

I assent.

(L.S.)

GEORGE ABELA  
President

29th December, 2009

**ACT No. XXIII of 2009**

*AN ACT to establish general provisions facilitating the exercise of freedom of establishment for service providers and the free movement of services in the internal market and to implement Directive 2006/123/EC.*

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**

**1.** (1) The short title of this Act is the Services (Internal Market) Act, 2009. Short title and commencement.

(2) Parts I to VI (both inclusive) and the Schedules of this Act shall come into force upon publication of this Act.

**PART II - DEFINITIONS**

**2.** In this Act, unless the context otherwise requires: Interpretation.

"Appeals Board" means the appeals boards, tribunals or courts established by law, recourse to which may be made by any aggrieved person following a decision of a competent authority;

"authorisation" means a permit, licence, warrant, appointment, concession or any formal or implied decision concerning access to a service activity or the exercise thereof;

"authorisation scheme" means any authorisation and other procedure of an administrative nature, under which a provider or recipient is in effect required to take steps in order to commence the activity in question and obtain, from a competent authority, authorisation concerning access to a service activity or the exercise thereof;

"commercial communication" means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity, or practicing a regulated profession. The following do not in themselves constitute commercial communications:

(a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;

(b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration;

"competent authority" means any body or authority established and, or designated by law and vested with a supervisory and, or regulatory role in relation to service activities, including the regulation of access to service activities and, or the exercise thereof;

"the Directive" means Directive 2006/123/EC of the European Parliament and of the Council of 12 December, 2006, on services in the internal market;

"establishment" means the actual pursuit of an economic activity as referred to in Article 43 of the Treaty, by a service provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

"the European Commission" means the Commission of the European Community;

"Internal Market Information System" means the information system, established further to Article 34 of the Directive, through which competent authorities exchange information in fulfilment of their obligations under Chapter VI of the Directive;

"Member State" means a member state of the European Economic Area;

"Member State of establishment" means the Member State in whose territory the provider of the service concerned is established;

"Member State where the service is provided" means the Member State where the service is supplied by a provider established in another Member State;

"the Minister" means the Minister responsible for the economy;

"overriding reasons relating to the public interest", unless otherwise specified in this Act, means the reasons recognised as such in the case law of the European Court of Justice, and as they may continue to evolve, including the following grounds: public policy, public security, public safety, and public health; the maintenance of order in society; social policy objectives, the protection of the recipients of services; consumer protection; the protection of workers including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives including safeguarding the freedom of expression of various elements in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy;

"point of single contact" means the electronic system through which the competent authorities shall fulfill their functions relating to the completion of all procedures and formalities necessary for establishment and access to and exercise of a service activity in Malta and the provision of relevant information to an applicant, a provider and recipients in terms of this Act or as may be prescribed;

"provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;

"recipient" means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;

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2007.

"regulated profession" means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC on the recognition of professional qualifications as transposed by the Recognition of Professional Qualifications Regulations, 2007;

"requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy;

"service" means any self-employed activity performed for an economic consideration as referred to in Article 50 of the Treaty;

Cap. 379.

"services of a general economic interest" means those services declared by the Minister as services of general economic interest in terms of article 30(3) of the Competition Act in conformity with Community law;

"the Treaty" means the Treaty establishing the European Community.

### **PART III - SCOPE OF APPLICATION OF THIS ACT**

Scope.

**3.** (1) This Act shall apply to services supplied by a provider.

(2) Without prejudice to subarticle (1), this Act shall not apply to the following activities:

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(a) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions as transposed by the European Passport Rights for Credit Institutions Regulations;

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC (Access Directive), 2002/20/EC (Authorisation Directive), 2002/21/EC (Common Regulatory Framework), 2002/22/EC (Universal Services Directive) and 2002/58/EC (Directive on Piracy and Electronic Communication) as transposed into Maltese legislation;

(c) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;

(d) services of temporary work agencies;

(e) healthcare services including pharmaceutical services provided by health professionals to assess, maintain and restore the state of health to patients, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

(f) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;

(g) gambling activities as regulated by the Gaming Act Cap.400. and the Lotteries and other Games Act; Cap. 438.

(h) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;

(i) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(j) private security services;

(k) services provided by notaries and court marshals, who are appointed by an official act of government;

(l) services in the field of taxation.

(3) If the provisions of this Act are in conflict with a provision of a Community act governing specific aspects of access to, or exercise of a service activity in, specific sectors or for specific professions, the provision of the Community act shall prevail and shall apply to those specific sectors or professions. These include:

(a) Directive 96/71/EC on the posting of workers in the framework of the provision of services;

(b) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and self-employed persons, and to members of their families moving within the Community;

(c) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;

(d) Directive 2005/36/EC on the recognition of professional qualifications.

(4) Furthermore, this Act shall not apply to:

(a) rules of private international law, in particular rules governing the law applicable to contractual and non-contractual obligations; and

(b) rules concerning the rules of jurisdiction of the Courts.

#### **PART IV - COMPETENT AUTHORITIES**

General functions of competent authorities regulating access to service activities falling under this Act and, or the exercise thereof.

**4.** Further to the fulfilment of the powers, functions and responsibilities attributed to a competent authority, in the founding and enabling legislation concerning their area of competence, and without prejudice to the allocation of functions and powers vested among authorities within the national administrative system, a competent authority shall:

(a) simplify procedures and formalities applicable to the access to a service activity and to the exercise thereof;

(b) act objectively, transparently, efficiently and in a timely manner;

(c) provide information and assistance to providers and recipients subject to the provisions of this Act;

(d) make it possible to complete all procedures and formalities relating to access to a service activity and to the exercise thereof available electronically through the designated point of single contact:

Provided that the requirement to make it possible to complete all procedures and formalities electronically through the point of single contact shall not be applicable to the inspection of premises on which the service is provided or of equipment used by the provider or to the physical examination of the capability or of the personal integrity of the provider or of his responsible staff;

(e) assist competent authorities of another Member State and seek their assistance in fulfilling the supervisory obligations in terms of article 8;

(f) perform such other functions as may from time to time be assigned to it by the Minister, in consultation with other Ministers, as may be applicable.

5. (1) Where a competent authority grants and regulates access to a service activity, in the carrying out of its authorisation functions, on the basis of an authorisation scheme, the scheme shall be:

Authorisation function and conditions.

(a) non-discriminatory;

(b) necessary, and

(c) justified by an overriding reason relating to the public interest;

Provided that the public interest objective being pursued cannot be attained by means of a less restrictive measure, in particular because *a posteriori* inspections, checks and controls would take place too late to be genuinely effective.

(2) The competent authority shall assess applications and grant authorisations based on criteria that are:

Conditions for granting authorisations.

(a) non-discriminatory;

(b) justified by an overriding reason related to public interest and proportionate to the attainment of that public interest objective;

(c) clear and unambiguous;

(d) objective;

(e) made public in advance; and

(f) transparent and accessible.

(3) A competent authority may not make access to or the exercise of a service activity in Malta subject to compliance to any of the following, in conformity with European Union law:

(a) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:

(i) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;

(ii) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident in Malta;

(b) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;

(c) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in Malta, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;

(d) conditions of reciprocity with the Member State in which the provider already has an establishment;

(e) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;

(f) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large;

(g) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in Malta; this paragraph is without prejudice to sub-article (5) or to requirements relating to the participation in a



collective compensation fund for members of professional bodies or organisations;

(h) an obligation to have been pre-registered, for a given period, in the registers held in Malta or to have previously exercised the activity for a given period in Malta.

(4) Where a competent authority makes access to a service activity or the exercise thereof subject to any of the following non-discriminatory requirements:

(a) quantitative or territorial restrictions;

(b) an obligation on the provider to take a specific legal form;

(c) requirements which relate to the shareholding of a company;

(d) requirements, other than those concerning matters covered by Directive 2005/36/EC on the recognition of professional qualifications as transposed by the Recognition of Professional Qualifications Regulations, 2007, or provided for in other Community Instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity, L.N. 422 of 2007.

it shall ensure that the requirements are:

(i) not directly nor indirectly discriminatory on the basis of the nationality of the individual or the registered office of the company;

(ii) justified by an overriding reason relating to the public interest; and

(iii) proportionate and suitable for attaining the objective pursued:

Provided that where the access to the service activity in question, or the exercise thereof, is a service of general economic interest, this sub-article shall apply only in so far as it does not obstruct the performance, in law or in fact, of the public service obligation task assigned to the provider or providers:

Provided further that with effect from 28 December 2009, the introduction of the said non-discriminatory requirements shall be notified to the European Commission through established procedure.

(5) Without prejudice to arrangements provided for in other Community instruments concerning professional insurance or guarantees, a competent authority may request a provider established in Malta whose services present a direct and particular risk to the health and safety of the recipient or a third person, or to the financial security of the recipient, to subscribe to a professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose.

For the purpose of this sub-article:

"direct and particular risk" means a risk arising directly from the provision of the service;

"health and safety" means, in relation to a recipient or a third person, the prevention of death or serious personal injury;

"financial security" means, in relation to a recipient, the prevention of substantial losses of money or of value of property;

"professional liability insurance" means insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service.

A competent authority shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in other Member States.

(6) A competent authority may not impose requirements on a service provider established in Malta which oblige him to exercise a specific service activity exclusively or which restricts him from exercising his service activity jointly or in partnership except in the case of:

(a) regulated professions, so long as it is justified on the grounds of ethics and conduct;

(b) providers of certification, accreditation, technical monitoring, test or trial services, so long as it is justified on the grounds of independence and impartiality;

Provided that where a competent authority authorises or permits the carrying out of multi-disciplinary activities between providers established in Malta, it shall ensure prevention of any conflict of interest from among the providers, the subsistence of independence and impartiality, and the adherence to professional ethics and codes of conduct where applicable.

(7) A competent authority or any other professional body empowered at law to regulate the exercise of regulated professions, shall not prohibit commercial communications by the regulated professions:

Provided that professional rules on commercial communications shall be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate:

Provided further that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession.

(8) When a service provider is already established in another Member State, and seeks establishment in Malta:

Service provider established in another Member State.

(a) where the service activity is subject to an authorisation scheme or the fulfillment of other requirements regulating establishment in Malta, the competent authority shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which a provider may already be subject to in another Member State where he is established:

Provided that the provisions of this paragraph shall not apply to the documents referred to in Article 7(2) and 50 of Directive 2005/36/EC, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, in the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community and in the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another Member State;

(b) where a competent authority requires a provider to supply a certificate, attestation or document proving that a requirement has been satisfied in terms of this Act:

(i) it shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied;

(ii) it may not require a document from another Member State to be produced in its original form or as a certified copy or certified translation save in the cases provided for in any Community instrument or where such a requirement is justified by an overriding reason relating to the public interest, including public order and public security:

Provided that this paragraph shall not affect the right of a competent authority from requesting a non-certified translation of documentation in the Maltese or English language:

Provided further that the competent authority may make use of the electronic system referred to in article 8 to carry out necessary verification, checks and controls with the relevant competent authority in the Member State of establishment;

(c) when a competent authority requires a provider to subscribe to a professional liability insurance in terms of sub-article (5), a competent authority may not require a provider to subscribe to a professional liability insurance or a guarantee where he is already covered by an insurance or guarantee which is equivalent or essentially comparable, as regards its purpose and the cover it provides in terms of the insured risk, the insured sum, or a ceiling for a guarantee and possible exclusions from the cover in another Member State in which the provider is already established. Where equivalence is only partial, a competent authority may require a supplementary insurance or guarantee to cover those aspects not already covered.

Selection from among several candidates.

(9) (a) Where the number of authorisations available for a given service activity is limited because of the scarcity of available natural resources, technical capacity or if justified by an overriding reason relating to public interest, a competent authority shall apply a selection procedure to potential candidates in order to ensure impartiality, transparency, conditions of open competition, including in particular adequate publicity about the launch, conduct and

completion of the procedure.

(b) Subject to the provisions of paragraph (a) and sub-articles (1) and (2), in establishing the rules for the selection procedure, the competent authority may give consideration to issues relating to public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest, in conformity with Community law.

(10) (a) An authorisation granted to a provider shall be for an indefinite period, except where: Duration of authorisation.

(i) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(ii) the number of available authorisations is limited in terms of sub-article (9);

(iii) a limited authorisation period can be justified by an overriding reason relating to the public interest.

