establishment.

(ii) Such fund shall be regulated in such a manner as may be provided for in the bye-laws. Constitution.

Passed by the House of Representatives at Sitting No. 432 of the 30th October, 1990.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni — Kastilja — *Published by the Department of Information — Castille*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz 16c — *Price 16c*