

# Regulatory Monitor

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## Act XVII of 2002: a brief introduction

Act Number XVII of 2002 was published on the 10 September 2002 and it is the final Act following Bill Number 151 of 2002. The amendments are expected to come into force in October 2002.

The Act contains a **new law on retirement funds** (directed principally at foreign pension funds since there appear to be no incentives to apply it to the Maltese market) and a **number of amendments to the original 1994 financial services law package**, namely:- Central Bank of Malta Act, Malta Financial Services Centre Act, Malta Stock Exchange Act, Investment Services Act, Banking Act, Insider Dealing Act, Financial Institutions Act, Professional Secrecy Act, Controlled Companies (Procedure for Liquidation) Act, Companies Act, Insurance Business Act and Insurance Brokers and Other Intermediaries Act.

Generally speaking **the main objectives** of the new amendments is to further align our laws with international best practice and standards, while placing more emphasis on consumer protection and crystallising the position of the MFSC as the single regulator for financial services.

The MFSC is now restyled as the **Malta Financial Services Authority** and the **exchange of information** with other bodies in Malta and regulatory bodies outside Malta have been enhanced.

From an operational point of view, **the most significant amendments appear to be those to the Investment Services Act**, and the two more

*continued on page 2*

## Amendments to the Investment Services Act

In Volume 1 Issue 1 of this Newsletter we had examined the two most important changes in the Investment Services Act, namely the introduction of **personal liability** in addition to the liability of the Licence Holder for breach of licence conditions, and that **investment advertisements**, excluding prospectuses, will no longer require the prior approval of the MFSA and instead the investment advert need only be approved by the licence holder itself in the light of the guidelines of the MFSA.

**CIS prospectuses** require approval by the MFSA before being issued and the MFSC may issue rules in this respect.

The **definition of a collective investment scheme** ("CIS") has been amended and now a CIS which is sold to the general public must always operate according to the principle of risk spreading and have at least one further characteristic, namely pooled contributions and profits, redemption of units and continuous issuance of units. **However, it is now possible to licence a CIS which does not operate according to the principle of risk spreading** if its units are offered for subscription, sale or exchange to: (i) other ISA licence holders; or (ii) persons whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instrument or instruments in which the CIS invests; or (iii) persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, in which the CIS invests; or (iv) persons who by regulation under the Act are exempt from the requirement of an investment services licence provided that the CIS invests in instruments or property in respect of which such persons are exempt.

The MFSA now has the power to determine, by notice in writing, that (a) **an investment service is licensable** under the ISA when provided in relation to an instrument; or (b) that an instrument, contract or

*continued on page 2*

## INSIDE THIS ISSUE

- 1 Act XVII of 2002: a brief introduction
- 1 Amendments to the Investment Services Act

important ones have already been referred to in the first issue of this newsletter, and others are considered in this edition.

**Stockbrokers** will now be licenced under the Investment Services Act though a transitory provision automatically allows stockbrokers to continue their licence without any formality.

**The Banking Act** has introduced provisions to cater for "Electronic Money Institutions" in line with the corresponding EU Directive.

**The Insider Dealing Act** has been restyled as the "Insider Dealing and Market Abuse Offences Act" and now makes it a criminal offence to disseminate false exaggerated or misleading information, spread false rumours or put into effect simulated or artificial operations or transactions which are intended to influence the supply, demand or price of a security or create a false or misleading impression of a market in a security, or otherwise to manipulate the securities market.

**The Professional Secrecy Act** now allows the disclosure, in good faith, to a competent public authority, of secret information when there is a reasonable belief that such disclosure is reasonably necessary for the purpose of preventing, revealing, detecting or prosecuting the commission of acts that amount or are likely to amount to a criminal offence, or to prevent a miscarriage of justice. This provision would allow "whistle-blowing" by financial services providers.

**The Financial Markets Act is the new name of the Malta Stock Exchange Act**, and it will now regulate investment exchanges, of which the Malta Stock Exchange will be one. A Listing Authority has been created in order to establish listing requirements and once a company has been given the green light to list, it can then list on any one or more of the recognised investment exchanges subject to their bye-laws. ❖



20, Cannon Road, St. Venera HMR 07 MALTA  
Tel. (356) 21223334 Fax & Ans. (356) 21248594  
E-mail: info@cdf.com.mt Web Site: http://www.cdf.com.mt

**right falls within the definition of instruments** in the ISA, whether it is issued in Malta or abroad. Such determination is conclusive for all purposes of this Act unless it is appealed to the Financial Services Tribunal and overruled by the Tribunal.

**"Close links"** between an applicant for a licence or an existing licence holder are subject to notification to the MFSA, which can refuse to grant a licence (or possibly revoke an existing one) if it considers that such close links prevent it from exercising efficiently its supervisory functions. What "close links" are still have to be determined by guidelines issued by the MFSA.

**Administrative services to licence holders or CIS** are now subject to "recognition" by the MFSA although such services are not licensable under the ISA. Therefore back-office services to a licence holder or a CIS would be exempt from a licence though subject to recognition. The MFSA still has to issue guidance on what it considers to be administrative services in this context.

An **Investor Compensation Scheme** can now be introduced under the ISA. It is expected that such a scheme would operate in line with EU standards in order to provide a level of compensation for investors in cases where licence holders are unable to satisfy their obligations towards investors or investors' claims in respect of any liability incurred by the licence holder in connection with the carrying out of any licensed activity.

Rules may also be issued to govern the constitution of **common funds for investment purposes in the form of a CIS by contract**, and such a CIS can be made exempt from the Civil Code rules on the community of property with the modifications and variations necessary.

It is now also possible to **continue in Malta a CIS constituted outside Malta**, with full continuance of legal personality, assets and liabilities. This provision will enable funds constituted outside Malta to redomicile in Malta and benefit from Malta's attractive regime. ❖

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