(b) In cases referred to in paragraph (a)(ii), an authorisation shall be granted for an appropriate limited period enabling the provider to recoup the cost of investment and to make a fair return on the capital invested, which authorisation may not be open to automatic renewal nor confer any other advantage on the provider whose authorisation has just expired or on any person having any particular links with that provider.

(11) (a) An authorisation granted by a competent authority shall enable the provider to have access to the service activity or the exercise thereof throughout the national territory including by means of setting up agencies, subsidiaries, branches or offices, except where the authorisation for each individual establishment or a limitation of authorisation to a certain part of the territory is justified by an overriding reason relating to public interest. Territoriality.

(b) The service provider shall be required to inform the competent authority of the creation of subsidiaries, branches, offices or agencies whose activities fall within the scope of the authorisation scheme.

(12) In the fulfilment of its authorisation function, a competent authority shall: Procedures and formalities.

(a) ensure that the procedures and formalities are

maintained sufficiently simple, clear, objective and made public in advance, and shall not unduly complicate or delay the commencement of the service activity by the provider;

(b) acknowledge all applications requesting authorisation; specifying the time period within which the application shall be processed referred to in paragraph (d), the available means of redress and where applicable, a statement that in the absence of a response within the time-period specified the authorisation shall be deemed to have been granted;

(c) in the case of an incomplete application, inform the applicant as quickly as possible of the need to supply any additional information, together with the consequences which ensue should the applicant delay in providing the said information or requirements;

(d) process an application for an authorisation as quickly as possible and in any event within a time period which shall be fixed and made public in advance failing which it shall be deemed that the authorisation has been granted, the period will start to run from the day when all due information and requirements have been submitted and any other formalities have been completed in order for the competent authority to process the application:

Provided that the time period may be extended once for a limited time when justified by the complexity of the issue, and due justification shall be given to the applicant before the original period has expired:

Provided further that a competent authority may make different arrangements where objectively justified by overriding reasons relating public interest;

(e) provide information regarding the means of redress available in case of non-acceptance of an application;

(f) grant authorisation as soon as the applicant fulfills all requirements, without prejudice to the right of the competent authority to revoke or modify an authorisation when the conditions for authorisation are no longer met by the provider;

(g) in the case of rejected applications due to failure to comply with the required procedures or formalities, inform the applicant of the rejection as soon as possible;

(h) except in the case of the granting of an authorisation, a decision from a competent authority, including refusal or withdrawal, shall be fully reasoned and shall be open to challenge before the Appeals Board.

**6.** (1) With the exclusion of service activities and matters included under the First Schedule, a competent authority shall respect the right of a provider that is lawfully established and providing services in another Member State to provide services in Malta, and may not prevent him from providing such service activity by imposing requirements which are discriminatory, unnecessary or disproportionate.

Freedom to provide services by providers already established in Member States.

For the purposes of this sub-article:

(a) a requirement is discriminatory if it necessitates the fulfilment of obligations which relate to the nationality of the applicant, including the place of establishment of a legal person;

(b) a requirement is unnecessary if it is not justified by reasons of public policy, public security, public health or the protection of the environment;

(c) a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective.

(2) Without prejudice to sub-article (1), a competent authority may not subject a provider established in another Member State who wishes to provide services in Malta, to any of the following requirements:

(a) an obligation on the provider to have an establishment in Malta;

(b) an obligation on the provider to obtain an authorisation from the competent authority including entry in a register or registration with a professional body or association in Malta except where provided for in this Act and other instruments of Community law;

(c) a ban on the provider setting up a certain form or type of infrastructure in Malta, including an office or chambers, which the provider needs in order to supply the services in question;

(d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;

(e) an obligation on the provider to possess an identity document issued by the relevant Maltese authorities for the exercise of a service activity;

(f) requirements which affect the use of equipment and material which are an integral part of the service provided, unless necessary for the purpose of health and safety at work;

(g) restriction on the freedom to provide services as contemplated under article 9(b) in relation to the right of recipients:

Provided that a competent authority may necessitate that the provider observes the relevant laws which regulate conditions of employment including those relating to collective agreements in conformity with Community law:

Provided further that in establishing whether a provider is exercising his freedom to provide services within the meaning of this article and Article 49 of the Treaty, or is an establishment case, the competent authority shall assess and decide each case on its individual merits and in conformity with the Community law and rulings of the European Court of Justice.

(3) In exceptional cases only, and on a case by case basis, without prejudice to sub-articles (1) and (2), a competent authority may, in respect of a provider established in another Member State, take measures in order to ensure the safety of services provided in Malta. When taking such measures, a competent authority shall follow the procedure established under the Fourth Schedule, and ensure the fulfilment of the following conditions:

(a) the national provisions in accordance with which the measures are taken have not been subject to Community harmonisation in the field of the safety of services;

(b) the measures taken provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;

(c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those requested by the competent authority as referred to in paragraphs 2 and 3 to the Fourth Schedule;

(d) the measures are proportionate:



Provided that where the competent authority becomes aware of a serious specific act or circumstances relating to a service activity that would cause serious damage to the health and safety of persons, or the environment, in Malta or another Member State, it shall inform the Member State of establishment, other Member States that may be concerned or affected, and the European Commission within the shortest time possible through the Internal Market Information System.

7. In its function to provide information and assistance in terms of article 4(c):

Provision of information and assistance to applicants, providers and recipients.

(a) a competent authority shall cooperate with the designated entity in accordance with article 10(3) to ensure that the following are easily accessible to providers and recipients:

(i) the requirements applicable in other Member States relating to access to, and exercise of, the relevant service activities, in particular those relating to consumer protection;

(ii) the contact details of the competent authorities enabling the latter to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of the relevant service activities;

(iii) the means of, and conditions for, accessing public registers and databases on providers and relevant services;

(iv) the means of redress which are generally available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;

(v) the contact details of the associations or organisations other than the competent authorities, from which providers may obtain practical assistance;

(vi) a list, updated at least annually, of the names and commercial contact details of those providers who are in possession of a valid licence issued by the competent authority;

(b) at the provider's and recipient's request, the competent authority shall provide assistance consisting of simple, generic information of a non-legal nature, on the

interpretation and application of the requirements, procedures and formalities needed for a provider or recipient to have access to the relevant service activity in Malta;

(c) in cooperation with the European Commission and other Member States, the competent authority shall seek to assist recipients in Malta in obtaining information on the protection given to recipients, as well as the available means of redress, and the contact details of associations providing consumer assistance in other Member States.

Supervisory  
functions.

**8.** (1) A competent authority shall require providers established in Malta and falling under its area of competence to keep it updated at all times with the information it identifies as necessary and objectively justified for it to fulfill its supervisory function of services in terms of its enabling Act and this Act.

(2) The competent authority shall exercise its supervisory functions on providers established in Malta, and falling under its area of competence, whether the service is provided in Malta or in another Member State.

(3) In executing its supervisory functions, when a service is being provided in another Member State by a provider established in Malta, a competent authority shall assist the relevant competent authority of that other Member State according to the procedure set up in the Second Schedule. In doing so, the competent authority shall not refrain from taking supervisory enforcement measures in Malta on the grounds that a service has been provided or caused damage in another Member State:

Provided that a competent authority shall not be bound to carry out checks and controls in the Member State where the service is being provided.

(4) When a service is being provided in Malta, in the event of a temporary movement by a provider established in another Member State in terms of article 6:

(a) the competent authority shall participate in the supervision of the provider in accordance with the procedure set up in the Second Schedule;

(b) when it has imposed requirements in terms of the provisos to article 6(2), it shall assume responsibility for the supervision of the provider in Malta in order to ensure compliance with those requirements.

(5) A competent authority shall exchange requests and information with the relevant competent authorities of another Member State and the Commission through the Internal Market Information System.

(6) Without prejudice to the limitations imposed by any other law, a competent authority shall supply information to the relevant competent authority of another Member State on disciplinary or administrative actions, or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which directly concern a provider, in terms of the procedure contemplated under the Third Schedule.

## PART V - RIGHTS OF RECIPIENTS

**9.** Recipients and potential recipients of a service shall not be subjected to discriminatory requirements, including: Prohibitions.

(a) limitations to access to services in Malta through a provider's general conditions that contain discriminatory provisions relating to the nationality or place of residence of the recipient, provided that this does not preclude the possibility for a provider to provide for differences in the conditions of access where those differences are directly justified by objective criteria; or

(b) the granting of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided; or

(iii) an obligation to obtain authorisation from, or to make a declaration to, a competent authority.

**10.** (1) Further to the right to information and assistance referred to in articles 4 and 7, a provider established in Malta is obliged to provide the information listed in the Fifth Schedule. Right to information and assistance.

(2) For the purpose of subarticle (1), the body responsible for consumer protection shall be responsible to monitor and enforce compliance by the provider with the requirements listed under the Fifth Schedule.

(3) For the purposes of subarticle (1) the body responsible to provide, upon request, information in accordance with article 7(a)(i) to (vi) shall be the entity fulfilling the role of the European Consumer Centre in Malta or any other entity as may be designated by the Minister.

## PART VI - MISCELLANEOUS

Power to take  
necessary  
measures.

**11.** It shall be the function of the Minister, in consultation with other Ministers, to take any additional necessary measures to this Act, in order to ensure Malta's fulfilment of its obligations under the Directive, and to ensure compliance by all concerned with the provisions of this Act.

Power of make  
regulations.

**12.** (1) The Minister may, in consultation with other Ministers, as the case may require, make regulations for the better carrying out of any of the provisions of this Act.

(2) Without prejudice to the generality of the aforesaid power, such regulations may in particular provide for:

(a) the definition of functions of a point of single contact, its administrative and operational set up and function including its coordination with the relevant competent authorities and other bodies established under other laws in fulfilment of the functions assigned to it;

(b) establishing the sanctions or penalties to which an offender under this Act may, on being found guilty, become liable;

(c) conformity by competent authorities with the provisions of this Act;

(d) the designation of a body responsible to communicate with the European Commission for the introduction of any laws, regulations or administrative provisions as referred to in the second proviso to article 5(4), and the procedure to be followed to channel the information to the European Commission;

(e) the designation of a national coordinator for the Internal Market Information System;

(f) the designation of an Appeals Board to take cognizance of complaints lodged by a provider against a competent authority in default of a procedure identified under its founding and enabling legislation;

(g) prescribing anything which may be required to be prescribed by this Act.

Reprint.

**13.** Without prejudice to any other law, in any reprint of this Act, Parts VII to the last Part need not be reproduced and it shall be

sufficient to reproduce Parts I to VI of this Act:

Provided that nothing in this article shall be construed as reducing the validity of anything contained in the parts not so reproduced.

## PART VII

### AMENDMENTS TO THE CODE OF ORGANIZATION AND CIVIL PROCEDURE

**14.** (1) This Part amends the Code of Organization and Civil Procedure, and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the principal law".

Amendments to the Code of Organization and Civil Procedure. Cap. 12.

(2) This Part shall come into force upon publication of this Act.

**15.** Sub-paragraph (a) of paragraph 47 of Tariff E in Schedule A of the principal law shall be substituted by the following new sub-paragraph:

Amendment of Tariff E in Schedule A of the principal law.

"(a) The foregoing provisions of this Tariff shall not prohibit an Advocate or a Legal Procurator and his client, from agreeing on a fee, or the basis on which the fee is to be determined which is different from that established by this Tariff, and in any such case the agreed fee or basis for determining it, not being a basis prohibited by law, shall apply, subject to the provisions of the following sub-paragraphs:

Provided that in any case, an Advocate or a Legal Procurator shall inform his client of the applicable fee or the basis on which the fee is to be determined before the service is provided."

**16.** Immediately after paragraph 19 of Tariff K in Schedule A of the principal law, there shall be added the following new paragraph:

Amendment of Tariff K in Schedule A of the principal law.

"20. (a) The foregoing provisions of this Tariff shall not prohibit a Perit and his client, from agreeing on a fee, or the basis on which the fee is to be determined which is different from that established by this Tariff, and in any such case the agreed fee or basis for determining it, not being a basis prohibited by law, shall apply, subject to the provisions of the following sub-paragraphs:

Provided that in any case, a Perit shall inform his

client of the applicable fee or the basis on which the fee is to be determined before the service is provided.

(b) For the purposes of this paragraph, an agreement concerning fees shall be in writing."

## PART VIII

### AMENDMENTS TO THE COMMERCIAL CODE

Amendments to the Commercial Code. Cap. 13.

**17.** (1) This Part amends the Commercial Code, and it shall be read and construed as one with the Commercial Code, hereinafter in this Part referred to as "the principal law".

(2) This Part shall come into force upon publication of this Act.

Substitution of articles 71, 72, 73 and 73A of the principal law.

**18.** Articles 71, 72, 73 and 73A of the principal law shall be substituted by the following new articles:

"Commercial agents.

71. (1) Any person desiring to act as a commercial agent, whether alone or in partnership with any other person, shall notify the regulatory authority requesting registration, within thirty days of undertaking this activity.

(2) In order to be registered as a commercial agent with the regulatory authority an applicant shall apply in writing to the authority in such form as the regulatory authority shall prescribe, containing the full name and surname, age, private and business addresses of the applicant and such other particulars concerning his business or occupation as the regulatory authority shall require. In the case of a person applying to be registered as a commercial agent in partnership, a reference shall be made in the application to the statement published in the Gazette in terms of the Companies Act showing the date of registration of the partnership and the date on which the relative certificate of registration was issued.

Cap. 386

(3) The regulatory authority shall not accept an application for registration to act as a commercial agent from any person who is in the employment of the Government of Malta or of any financial institution, or from any person holding a warrant to practise a profession in Malta and actually practising such profession, or from stockbrokers or from any person who, whether in Malta or abroad, has been found guilty of fraudulent bankruptcy.

(4) Notice of any registration under this article shall be published in the Gazette. In the month of January of each year, a complete list of registrations then in force shall likewise be published in the Gazette.

(5) Any registration carried out under this article may be withdrawn or suspended by the regulatory authority, if the person registered -

(a) is convicted of any crime against property;

(b) is adjudged bankrupt;

(c) accepts employment under the Government of Malta, or with any financial institution, or becomes the holder of a warrant to practise a profession and actually practises such profession or becomes a stockbroker;

(d) is proved, to the satisfaction of the court, not to be a fit and proper person to act as a commercial agent.

(6) Such withdrawal or suspension shall be published in the Gazette.

Power of the Minister to prescribe fee for registration.

72. The Minister after consulting the regulatory authority may, by regulation, prescribe the fee to be charged by the regulatory authority in respect of a registration to act as a commercial agent under the provisions of the last preceding article. Any such regulation may prescribe the payment of an annual fee in addition to the fee payable on the initial registration and may provide that in default of payment of any such annual fee, the registered person or partnership shall removed from the register.

Penalties.

73. Without prejudice to the provisions of article 71(1), any person who, without being registered, represents himself to be, or acts or undertakes to act as a commercial agent, shall be liable:

(a) on a first conviction to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500); and

(b) on a second or subsequent conviction, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding five thousand euro (€5,000).

No grant or renewal of registration pending settlement of fine.

73A. Where any court has imposed a fine under this sub-title, and such fine has not been paid, the regulatory authority shall not grant or renew the registration on the expiry thereof until such time as the payment of the fine is effected."

Substitution of articles 79 and 80 of the principal law.

**19.** Articles 79 and 80 of the principal law shall be substituted by the following new articles:

"Requirements for becoming a public broker.

79. (1) Any person desiring to act as a public broker shall notify the Council of the Chamber of Commerce, Enterprise and Industry, as the authority regulating this activity, requesting registration, within thirty days of starting such an activity.



(2) In order to be registered as a public broker with the regulatory authority, an applicant shall inform the authority in writing in such form as the regulatory authority shall prescribe, containing the full name and surname, age, private and business addresses of the applicant and such other particulars concerning his business or occupation as the regulatory authority shall require.

(3) Brokers complying with all the aforesaid formalities shall be registered in a register administered by the regulatory authority. Notice of any registration under this article shall be published in the Gazette. In the month of January of each year, a complete list of registrations then in force shall likewise be published in the Gazette.

Forfeiture of office of public broker.

Cap. 9.

80. If a public broker is convicted of any of the crimes provided for in Sub-titles I, II and III of Title IX of Part II of Book First of the Criminal Code, he shall, *ipso facto*, forfeit his office, and his name shall be struck off the register."

**20.** Article 91 of the principal law shall be substituted by the following new article:

Substitution of article 91 of the principal law.

"Penalty for contraventions committed by public brokers.

91. (1) A public broker who acts in contravention of any of the obligations mentioned in the foregoing articles shall, at the instance of any interested party or of the Attorney General, be liable to a penalty of not less than fifty euro (€50) and not exceeding five hundred euro (€500) on proceedings taken before the Civil Court, First Hall, or the Court of Magistrates (Gozo) in its superior commercial jurisdiction, as the case may be, saving any other action arising from this Code or any other law.

(2) The court may, moreover, order the interdiction of the public broker for a period not exceeding two years, in which case the provisions of article 81 shall, during the time of interdiction, be applicable."

Substitution of article 550 of the principal law.

**21.** Article 550 of the principal law shall be substituted by the following new article:

"Commercial fees. 550. It shall be possible for commercial fees, different from those established in the Schedule hereto, to be agreed between parties. The service provider shall inform his client of the applicable fee or the basis on which the fee is to be determined before the service is provided."

## PART IX

### AMENDMENTS TO THE TRAFFIC (REGULATION) ORDINANCE

Amendments to the Traffic (Regulation) Ordinance. Cap. 65

**22.** (1) This Part amends the Traffic (Regulation) Ordinance, and it shall be read and construed as one with the Traffic (Regulation) Ordinance, hereinafter referred to in this Part as "the principal law".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 of the principal law.

**23** Article 2 of the principal law shall be amended as follows:

(a) immediately after the definition "Authority", there shall be added the following new definition:

" "Member State" means a Member State of the European Economic Area;"

(b) immediately after the definition "public transport vehicle", there shall be added the following new definition:

"Treaty" means the Treaty establishing the European Community;" and

(c) immediately after the proviso thereof, there shall be added the following new proviso:

"Provided further that unless otherwise stated in this Act, the definitions in the Services (Internal Market) Act, 2009 shall apply."

Addition of new article 16B to the principal law.

**24.** Immediately after article 16A of the principal law, there

shall be added the following new article 16B:

"Applicability of the Services (Internal Market) Act, 2009.

16B. Nothing in this Ordinance shall be construed as limiting, restricting or otherwise affecting the application of any law, regulation or other rule made in pursuance of the Services (Internal Market) Act, 2009."

25. In article 18 of the principal law, after the words "in the opinion of the Authority", there shall be added the words "or, with respect to self-drive car hire, as provided for under this Ordinance or any other law, regulation or rule".

Amendment of article 18 of the principal law.

## PART X

### AMENDMENTS TO THE POSTAL SERVICES ACT

26. (1) This Part amends the Postal Services Act, and it shall be read and construed as one with the Postal Services Act, hereinafter referred to in this Part as "the principal Act".

Amendments to the Postal Services Act. Cap. 254.

(2) This Part shall come into force upon publication of this Act.

27. Immediately after article 9 of the principal Act, there shall be inserted the following new article 9A:

Addition of new article 9A to the principal Act.

"Default of a reply does not amount to the granting of a licence.

9A. Due to overriding reasons of public interest, the absence of a communication within the time periods provided for in article 9 shall not be construed to imply the automatic granting of the licence applied for, but the applicant shall, if he considers the delay to be unjustified or he has suffered any prejudice as a result of such delay, have a right of appeal in accordance with the provisions of Part VIII of the Malta Communications Authority Act."

Cap. 418.

## PART XI

### AMENDMENTS TO THE ACCOUNTANCY PROFESSION ACT

28. (1) This Part amends the Accountancy Profession Act, and it shall be read and construed as one with the Accountancy Profession Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Accountancy Profession Act. Cap. 281.

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 to the principal Act.

**29.** Subarticle (1) of article 2 of the principal Act shall be amended as follows:

(a) in the definition "accountancy firm" the words "a partnership whether a civil partnership or a commercial partnership including a company," shall be substituted by the words "an entity, regardless of its legal form,";

(b) immediately after the definition "accountancy firm" there shall be added the following new definition:

" "Appeals Tribunal" means the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act;"; and

(c) in the definition "audit firm" the words "a civil partnership or a commercial partnership, including a company" shall be substituted by the words "an entity, regardless of its legal form,".

Amendment of article 3 to the principal Act.

**30.** Article 3 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, the words "No person shall" shall be substituted by the words "Except where otherwise prescribed, no person shall";

(b) in subarticle (2) thereof -

(i) in paragraph (b) thereof, the word "and" shall be deleted; and

(ii) in the second proviso to paragraph (d) thereof, immediately after the words "according to the particular circumstances;" there shall be added the word "and";

(c) in subarticle (3) thereof, the words "in any country outside Malta," shall be substituted by the words "in any third-country,";

(d) in subarticle (4) thereof, the words "not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69)" shall be substituted by the words "not exceeding one thousand and two hundred euro (€1,200.00)", the words "not exceeding five thousand and eight hundred and

twenty-three euro and forty-three cents (€5,823.43)" shall be substituted by the words "not exceeding six thousand euro (€6,000.00)" and the words "not exceeding one hundred and sixteen euro and forty-seven cents (€116.47)" shall be substituted by the words "not exceeding one hundred and twenty euro (€120.00)"; and

(e) in subarticle (5) thereof, the words "not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87)" shall be substituted by the words "not exceeding twelve thousand euro (€12,000.00)".

**31.** Article 7 of the principal Act shall be amended as follows:

Amendment of  
article 7 of the  
principal Act.

(a) in subarticle (1) thereof -

(i) in paragraph (a) thereof, the words "and to advise the Minister;" shall be substituted by the words "and, in the case of warrants, whether to advise the Minister to issue such warrants and, in the case of practising certificates, to decide whether to issue such practising certificates;"

(ii) in paragraph (b) thereof, the words "to deal with" shall be substituted by the words "to deal, through disciplinary committees appointed under article 7(16), with";

(iii) in paragraph (c) thereof, the words "per warrant holder or firm;" shall be substituted by the words "per warrant holder, practising certificate holder or firm;"

(iv) in paragraph (e) thereof, the words "Directive 2006/34/EC;" shall be substituted by the words "Directive 2006/43/EC;"

(v) paragraphs (h) and (i) thereof shall be renumbered as paragraphs (j) and (k) respectively;

(vi) immediately after paragraph (g) thereof, there shall be added the following new paragraphs (h) and (i):

"(h) to carry out all such things as may be necessary to meet the obligations arising from the Services (Internal Market) Act, 2009, and to fulfill the powers, functions and responsibilities attributed to a competent authority in terms of the same Act, including the provision of assistance to competent

authorities of other Member States in accordance with the provisions of the same Act;

(i) to carry out all such things as may be necessary to meet the obligations arising from the Mutual Recognition of Qualifications Act;"

(b) in subarticle (13) thereof, immediately after the words "pertaining to them", there shall be added the words "within fifteen days after the date on which the change occurs";

(c) in the proviso to subarticle (13) thereof, the word "may" shall be substituted by the word "shall"; and

(d) in subarticle (16) thereof, immediately after the words "under subarticle (1)(b)" there shall be added the words "or under any regulations made by the Minister in terms of article 8A,".

Amendment of article 8 to the principal Act.

**32.** Article 8 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof -

(i) paragraphs (g), (h), (i) and (j) thereof shall be renumbered as paragraphs (h), (i), (j) and (l) respectively;

(ii) immediately after paragraph (f) thereof, there shall be added the following new paragraph (g):

"(g) the procedure to be followed by the Board in relation to applications for the issue of warrants or practising certificates under article 4;"

(iii) immediately after paragraph (j) thereof, as renumbered, there shall be added the following new paragraph (k):

"(k) the implementation of the powers, functions and responsibilities attributed to the Board as a competent authority in terms of the Services (Internal Market) Act, 2009;"

(iv) in paragraph (l) thereof as renumbered, the words "fine (*multa*) of twenty-three thousand, two hundred and ninety-three euro and seventy-three cents (€23,293.73)," shall be substituted by the words "fine (*multa*) of twenty-five thousand euro (€25,000.00)," and the words "fine (*multa*) of one hundred and sixteen euro

and forty-seven cents (€116.47)" shall be substituted by the words "fine (*multa*) of one hundred and twenty euro (€120.00)";

(b) in subarticle (2) thereof -

(i) the words "of warrant holders and holders of practising certificates on" shall be substituted by the words "of warrant holders, practising certificate holders or firms on";

(ii) in paragraph (a) thereof, the words "holders and practising certificate holders" shall be substituted by the words "holders, practising certificate holders or firms";

(iii) in paragraph (b) thereof, the words "warrant holder or practising certificate holder, or his employees" shall be substituted by the words "warrant holder, practising certificate holder, firm or their employees";

(iv) in paragraph (c) thereof, the words "warrant holders and practising certificate holders;" shall be substituted by the words "warrant holders, practising certificate holders and firms;"

(v) in paragraph (i) thereof, the words "any regulations" shall be substituted by the words "any provision of this Act and any regulations";

(vi) paragraphs (l), (m) and (n) thereof shall be renumbered as paragraphs (m), (n) and (o) respectively;

(vii) immediately after paragraph (k) thereof, there shall be added the following new paragraph (l):

"(l) the implementation of the powers, functions and responsibilities attributed to the Board as a competent authority in terms of the Services (Internal Market) Act, 2009"; and

(viii) in paragraph (m) thereof, as renumbered, the words "warrant holders and practising certificate holders" shall be substituted by the words "warrant holders, practising certificate holders and firms".

**33.** In article 8A of the principal Act, the words "thereunder, in relation to the mutual recognition of qualifications of accountant and auditor." shall be substituted by the word "thereunder".

Amendment of article 8A of the principal Act.

Amendment of article 10 of the principal Act.

**34.** Article 10 of the principal Act shall be amended as follows:

(a) in the second proviso to subarticle (1) thereof, the words "any other service provided by such firms shall not be incompatible with their main object, as aforesaid." shall be substituted by the words "a firm may provide other services subject to compliance at all times with the rules on independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued in terms of article 8.";

(b) in sub-article (11) thereof, the words "not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37)," shall be substituted by the words "not exceeding two thousand and five hundred euro (€2,500.00)," the words "not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87)" shall be substituted by the words "not exceeding twelve thousand euro (€12,000.00)" and the words "not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94)" shall be substituted by the words "not exceeding two hundred and fifty euro (€250.00)".

Amendment of article 11 of the principal Act.

**35.** In subarticle (5) of article 11 of the principal Act, the words "not exceeding five thousand and eight hundred and twenty-three euro and forty-three cents (€5,823.43)," shall be substituted by the words "not exceeding six thousand euro (€6,000.00)," and the words "not exceeding five hundred and eighty-two euro and thirty-four cents (€582.34)" shall be substituted by the words "not exceeding six hundred euro (€600.00)".

Amendment of article 12 of the principal Act.

**36.** In article 12 of the principal Act, the words "not exceeding fifty-eight thousand and two hundred and thirty-four euro and thirty-three cents (€58,234.33)" shall be substituted by the words "not exceeding sixty thousand euro (€60,000.00)".

Amendment of article 15 of the principal Act.

**37.** In subarticle (3) of article 15 of the principal Act, the words "prescribed; and the findings of the said disciplinary committee shall be subject to such reference back, review or appeal as may be" shall be deleted.

Addition of new articles 15A to 15C of the principal Act.

**38.** Immediately after article 15 of the principal Act, there



shall be added the following new articles 15A, 15B and 15C:

"Appeals.

15A. (1) A right of appeal to the Appeals Tribunal, from the decisions referred to in article 15B, shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Appeals Tribunal shall also explain his juridical interest in impugning the decision appealed from.

Cap. 490.

(2) Unless otherwise provided by the Administrative Justice Act or any regulations made thereunder, an appeal from the decisions referred to in article 15B shall be made by application and shall be filed in the registry of the Appeals Tribunal within thirty days from the date on which the said decision has been notified to the party appealing.

Decisions of the Board that may be appealed from.

15B. Unless otherwise provided by law, an appeal shall lie to the Appeals Tribunal from the following decisions made under this Act:

(a) any decision of the Board not to advise the Minister to issue a warrant, taken pursuant to article 7(1)(a), and any decision of the Board not to issue a practising certificate, taken pursuant to article 7(1)(a);

(b) any decision of the Board pursuant to article 7(1)(b) taken following an enquiry held by the disciplinary committee appointed under article 7(16);

(c) any decision of the Board to take a measure in terms of article 7(1)(c);

(d) any decision of the disciplinary committee to impose an administrative fine pursuant to article 7(17);

(e) any decision of the Board to refuse the registration of a firm pursuant to article 10(7) or any decision of the Board pursuant to article 15(1) to suspend, cancel or subject to other conditions the registration of a firm or to revoke or cancel the registration of a firm pursuant to article 15(2)(e);

(f) any decision of the Board, pursuant to article 14, to issue administrative fines or reprimands or to impose other measures;

(g) any decision taken by the Board, pursuant to article 15(1), to revoke, withdraw or suspend a practising certificate, or to subject such practising certificate to other conditions, or to revoke or cancel a practising certificate pursuant to article 15(2)(e);

(h) any decision taken by the Board, pursuant to article 15(1), to suspend a warrant or to subject such warrant to other conditions;

(i) any decision taken by the Minister, on the advice of the Board, pursuant to article 15(1) or article 15(2)(d), to revoke or withdraw a warrant; and

(j) any decision taken in terms of regulations or directives issued under this Act, when the regulation or directive explicitly grants a right of appeal in terms of this article.

Status of decision pending an appeal before the Appeals Tribunal or the Court of Appeal.

15C. (1) The decision of the Board or the Minister, as the case may be, shall stand pending an appeal, whether before the Appeals Tribunal or the Court of Appeal, and shall be adhered to by all the parties to whom the decision applies.

(2) The Appeals Tribunal or the Court of Appeal, as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision of the Board or the Minister, as the case may be, pending the final determination of the appeal. The Appeals Tribunal or the Court of Appeal, in deciding to suspend the decision, shall state their reasons for doing so."

**39.** In subarticle (2) of article 16 of the principal Act, the words "of article 3(5)" shall be substituted by the words "of article 3(6)".

Amendment of article 16 of the principal Act.

**40.** Subarticle (1) of article 17 of the principal Act shall be substituted by the following:

Amendment of article 17 of the principal Act.

"(1) An auditor shall, in the case of his dismissal or resignation as auditor of an audit client during his term of appointment, inform the Board in writing of such dismissal or resignation of an audit and shall give adequate explanations for the reasons thereof."

**41.** In subarticle (1) of article 18 of the principal Act, the words "shall publish on their websites, within three months of each calendar year, annual transparency reports that include" shall be substituted by the words "shall, within three months of each calendar year, publish an annual transparency report on their website, and maintain such report on their website until the publication of a transparency report the following calendar year, that shall include".

Amendment of article 18 of the principal Act

**42.** Article 20 of the principal Act shall be amended as follows:

Amendment of article 20 of the principal Act.

(a) in the marginal note thereof, immediately after the words "Disclosure of measures" there shall be added the words "and decisions";

(b) the present article shall be renumbered as subarticle (1) thereof; and

(c) immediately after subarticle (1) thereof, as renumbered, there shall be added the following new subarticle:

"(2) Without prejudice to the generality of subarticle (1), the Board or the Minister, as the case may be, shall notify by registered mail the decisions taken pursuant to articles 7(1)(a), 7(1)(b), 7(1)(c), 7(17), 10(7),

14, 15(1), 15(2)(d) and 15(2)(e) to any person to whom such decision applies."

Addition of new article 21 to the principal Act.

**43.** Immediately after article 20 of the principal Act, there shall be added the following new article:

"Demonstration of compliance with Services (Internal Market) Act, 2009.

21. A warrant holder, practising certificate holder or firm shall, if so requested by the Board and in the manner determined by the Board, demonstrate compliance with the obligations imposed on such warrant holder, practising certificate holder or firm pursuant to the Services (Internal Market) Act, 2009."

## PART XII

### AMENDMENTS TO THE DOORSTEP CONTRACTS ACT

Amendments to the Doorstep Contracts Act. Cap. 317.

**44.** (1) This Part amends the Doorstep Contracts Act, and it shall be read construed as one with the Doorstep Contracts Act, hereinafter referred to in this Part as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 of the principal Act.

**45.** In article 2 of the principal Act, immediately after the definition "goods", there shall be added the following new definition:

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

Deletion of articles 4 and 5 of the principal Act.

**46.** Articles 4 and 5 of the principal Act shall be deleted.

Renumbering of article 5A of the principal Act.

**47.** Article 5A of the principal Act shall be renumbered as article 4 thereof.

Addition of new articles 6A and 6B to the principal Act.

**48.** Immediately after article 6 of the principal Act, there shall

be added the following new articles 6A and 6B:

"Obligation of the door-to door seller to give all information necessary of his own initiative.

6A. (1) Every licensed door-to-door seller has to provide to the consumer free of charge, and of his own initiative the following information:

(a) his name, legal status and whether he is operating as a commercial partnership, and what type of commercial partnership, the address of the commercial premises in the Member State in which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(b) if he is registered as a commercial partnership under the Companies Act or under the Commercial Partnerships Ordinance under article 5 of the Companies Act, the number of registration and all information relating to article 6 of the Companies Act;

(c) the particulars of the relevant competent authority issuing the license of a door-to-door seller or the single point of contact;

(d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax;

(e) in the case of the regulated professions, any professional body or similar institution with which the door-to-door seller is registered, the professional title and the Member State in which that title has been granted;

(f) the general conditions and clauses used by the provider.

Cap. 386.  
Cap. 168.

(2) In addition to the provisions of sub-article (1), every door-to-door seller duly licensed has to provide free of charge and on his own initiative, to the consumer, the following information:

(a) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and, or the competent courts;

(b) the existence of an after-sales guarantee, if any, not imposed by law;

(c) the price of the service, where a price is pre-determined by the provider for a given type of service;

(d) the main features of the service, if not already apparent from the context.

(3) All information referred to in sub-article (1) according to the provider's preference -

(a) has to be easily accessible to the consumer at the place where the service is provided or the contract concluded;

(b) must be easily accessed by the recipient electronically by means of an address supplied by the provider, and;

(c) must appear in any information documents, supplied to the consumer by the door-to-door seller, which set out a detailed description of the service he provides.

Information to be given by door-to-door seller on the consumer's request.

6B. (1) Every door-to-door seller at the consumer's request has to provide the following additional information:

(a) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;

(b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them;

(c) information on the multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which door-to-door sellers give a detailed description of their services;

(d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;

(e) where a provider is a member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

(2) Any information as required in sub-article (1) is to be made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the doorstep contract."

**49.** In article 14A of the principal Act, for the words "other than articles 5 and 5A", there shall be substituted the words "other than article 4".

Amendment to  
article 14A of  
the principal  
Act.

Substitution of article 15 of the principal Act.

**50.** Article 15 of the principal Act shall be substituted by the following new article:

"15. The Minister may make regulations for better putting into effect any of the provisions of this Act, and without prejudice to the generality of the foregoing may by such regulations prescribe:

(a) the form in which any contract or cancellation or any clause thereof shall be made, whether generally or in respect of any class of goods;

(b) the means of identification of any door-to-door seller licensed under this Act;

(c) such goods or services that may not be sold by means of a doorstep contract;

(d) any other matter which may be prescribed under this Act."

### PART XIII

#### AMENDMENTS TO THE ENGINEERING PROFESSION ACT

Amendments to the Engineering Profession Act. Cap. 321.

**51.** (1) This Part amends the Engineering Profession Act, and it shall be read and construed as one with the Engineering Profession Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 of the principal Act.

**52.** Article 2 of the principal Act shall be amended as follows:

(a) in the definition "Board", for the words "Engineering Board" there shall be substituted the word "Engineering Profession Board";

(b) immediately after the definition "Engineer" there shall be inserted the following new definition:

" "Member State" means a Member State of the European Economic Area;"

(c) in the definition "Minister", for the word "infrastructure" there shall be substituted the word "works"; and

(d) immediately after the definition "profession of



engineer" there shall be inserted the following new definition:

" "service provider" means a person from any Member State or any country in the European Economic Area who exercises the engineering profession on a temporary basis in Malta;"

**53.** Article 3 of the principal Act shall be amended as follows: Amendment of article 3 of the principal Act.

(a) in subarticle (2) thereof -

(i) in paragraph (a) thereof, immediately after the words "he is a citizen of Malta" there shall be added the words "or of a Member State or is otherwise legally entitled to work in Malta"; and

(ii) for subparagraph (i) of paragraph (d) thereof, there shall be substituted the following:

"(i) he is in possession of such degree of the University of Malta or an equivalent academic qualification relating to the engineering profession both of which, at the relevant time, are recognised by the Board to be sufficient for the purposes of this article;" and

(b) immediately after subarticle (4) thereof, there shall be added the following new subarticle:

L.N. 422 of 2007.      "(5) Subarticle (2) shall be interpreted in accordance with the Recognition of Professional Qualifications Regulations, 2007."

**54.** Immediately after article 3 of the principal Act there shall be added the following new article: Addition of new article 3A to the principal Act.

"Acknowledgement of receipt of an application.

3A. (1) The Board shall acknowledge the receipt of an application for a warrant as soon as possible and in any case not later than one month from the date of the receipt of the application. If the applicant does not submit all the documentation, the Board shall inform the applicant accordingly.

(2) The Board shall complete the procedure for examining applications as early as possible. The Board shall give its reasoned decision within three months after the date on which the complete application is received. The Board may extend this period by one month, provided that the applicant is notified prior to the expiration of the original period established in this sub-article.

(3) In the event that the Board does not give its decision within the period established in sub-article (2), this shall not imply tacit approval of the application.

(4) The acknowledgement referred to in sub-article (1) shall specify:

(a) the time period within which the application shall be processed;

(b) the available means of redress; and

(c) a statement that in the absence of a response within the specified time period, the authorisation shall not be deemed to have been granted."

Amendment of article 5 of the principal Act.

**55.** In subarticle (1) of article 5 of the principal Act immediately after the words "grant a special licence to any person holding" there shall be added the words "academic qualifications at least equivalent to those listed in article 3(2)(d) and who is a national of a country outside the European Union or the European Economic Area, and therefore does not fall within the ambit of articles 3 and 5B and holding".

Addition of new article 5B to the principal Act.

**56.** Immediately after article 5A of the principal Act there shall be added the following new article:

"Temporary provision of services. Cap. 451.

**5B.** (1) Without prejudice to the Mutual Recognition of Qualifications Act and notwithstanding the provisions of article 3 of this Act, any person established in another Member State may practise the profession of engineer in Malta on a temporary and occasional basis provided that such person:

(a) is legally established in another Member State for the purpose of pursuing the engineering profession in that Member State; and

(b) has pursued the engineering profession for at least two years during the ten years immediately preceding the provision of services where the engineering profession is not regulated in that Member State.

(2) Persons referred to in subarticle (1) shall inform the Board by means of a written declaration to be made in advance which shall include the following:

(a) the details of an insurance cover or other means of personal or collective protection relative to professional liability. This declaration shall be made once a year if the applicant intends to provide temporary or occasional services during the year;

(b) proof of the nationality of the applicant;

(c) an attestation certifying that the warrant holder is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising the profession of engineer even temporarily, at the moment of delivering the attestations;

(d) evidence of professional qualifications; and

(e) where applicable, any means of proof that the applicant has pursued the engineering profession for at least two years during the previous ten years immediately preceding the provision of services.

(3) Where the Board, in exercising its authority under this article, deems that there is a substantial difference between the professional qualifications of the applicant and the academic qualifications required under article 3(2)(d)(i), to the extent that the difference is such as to be harmful to public health, safety and security, the Board shall give the applicant the opportunity to show, in particular by means of an aptitude test, that he has acquired the knowledge or competence which he lacks.

(4) The Board shall assess the temporary and occasional nature of the provision of the engineering services on a case by case basis.

(5) (a) The Board shall give its decision within one month from the date of receipt of the declaration referred to in sub-article (2).

(b) Whenever a decision could not be given during the established time, the Board shall notify this information to the applicant within the period established in paragraph (a). The Board shall extend this period only once for another period of one month.

(c) In the event that the Board does not give its decision within the period referred to in paragraph (b), the engineering services falling under this article may be provided.

(6) A person exercising the profession under this article shall be deemed to be a warrant holder and the provisions of this Act and of any other law shall apply to him in the same manner and to the same extent as with any other warrant holder."

Amendment of  
article 6 of the  
principal Act.

**57.** Article 6 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "Engineering Board" there shall be substituted the words "Engineering Profession Board"; and

(b) immediately after subarticle (8) thereof, there shall be added the following new subarticle:

"(9) The Board shall, in the fulfilment of its

functions, act independently and impartially."

**58.** Immediately after article 7 of the principal Act there shall be added the following new article:

Addition of new article 7A to the principal Act.

"Appeals. 7A. Decisions of the Board shall be subject to appeal before the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act."  
Cap. 490.

**59.** Article 10 of the principal Act shall be amended as follows:

Amendment of article 10 of the principal Act.

(a) in subarticle (1) thereof, for the words from "Every warrant holder" to the words "committed by the warrant holder," there shall be substituted the words "Every warrant holder or any person who is granted a special licence under this Act, or any person who exercises the profession of engineer on a temporary and occasional basis or partnership registered under this Act shall be covered by an indemnity insurance against any liability which the warrant holder or any person who is granted a special licence under this Act, or any person who exercises the profession on a temporary and occasional basis or the partnership may incur for compensation in respect of loss or damage to any person as a result of any negligent act, error or omission committed by the warrant holder, or by any person who is granted a special licence under this Act, or any person who exercises the profession on a temporary and occasional basis,";

(b) in the proviso to subarticle (1) thereof, immediately after the words "that the provisions of this subarticle shall not apply to warrant holders" there shall be added the words "or to any person who exercises the profession of engineer on a temporary and occasional basis";

(c) the present subarticle (2) shall be renumbered as subarticle (3) thereof and for the words, "Every warrant holder" there shall be substituted the words "Every person"; and

(d) immediately after subarticle (1) thereof, there shall be added the following new subarticle:

"(2) The Board shall only accept any professional liability insurance of any person providing the services of engineering in terms of article 5B(1) if the Board considers that the professional liability insurance subscribed to is

equivalent or essentially comparable as regards the purpose and cover it provides in terms of insured risk. The Board shall require supplementary insurance or guarantee in those cases when the professional liability insurance is not adequate to cover all risks."

Amendment of article 11 of the principal Act.

**60.** Article 11 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, immediately after the words, "Any agreement or other arrangement purporting to exempt a warrant holder" there shall be added the words "or any person who is granted a special licence under this Act, or any person who exercises the profession of engineer on a temporary and occasional basis"; and

(b) in subarticle (2) thereof, immediately after the words, "Any agreement or other arrangement whereby a warrant holder" there shall be added the words "or a person who is granted a special licence under this Act, or any person who exercises the profession of engineer on a temporary and occasional basis,".

Amendment of article 19 of the principal Act.

**61.** In subarticle (4) of article 19 of the principal Act, immediately after the words, "Any person who, not being the holder of a warrant or a special licence" there shall be added the words "or who is otherwise not entitled to practise temporarily".

#### **PART XIV**

#### **AMENDMENTS TO THE EDUCATION ACT**

Amendments to the Education Act. Cap. 327.

**62.** (1) This Part amends the Education Act and it shall be read and construed as one with the Education Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 20 of the principal Act.

**63.** Article 20 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words "the national minimum conditions:" there shall be substituted the words "the national minimum conditions." and the proviso thereto shall be deleted;

(b) in subarticle (6) thereof, immediately after the words "received by the Minister." there shall be added the words

"A decision to refuse an application for a licence shall be accompanied with the reasons for refusal. Failure to notify the applicant about the decision regarding an application for a licence within the time established in this sub-article shall, for reasons of public interest, be deemed to be a refusal of the licence applied for:" and immediately thereafter there shall be inserted the following new provisos:

"Provided that an application for a licence to establish a school shall not be deemed to have been filed by an applicant unless it is duly filled in and accompanied with all required information and documentation:

Provided further that in the case of an application made under subarticle (2), an application for a licence to establish a school shall not be deemed to have been submitted by the Catholic Church if such application is not signed by the Bishops in Ordinary of these Islands or authorised by them in writing.";

(c) in subarticle (9) thereof, for the words "further or higher education level." there shall be substituted the words "further or higher education level:" and immediately thereafter there shall be inserted the following new proviso:

"Provided that where an applicant for a licence is already licensed or otherwise legally established in a Member State, the Minister, in compliance with Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market, shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which the applicant may already be subject to in another Member State."; and

(d) for subarticle (10) thereof, there shall be substituted the following:

"(10) Where an application has been refused, suspended or cancelled, the applicant for a licence may appeal to the Court of Appeal (Inferior Jurisdiction) according to the provisions of article 127.".

**64.** In subarticle (1) of article 28 of the principal Act, for the words "as the Council may require." there shall be substituted the words "as the Council may require:" and immediately thereafter there shall be inserted the following new proviso:

Amendment of  
article 28 of the  
principal Act.

"Provided that an application made under this article shall not be deemed to have been filed by an applicant unless it is duly filled in and accompanied with all required information and documentation."

Amendment of article 32 of the principal Act.

**65.** In subarticle (1) of article 32 of the principal Act, immediately after the words "to refuse an application for the issuing of a warrant," there shall be inserted the words "or where no decision has been notified to the applicant within the time established in article 29,".

Addition of new article 33A to the principal Act.

**66.** Immediately after article 33 of the principal Act, there shall be inserted the following new article:

"Temporary provision of services.

L.N. 422 of 2007.

33A. Any person established in a Member State may practise the profession of teacher in Malta on a temporary and occasional basis provided that the provisions of Part II of the Recognition of Professional Qualifications Regulations, 2007 are satisfied."

## PART XV

### AMENDMENTS TO THE MALTA TRANSPORT AUTHORITY ACT

Amendments to the Malta Transport Authority Act. Cap. 332.

**67.** (1) This Part amends the Malta Transport Authority Act, and it shall be read and construed as one with the Malta Transport Authority Act, hereinafter referred to in this Part as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 of the principal Act.

**68.** Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "licence", there shall be added the following new definition:

" "Member State" means a Member State of the European Economic Area;" and

(b) immediately after the definition "transport of goods", there shall be added the following new definition:

" "Treaty" means the Treaty establishing the European Community;".



**69.** Article 2A of the principal Act shall be renumbered as article 2B thereof. Renumbering of article 2A of the principal Act.

**70.** Immediately after article 2 of the principal Act, there shall be added the following new article 2A: Addition of new article 2A to the principal Act.

"Definitions in 2A. Unless otherwise stated in this Act,  
 Services (Internal the definitions in the Services (Internal Market)  
 Market) Act, Act, 2009 shall apply."  
 2009.

**71.** Immediately after paragraph (r) of article 4(1) of the principal Act, there shall be added the following new paragraph: Amendment of article 4 of the principal Act.

"(s) to do all such things as are necessary for facilitating the exercise of freedom of establishment of service providers and the free movement of services in accordance with the Services (Internal Market) Act 2009, including providing applicants, providers or recipients with such relevant information and assistance as is necessary to access and exercise relevant service activities and all such rights as are related thereto, and, where required, cooperating with, assisting, and providing information to the competent authorities of other Member States:

Provided that in fulfilling the above functions and duties, the Authority shall facilitate and encourage communication by electronic means."

**72.** Immediately after subarticle (6) of article 34 of the principal Act, there shall be added the following new sub-article (7): Amendment of article 34 of the principal Act.

"(7) Nothing in this article shall be construed as limiting, restricting or otherwise affecting any law, regulation or other rule made in relation to the conditions and criteria under which the Authority may grant, renew, refuse to grant, refuse to renew, suspend or revoke a licence for service activities falling within the scope of application of the Services (Internal Market) Act, 2009:

Provided that services in the field of transport as set out in Article 45 of the Treaty shall not be deemed to be included within the scope of application of the Services (Internal Market) Act, 2009:

Provided further that, without prejudice to the definition of "licence" in article 2, where the Authority requires a certificate, attestation or document proving that a requirement has been satisfied in terms of the Services (Internal Market) Act

2009, the Authority shall accept any certificate, attestation or document from another Member State which serves the equivalent purpose or from which it is clear that the said requirement has been satisfied and shall not require any such certificate, attestation or document to be produced in its original form or as a certified copy or certified translation save in cases provided for in Community instruments or where it is justified by an overriding reason relating to the public interest, including public order and public security."

Addition of new article 35 to the principal Act.

**73.** Immediately after article 34 of the principal Act, there shall be added the following new article 35:

"Services falling within the scope of the Services (Internal Market) Act, 2009.

35. Where service activities fall within the scope of application of the Services (Internal Market) Act 2009, the Authority shall respect the right of a provider that is lawfully established and providing services in another Member State to provide services in Malta:

Provided that the Authority may impose requirements with regard to the provision of service activities where these are justified for reasons related to public policy, public security, public health or the protection of the environment:

Provided further that in establishing whether a provider is exercising his freedom to provide services within the meaning of article 6 of the Services (Internal Market) Act, 2009 and Article 49 of the Treaty, or is an establishment case, or whether a service provider is absolutely taking advantage of the freedom to provide services, the Authority shall assess and decide in each case on its own individual merits and in conformity with Community legislation and the rulings of the European Court of Justice."

## PART XVI

### AMENDMENTS TO THE EMPLOYMENT AND TRAINING SERVICES ACT

Amendments to the Employment and Training Services Act. Cap. 343.

**74.** (1) This Part amends the Employment and Training Services Act and it shall be read and construed as one with the Employment and Training Services Act hereinafter in this Part

referred to as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

**75.** Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) for the definition "Director", there shall be substituted the following new definition:

" "Director" means the Director of Industrial and Employment Relations and includes any officer of the Department of Industrial and Employment Relations who is authorized by the Director to act on his behalf;"; and

(b) immediately after the definition "financial year", there shall be inserted the following new definition:

" "Member State" means a member state of the European Union or of the European Economic Area;".

**76.** Article 23 of the principal Act shall be amended as follows: Amendment of article 23 of the principal Act.

(a) subarticle (1) thereof shall substituted by the following new subarticle:

"(1) Without prejudice to the provisions of Part III of this Act, no person shall carry on an employment agency or an employment business unless:

(a) he is the holder of a current licence granted by the Director authorizing him to carry on such an agency or business in premises specified in the licence, or

(b) he is the holder of a relevant authorization to conduct business as an employment agency by a competent authority in a Member State, and has notified the Director of his intention to provide or that he is providing services of an employment agency in Malta within five working days from the date of the commencement of this activity:

Provided that for the purposes of this article, the term 'relevant authorisation' means the authorization to perform the services of an employment agency issued by a competent authority of a Member State and it shall be

read and construed in terms of the Services (Internal Market) Act, 2009:

Provided further that the Director may impose any necessary requirements on holders of relevant authorizations referred to in paragraph (b) in terms of the Services (Internal Market) Act, 2009.";

(b) subarticles (2) to (13) thereof shall be deleted; and

(c) subarticle (14) thereof shall be renumbered as sub-article (2).

Amendment of article 24 of the principal Act.

**77.** Subarticle (1) of article 24 of the principal Act shall be substituted by the following new subarticle:

"(1) Where the Director intends to refuse to grant or transfer a licence, or to revoke the same, he shall notify the applicant for, or the holder of, the licence or the person to whom it is requested that the licence be transferred, of his intention and the reasons therefor."

## PART XVII

### AMENDMENTS TO THE PERITI ACT

Amendments to the Periti Act. Cap. 390.

**78.** (1) This Part amends the Periti Act, and it shall be read and construed as one with the Periti Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 2 of the principal Act.

**79.** In article 2 of the principal Act, immediately after the definition "profession", there shall be added the following new definitions:

" "service provider" means a person from any Member State or any country in the European Economic Area who exercises the profession on a temporary basis in Malta;

"Treaty" means the Treaty establishing the European Community;"

Amendment of article 3 of the principal Act.

**80.** Immediately after subarticle (2) of article 3 of the

principal Act, there shall be added the following new subarticle:

L.N. 422 of 2007.      "(3) Subarticle (2) shall be interpreted in accordance with the Recognition of Professional Qualifications Regulations, 2007."

**81.** Immediately after article 5 of the principal Act there shall be added the following new article:

Addition of new article 5A to the principal Act.

"Temporary provision of services. Cap. 451.      5A. Without prejudice to the Mutual Recognition of Qualifications Act and notwithstanding the provisions of articles 3 and 4 of this Act, any person established in another Member State may practice the profession in Malta on a temporary and occasional basis subject to further requirements as may be provided under this Act."

**82.** For subarticle (2) of article 7 of the principal Act, there shall be substituted the following new subarticle:

Amendment of article 7 of the principal Act.

"(2) The Board shall exercise its functions independently and according to its own judgment. In the exercise of its functions the Board may:

(a) consult such persons as it may consider necessary; and

(b) appoint committees under the chairmanship of a member of the Board for the purpose of the carrying out of such duties and tasks as the Board may assign to them."

**83.** Immediately after article 7 of the principal Act there shall be added the following new article:

Addition of new article 7A to the principal Act.

"Appeals. Cap. 490.      7A. Decisions of the Board shall be subject to appeal before the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act."

**PART XVIII**

**AMENDMENTS TO THE MALTA TRAVEL  
AND TOURISM SERVICES ACT**

Amendments to  
the Malta Travel  
and Tourism  
Services Act.  
Cap. 409.

**84.** (1) This Part amends the Malta Travel and Tourism Services Act, and it shall be read and construed as one with the Malta Travel and Tourism Services Act, hereinafter referred to in this Part as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of  
article 2 of the  
principal Act.

**85.** In article 2 of the principal Act:

(a) immediately after the definition "licence" there shall be inserted the following new definition:

" "Member State" means a member state of the European Economic Area;"

(b) immediately after the definition "public officer" there shall be added the following definition:

" "requirement" means any obligation, prohibition, condition or limit provided for in the laws or regulations, or in the administrative provisions, or administrative practices of the Authority;" and

(c) the definition "tourist guide" shall be deleted and substituted by the following:

" "tourist guide" means a person who guides visitors in the language of their choice and interprets the cultural and natural heritage of Malta and/or specific area or areas, and who possesses a specific relevant qualification and licence issued and/or recognised by the Authority;"

Substitution of  
article 17 of the  
principal Act.

**86.** Article 17 of the principal Act shall be substituted by the

following new article:

"Disclosure  
of interest in  
contract.

17. (1) Any member of the Authority or of any committee, commission or other body established by this Act who is in any way, directly or indirectly interested in any particular matter considered or to be considered by the Authority or by such other body shall declare the nature of his interest either at the meeting at which the matter is first considered or, if he was not at the date of that meeting so interested in the matter, at the next meeting after he shall have become so interested.

(2) Without prejudice to the provisions of subarticle (1), where at a meeting of the Authority or by such other body any of the following matters arises, namely -

(a) an arrangement to which the Authority is a party or a proposed such arrangement, or

(b) a contract or other agreement with the Authority or a proposed such contract or other agreement, or

(c) the assessment of any application for the issue or renewal of a licence or other authorisation and any decision relating thereto, or

(d) any decision of the Authority taken after reviewing the methods of operation of a licensee, or

(e) any other particular matter in which any member of the Authority or such other body is in any way, directly or indirectly interested,

then, any member of the Authority present at the meeting who otherwise than in his or her capacity as such a member has a material interest in the matter, shall -

(i) at the meeting, disclose to the Authority the fact of such interest and the nature thereof,

(ii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,

(iii) take no part in any deliberation of the Authority relating to the matter, and

(iv) not vote on a decision relating to the matter.

(3) Where a material interest is disclosed pursuant to subarticle (2), the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) A member of the Authority who, otherwise than in his or her capacity as such a member has a material interest in -

(a) an arrangement or proposed arrangement to which subarticle (2)(a) applies; or

(b) a contract or other agreement or a proposed contract or other agreement to which subarticle (2)(b) applies; or

(c) the assessment of any application for the issue or renewal of a licence or other authorisation and any decision relating thereto; or

(d) any decision of the Authority taken after reviewing the methods of operation of a licensee; or

(e) any other particular matter in which any member of the Authority or by such other body is in any way, directly or indirectly, interested,

shall neither influence nor seek to influence any decision to be made by the Authority in relation thereto.



(5) Where at a meeting of the Authority a question arises as to whether or not a course of conduct, if pursued by a member of the Authority, would constitute a failure by him or her to comply with the requirements of subarticles (2) and (3), the question may, subject to subarticle (6), be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(6) Where at a meeting of the Authority, the chairperson of the meeting is the member in respect of whom a question to which subarticle (5) applies falls to be determined, then the other members of the Authority attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

(7) Where the Minister is satisfied that a member of the Authority has acted contrary to any of the provisions of this article, the Minister may, if he or she thinks fit, remove that member from office and, where a person is removed from office pursuant to this subarticle, he or she shall thenceforth be disqualified for membership of the Authority.

(8) The term 'material interest' in this article shall include, but not be limited to, being in the same type of business as the applicant, or licensee, as the case may be."

**87.** Article 18 of the principal Act shall be amended as follows:

Amendment of article 18 of the principal Act.

(a) in subarticle (4) after the word "specified.", the following paragraph shall be added:

"Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time."; and

(b) subparagraph (7) shall be deleted and substituted by the following:

"(7) A licence may be granted or renewed as subject to such requirements, conditions, limitation and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act."

Amendment of article 19 of the principal Act.

**88.** Article 19 of the principal Act shall be amended as follows:

(a) in paragraph (a), for the words "or provides such accommodation," there shall be substituted the words "or provides such accommodation." and the words ", and in addition the person who will in fact operate as aforesaid will be qualified and, or experienced to so operate to the satisfaction of the Authority;" shall be deleted; and

(b) in paragraph (a) after the paragraph ending with the words "or who in fact effects such operation or provides such accommodation.", there shall be added the following paragraph:

"The person who will be responsible for such operation or provision of accommodation or who in fact effects such operation or provides such accommodation possesses the skills and competencies necessary to operate a business of a hotel, guest house, hostel, holiday premises or catering establishment or to provide accommodation to tourists in a house, as the case may be, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity;"

Amendment of article 20 of the principal Act.

**89.** In article 20 of the principal Act the words "be transferred to any person who in the opinion of the Authority has the attributes mentioned in article 19(1)(a)" shall be deleted and substituted by the words "be transferred to any person who fulfils the requirements mentioned in article 19(1)(a)".

Amendment of article 27 of the principal Act.

**90.** Article 27 of the principal Act shall be amended as follows:

(a) in subarticle (2) after the words "as may be specified." there shall be added the following proviso:

"Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time."; and

(b) for subarticle (4) there shall be substituted the following:

"(4) A licence may be granted or renewed as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act."

**91.** Subarticle (a) of article 28 of the principal Act shall be deleted and substituted by the following:

Amendment of article 28 of the principal Act.

"(a) the person applying thereof is of good character standing and is fit and proper to be granted and operate a licence in relation to the business of an incoming tourism agent or a travel agent or of a destination management company, as the case may be:

Provided that if the applicant is a body corporate -

(i) the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;

(ii) the person applying thereof possesses the skills and competencies necessary to operate a business of an incoming tourism agent, or of a travel agent or of a destination management company as the case may be, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity:

Provided further that where the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;"

**92.** In subarticle (1) of article 30 of the principal Act, the words "in the opinion of the Authority satisfies the provisions of section 28 of this Act" shall be deleted and substituted by the words "fulfils the requirements of article 28".

Amendment of article 30 of the principal Act.

**93.** Subarticle (1) of article 31 of the principal Act shall be deleted and substituted by the following:

Amendment of article 31 of the principal Act.

"(1) Every tourism operation requiring a licence under this Act, except a licence to act as a tourist guide unless specifically prescribed in Regulations made under this Act, shall satisfy the Authority that it has at all times in its favour a policy of third party liability insurance and, in addition, or if required by the Authority, a policy of professional indemnity insurance, which policy or policies shall indemnify it, and any person employed by it, or otherwise acting for it, to such amount, in such manner and in respect of such matters as the Authority may establish."

Amendment of article 32 of the principal Act.

**94.** Article 32 of the principal Act shall be amended as follows:

(a) in subarticle (2), after the words "as may be specified." there shall be added the following proviso:

"Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time."; and

(b) subarticle (4) shall be deleted and substituted by the following:

"(4) A licence may be granted or renewed as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act."

Amendment of article 33 of the principal Act.

**95.** Subarticle (a) of article 33 of the principal Act shall be deleted and substituted by the following:

"(a) (i) the person applying thereof is of good character standing and is fit and proper to be granted and operate a licence in relation to the business of an organised excursion operator:

Provided that if the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;

(ii) the person applying thereof possesses the skills and competencies necessary to operate a business of an organized excursion operator, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity:

Provided that where the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;"

**96.** In subarticle (1) of article 35 of the principal Act, the words "in the opinion of the Authority satisfies the provisions of article 33" shall be deleted and substituted by the words "fulfils the requirements of article 33".

Amendment of article 35 of the principal Act.

**97.** Article 36 of the principal Act shall be amended as follows:

Amendment of article 36 of the principal Act.

(a) subarticle (1) shall be deleted and substituted by the following:

"(1) No person shall act, hold himself out as acting as a tourist guide or use the title of a "tourist guide" unless he is in possession of a licence in accordance with this Act and regulations issued under it.";

(b) subarticle (2) shall be deleted and substituted by the following:

"(2) A licence may be granted and renewed for such periods and as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act and regulations issued under it.";

and

(c) subarticle (4) shall be deleted.

**98.** Article 37 of the principal Act shall be deleted and substituted by the following:-

Amendment of article 37 of the principal Act.

"37. A licence shall not be granted for the purposes of article 36 unless:

(a) the person applying thereof is of good character and is fit and proper to act as a tourist guide; and

(b) the person applying thereof possesses the relevant qualification/s to act as tourist guide; or

(c) demonstrates that he has the practical and theoretical competencies and experience deemed and recognized to be equivalent to (b) above by the Authority in terms of this Act and

regulations issued under it."

Amendment of  
article 47 of the  
principal Act.

**99.** Subarticle (1)(b) of article 47 of the principal Act shall be deleted and substituted by the following:

"(b) require that any category or class of persons working, whether employed or self-employed, in any tourism operation shall be in possession of such licences or shall be in possession of such certificates of competence or qualifications as may be prescribed;"

## PART XIX

### AMENDMENTS TO THE MALTA RESOURCES AUTHORITY ACT

Amendments to  
the Malta  
Resources  
Authority Act.  
Cap. 423.

**100.** (1) This Part amends the Malta Resources Authority Act, and it shall be read and construed as one with the Malta Resources Authority Act, hereinafter referred to in this Part as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of  
article 2 of the  
principal Act.

**101.** Article 2 of the principal Act shall be amended as follows:

(a) in the definition "authorisation", for the words "or service however so described relating to resources", there shall be substituted the words "relating to resources and in relation to services and service providers means a permit, licence, warrant, appointment, concession or decision concerning access to a service activity or the exercise thereof relating to resources";

(b) immediately after the definition "authorisation", there shall be inserted the following new definition:

" "authorisation scheme" means any authorisation or other procedure of an administrative nature, under which a provider or recipient is in effect required to take steps in order to commence the activity in question and obtain from a competent authority authorisation concerning access to a service activity or the exercise thereof;"

(c) immediately after the definition "energy", there shall be inserted the following new definition:

" "establishment" means the actual pursuit of an

economic activity as referred to in Article 43 of the Treaty, by a service provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;"

(d) immediately after the definition "gas", there shall be inserted the following new definition:

" "Internal Market Information System" means the information system through which competent authorities exchange information in fulfillment of their obligations under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market;"

(e) immediately after the new definition "Internal Market Information System", there shall be inserted the following new definition:

" "Member State" means a member state of the European Economic Area;"

(f) immediately after the new definition "Member State", there shall be inserted the following new definition:

" "Member State of establishment" means the Member State in whose territory the provider of the service concerned is established;"

(g) immediately after the new definition "Member State of establishment", there shall be inserted the following new definition:

" "Member State where the service is provided" means the Member State where the service is supplied by a provider established in another Member State;"

(h) immediately after the definition "Minister", there shall be inserted the following new definition:

" "overriding reasons relating to the public interest" means the reasons recognised as such in the case law of the European Court of Justice in relation to Articles 43 and 49 of the Treaty, as they may continue to evolve and including the following grounds:

(a) public policy, public security, public safety and public health; provided that these grounds

shall be interpreted within the meaning of Article 46 and Article 55 of the Treaty;

(b) the maintenance of order in society;

(c) social policy objectives;

(d) the protection of the recipients of services;

(e) consumer protection;

(f) the prevention of fraud;

(g) the prevention of unfair competition;

(h) the protection of the environment;";

(i) immediately after the definition "public officer", there shall be inserted the following new definition:

" "recipient" means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;";

(j) immediately after the definition "resources", there shall be inserted the following new definition:

" "service" means any self-employed activity performed for an economic consideration as referred to in Article 50 of the Treaty;";

(k) immediately after the new definition "service", there shall be inserted the following new definition:

" "services of a general economic interest" means those services declared by the Minister responsible for Competition as services of general economic interest in terms of article 30(3) of the Competition Act;".

(l) immediately after the new definition "services of a general economic interest", there shall be inserted the following new definition:



" "service provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;"; and

(m) immediately after the definition "transmission", there shall be inserted the following new definition:

" "Treaty" means the Treaty establishing the European Community;".

**102.** Immediately after article 38 of the principal Act, there shall be inserted the following new article:

Addition of new article 39 to the principle Act.

"Service providers.

39. (1) In regulating access to service activities falling under this Act and, or the exercise thereof, the Authority shall, where such service activities fall within the scope of the Services (Internal Market) Act, 2009:

(a) act objectively, transparently, efficiently and in a timely manner;

(b) provide information and assistance to service providers and recipients subject to the provisions of this Act;

(c) make it possible to complete all procedures and formalities relating to access to a service activity and to the exercise thereof, available electronically through the designated point of single contact:

Provided that the requirement to make it possible to complete all procedures and formalities electronically through the point of single contact shall not apply to the inspection of premises from which the service is provided or of equipment used by the service provider.

(2) When a service provider is already established in another Member State, and seeks access to a service activity or the exercise thereof in Malta:

(a) where the service activity is subject to an authorisation scheme or the fulfillment of other requirements regulating establishment in Malta, the Authority shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose which a service provider may already be subject to in another Member State where he is already established;

(b) where the Authority requires a service provider to supply a certificate, attestation or document proving that a requirement has been satisfied in terms of this Act or regulations made thereunder:

(i) it shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied;

(ii) it may not require a document from another Member State to be produced in its original form or as a certified copy or certified translation save in the cases provided for in a Community instrument or where such a requirement is justified by an overriding reason relating to the public interest, including public order and public security:

Provided that the provisions of this paragraph shall not affect the right of the Authority from requesting a non-certified translation of documentation in the Maltese or in the English language.

(3) Where the number of authorisations available for a service activity is limited because of the scarcity of available natural resources, technical capacity or if justified by an overriding reason relating to public interest, the Authority shall apply a selection procedure to potential candidates in order to ensure impartiality, transparency, conditions of open competition, including in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, the Authority may give consideration to issues relating to public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, and other overriding reasons relating to the public interest, in conformity with Community law.

(4) An authorisation granted to a service provider shall be for an indefinite period, except where:

(a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(b) the number of available authorisations is limited in terms of sub-article (3);

(c) a limited authorisation period can be justified by an overriding reason relating to the public interest:

Provided that in cases referred to in paragraph (b), an authorisation shall be granted for an appropriate limited period enabling the service provider to recover the cost of investment and to make a fair return on the capital invested, which authorisation may not have an excessive duration, be open to automatic renewal nor confer any other advantage on the service provider whose authorisation has just expired or on any person having any particular links with that provider.

(5) An authorisation granted by the Authority shall enable the service provider to have access to the service activity or the exercise thereof throughout Malta including by means of the setting up of agencies, subsidiaries, branches or offices, except where the authorisation for each individual establishment or a limitation of authorisation to a certain part of the territory is justified by an overriding reason relating to public interest:

Provided that the service provider shall be required to inform the Authority of the creation of subsidiaries, branches, offices or agencies whose activities fall within the scope of the authorisation scheme.

(6) In the fulfillment of its authorisation function in terms of this article, the Authority shall:

(a) acknowledge all applications requesting authorisation;

(b) in case of an incomplete application, inform the applicant as quickly as possible of the need to supply any additional information, together with the consequences which ensue should the applicant delay in providing the said information or requirements;

(c) process an application for an authorisation as quickly as possible and in any event within a time period which shall be fixed and made public in advance failing which it shall be deemed that the authorisation has been granted. The period will start to run from the day when all due information has been submitted and any other requirements and formalities have been completed in order for the Authority to process the application:

Provided that the time period may be extended once for a limited time when justified by the complexity of the issue. The extension and its duration shall be duly justified and given to the applicant before the original period has expired:

Provided further that the Authority may make different arrangements where objectively justified by overriding reasons relating to the public interest including a legitimate interest of third parties;

(d) provide information regarding the means of redress available in case of non-acceptance of an application;

(e) grant an authorisation as soon as the applicant fulfills all requirements, without prejudice to the right of the Authority to revoke or modify an authorisation when the conditions for authorisation are no longer met by the service provider;

(f) in the case of rejected applications due to failure to comply with the required procedures or formalities, inform the applicant of the rejection as soon as possible;

(g) except in the case of the granting of an authorisation, a decision from the Authority, including refusal or withdrawal, shall be fully reasoned and shall be open to challenge before the Appeals Board.

(7) With the exclusion of service activities and matters which are declared to be services of a general economic interest, which *inter alia* may include -

(a) in the electricity sector, services covered by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;

(b) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;

(c) water distribution and supply services and waste water services,

the Authority shall respect the right of service providers that are lawfully established and providing services in another Member State to provide services in Malta, and may not prevent them from providing such service activities by imposing requirements which are discriminatory, unnecessary or disproportionate:

Provided that the Authority may impose requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment:

Provided also that in establishing whether a service provider is exercising his freedom to provide services within the meaning of this article and Article 49 of the Treaty, or is an establishment case, or whether a service provider is abusively taking advantage of the freedom to provide services, the Authority shall assess and decide each case on its individual merits and in conformity with Community legislation and rulings of the European Court of Justice.

(8) Without prejudice to sub-article (7), in exceptional cases only, the Authority may, in respect of a service provider established in another Member State, take measures in order to ensure the safety of services provided in Malta. When taking such measures, the Authority shall follow the procedure established under the Fourth Schedule to the Services (Internal Market) Act, 2009, and ensure the fulfillment of the following conditions:

(a) the national provisions, in accordance with which the measures are taken, have not been subject to Community harmonisation in the field of the safety of services;

(b) the measures taken provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;

(c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those requested by the Authority and as referred to in paragraphs 2 and 3 to the Fourth Schedule to the Services (Internal Market) Act, 2009;

(d) the measures are proportionate:

Provided that the Authority, upon gaining actual knowledge of any conduct or specific acts by a service provider established in Malta and which provides services in other Member States, which, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, shall inform all other Member States and the European Commission within the shortest possible period of time through the Internal Market Information System.

(9) (a) The Authority shall require service providers established in Malta and falling under its area of competence to keep it updated at all times with the information it identifies as necessary and objectively justified for it to fulfill its supervisory function of services in terms of this Act and the Services (Internal Market) Act, 2009.

(b) The Authority shall exercise its supervisory functions on service providers established in Malta, and falling under its area of competence, whether the service is provided in Malta or in another Member State.

(c) In executing its supervisory functions, when a service is being provided in another Member State by a service provider established in Malta, the Authority shall assist the relevant competent authority of that other Member State in terms of the procedure established in the Second Schedule of the Services (Internal Market) Act, 2009. In doing so, the Authority shall not refrain from taking supervisory enforcement measures in Malta on the grounds that a service has been provided or caused damage in another Member State:

Provided that the Authority shall not be bound to carry out checks and controls in the Member State where the service is being provided.

(d) When a service is being provided in Malta, in the event of a temporary movement by a service provider established in another Member:

(i) the Authority shall participate in the supervision of the service provider in accordance with the procedure set up in the Second Schedule to the Services (Internal Market) Act, 2009;



(ii) when the Authority has imposed requirements in terms of the first proviso to sub-article (7), it shall assume responsibility for the supervision of that service provider in Malta in order to ensure compliance with those requirements.

(e) The Authority shall exchange requests and information with the relevant competent authorities of another Member State through the Internal Market Information System.

(f) Without prejudice to the limitations imposed by any other law, the Authority shall supply information to the relevant competent authority of another Member State on disciplinary or administrative actions, or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which directly concern a provider, and which are directly relevant to the provider's competence or professional reliability, in terms of the procedure contemplated under the Third Schedule of the (Internal Market) Act, 2009."

## PART XX

### AMENDMENTS TO THE VETERINARY SERVICES ACT

**103.** (1) This Part amends the Veterinary Services Act, and it shall be read and construed as one with the Veterinary Services Act, hereinafter in this Part referred to as "the principal Act".

Amendments to  
the Veterinary  
Services Act.  
Cap. 437.

(2) This Part shall come into force upon publication of this Act.

**104.** Article 43 of the principal Act shall be amended as follows:

Amendment of  
article 43 to the  
principal Act.

(a) subarticle (3) thereof shall be amended as follows:

Cap. 451. (i) in paragraph (b) thereof, immediately after the words "the Council," there shall be added the words "after consultation with the Malta Qualifications Council and in terms of the Mutual Recognition of Qualifications Act and legislation made thereunder," and for the words ", if any" there shall be substituted the words "or in a Member State";

(ii) in paragraph (g) thereof, immediately after the words "citizen of Malta" there shall be added the words "or of a Member State";

(b) immediately after subarticle (3) there shall be added the following new subarticles:

"(4) (a) The Council shall acknowledge receipt of an application for a warrant as soon as possible and in any case by not later than one month of receipt of all relevant documentation submitted in fulfilment of the requirements listed in the last preceding sub-article. The acknowledgment shall include the time by which the Council expects to reach a decision in terms of this sub-article and the available means of redress from decisions of the Council:

Provided that in the case of incomplete documentation, the Council shall inform the applicant accordingly:

Provided further that where the applicant is already established in another Member State and, or has obtained his qualifications in another Member State and, or is a citizen of another Member State, the Council may seek to verify any of the documentation submitted by the applicant with the relevant competent authority of that Member State in terms of the Services (Internal Market) Act, 2009.

(b) The Council shall examine all documentation submitted by the applicant as early as possible and lead to a duly substantiated decision within three months. Such period shall commence to run from the date of receipt of all necessary documentation. Where duly motivated, this period may be extended by one month by the Council, provided that the applicant is notified before the original period set in paragraph (a) has expired.

(c) Lack of response within the timescales set in accordance with this sub-article shall not be deemed to imply the tacit approval of the applicant's application.

Cap. 451.  
L.N. 422 of 2007

(5) Without prejudice to sub-articles (2) and (3), and in terms of the Mutual Recognition of Qualifications Act, and the Recognition of Professional Qualifications Regulations, 2007, a person may provide veterinary services in Malta, on a temporary and occasional basis, provided that:

(a) he is legally established in another Member State for the purpose of pursuing the profession of a veterinary surgeon in that Member State; and

(b) he has pursued the profession of a veterinary surgeon for at least two years during the preceding ten years.

(6) (a) Persons referred to in sub-article (5) shall inform the Council in advance of their intention to provide veterinary services in Malta by means of a written declaration. Such written declaration shall include:

(i) proof of nationality;

(ii) an attestation certifying that the person is legally established in another Member State for the purpose of pursuing the profession of a veterinary surgeon in that Member State;

(iii) evidence of his professional qualifications and of his practice during the preceding ten years;

(iv) details of his current insurance cover or of any other means of collective protection with regard to professional liability, as it may be applicable;

(v) description of the services intended to be provided and the location from where such services are intended to be provided.

(b) (i) The Council shall, immediately upon receipt of a declaration in terms of the preceding paragraph, send an acknowledgement to the applicant and inform him of any missing documentation.

(ii) The Council shall, within a maximum of one month from the date of an acknowledged receipt of a completed declaration and all necessary accompanying documents, inform the applicant of the outcome of the checks of the submitted qualifications and documents.

(iii) In case of difficulty resulting in delay, the Council shall inform the applicant making the declaration, within the first month, of the reason for the delay and the timescale within which the Council's decision shall be finalised:

Provided that the extended timescale shall not be of more than one month.

(iv) In the absence of a reaction from the Council within the deadlines set in this sub-article the service may be provided.

(c) In making its decision in terms of this and the preceding subarticle, the Council shall assess and determine each application based on its individual merits.

(7) (a) The Veterinary Surgeons' Council shall keep a list within the Veterinary Surgeons' Register of persons approved for the provision of veterinary services on a temporary or occasional basis under this article.

(b) This registration shall be valid for one year and shall be renewed, in advance, for every year in which the applicant intends to provide temporary or occasional services in Malta during that year:

Provided that, for reasons of public and animal health, the person shall be required to inform the Council each time he intends to provide veterinary services on a temporary or occasional basis in Malta, fifteen days in advance and shall provide the Council with the information in terms of subarticle (6)(a)(v)."; and

(c) subarticle (5) shall be renumbered as sub-article (8) thereof and shall be amended as follows:

(i) in paragraph (a) thereof, the words "by the President of Malta" shall be deleted; and

(ii) in paragraph (b) thereof, immediately after the words "the Council" there shall be added the words "after consultation with the Malta Qualifications Council".

**105.** In article 45A of the principal Act, immediately after the words "Mutual Recognition of Qualifications Act" there shall be added the words "and the Services (Internal Market) Act, 2009,".

Amendment of article 45A of the principal Act.

## PART XXI

### AMENDMENTS TO THE TRADING LICENCES ACT

**106.** (1) This Part amends the Trading Licences Act, and it shall be read and construed as one with the Trading Licences Act, hereinafter referred to in this Part as "the principal Act".

Amendments to the Trading Licences Act. Cap. 441.

(2) This Part shall come into force upon publication of this Act.

**107.** Article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) for the definition "commercial fair" there shall be substituted the following:

" "commercial fair" means an event in one location in which more than one participant display or promote their goods or services from different sites of such location with a view to sell such goods or services from such location or from elsewhere;"

(b) immediately after the definition "commercial fair" there shall be inserted the following new definition:

" "commercial exhibition" means an event in one location in which one participant displays or promotes his goods or services with a view to sell such goods or services from such location or from elsewhere:

Provided that such event shall not comprise the display or promotion of goods or services for wholesale or retail from a premises licensed for such purposes;"

(c) immediately after the definition "commercial premises" there shall be inserted the following new definition:

" "exhibition" means an event in one location in which one or more participants display or promote their goods or services without the intention to sell such goods or services from such location or from elsewhere;" and

(d) immediately after the definition "street" there shall be added the following new definition:

" "the Treaty" means the Treaty establishing the European Community."

**108.** Articles 5, 6 and 7 of the principal Act shall be deleted.

Deletion of articles 5 to 7 of the principal Act.

**109.** Article 8 of the principal Act shall be renumbered as article 5, and in subarticle (5) thereof, for the words "to the Board." there shall be substituted the words "to the Board:", and immediately thereafter there shall be added the following proviso:

Renumbering and amendment of article 8 of the principal Act.

"Provided that the Minister may appoint a substitute secretary in the following cases:

(a) in cases of urgency if the designated secretary is in any way not available to perform his duties; and

(b) in cases where the designate secretary abstains himself for the same reasons that a member of the

board may abstain himself as mentioned above."

**110.** Articles 9, 10, 11 and 12 of the principal Act shall be renumbered as Articles 6, 7, 8 and 9 respectively.

Renumbering of articles 9 to 12 of the principal Act.

**111.** Immediately after article 9 of the principal Act, as renumbered, there shall be added the following new article:

Addition of new article 10 to the principal Act.

"Activities requiring licence and permits.

10. (1) No commercial activity shall be carried out in Malta without a licence from the regulatory authority:

Provided that any commercial activity, as may be prescribed, may:

(a) be deemed to be licensed following a notification made to the regulatory authority prior to commencement of the commercial activity by the person who undertakes to carry out the intended activity;

(b) be deemed to be licensed following a notification made to the regulatory authority, within a prescribed time, after commencement of the commercial activity:

Provided further that all persons carrying out any commercial activity shall still be required to comply with the relevant provisions of this Act and of any regulations subsidiary to it, irrespective of the type whether the commercial activity is licensed as a result of an application to the regulatory authority or is deemed to be licensed following a notification to the regulatory authority.

(2) Certain activities as may be prescribed may:

(a) be designated as not requiring a licence but requiring other relevant permits from the local authority and, or the Commissioner of Police or be subject to conditions issued by the local authorities and, or the Commissioner of Police;

(b) be designated as requiring other relevant permits, in addition to a licence from the regulatory authority, including:

(i) a permit from the local authority; and

(ii) a permit from the Commissioner of Police:

Provided that a person who holds on any special or special day or days:

(a) any procession or other activity held in a public place held in the context of a feast, any band march, any disco, ball, dance or any other similar activity, irrespective of the name by which it is called; or

(b) a sporting activity which is held across more than one locality or on a national basis; or

(c) any activity organised by a political party

shall only require a permit from the Commissioner of Police issued under this Act.

(3) The issuing of a licence by a regulatory authority or a permit by the local authority or Commissioner of Police may be subject to:

(a) the submission and evaluation of documents and other prescribed information as may be deemed necessary in order to ensure fulfillment of licence requirements;

(b) authorizations, permits, approvals and clearances from other entities as may be prescribed and applicable by other relevant legislation current at the time;



Cap. 451.

(c) compliance with terms and conditions as may be prescribed, including the possession of relevant qualifications in line with the Mutual Recognition of Qualifications Act and of any regulations made thereunder:

Provided that the regulatory authority may require the applicant to prove his competence to carry on the relevant commercial activity by means of other qualifications for reasons of overriding public interests, in terms of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market:

Provided further that where a person is legally established to carry on in another Member State a commercial activity falling under the implementing provisions of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market and is seeking a licence in Malta, the regulatory authority, in compliance with same Directive, shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which such person may already be subject to in another Member State.

(4) Notwithstanding any licence, permit or authorisation issued, the Commissioner of Police may:

(a) where any affray or tumult happens or is expected to happen in any place, order every commercial premises in or near the place where the affray or tumult happens or is expected to happen, to be kept closed during such time as, in the opinion of the Commissioner of Police, is reasonably necessary;

(b) for reasons of public order, public safety or public morality, stop any activity in respect of which any permit or licence or authorization was issued or should have been issued under this Act."

Addition of new article 11 to the principal Act.

**112.** Immediately after the new article 10 of the principal Act, there shall be added the following new article:

"Commercial activity on a non-permanent and occasional basis.

11. Where a person is already licensed or otherwise legally established to carry on a commercial activity in another Member State, and that person wishes to carry out such commercial activity in Malta on a non-permanent and occasional basis, the regulatory authority shall not prevent that person from doing so by imposing any requirements which are discriminatory, unnecessary or disproportionate:

Provided that the regulatory authority may impose such requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment:

Provided also that in establishing whether a service provider is exercising his freedom to provide services within the meaning of article 16 of the Services (Internal Market) Act, 2009 and Article 49 of the Treaty, or is an establishment case, or whether a service provider is abusively taking advantage of the freedom to provide services, the competent authority shall assess and decide each case on its individual merits and in conformity with Community law and rulings of the European Court of Justice."

Deletion of articles 13 to 18 and Parts III to V of the principal Act.

**113.** Part III and articles 13, 14, 15 and 16, Part IV and article 17 and Part V and article 18 of the principal Act shall be deleted.

- 114.** Part VI of the principal Act shall be renumbered as Part III thereof, and articles 19 to 22 of the principal Act shall be deleted. Renumbering of Part VI and deletion of articles 19 to 22 of the principal Act.
- 115.** Article 23 of the principal Act shall be renumbered as article 12 thereof. Renumbering of article 23 of the principal Act.
- 116.** Articles 24 and 25 of the principal Act shall be deleted. Deletion of article 24 and 25 of the principal Act.
- 117.** Immediately after the new article 12 of the principal Act as renumbered, there shall be added the following new article: Addition of new article 13 to the principal Act.
- "Selling from  
open-air markets. 13. When an open air market has been established in a locality, no person shall be allowed to carry on any commercial activity from a fixed place in such a market unless he complies with such conditions as may be prescribed."
- 118.** Immediately after the new article 13 of the principal Act as renumbered, there shall be added the following new article: Addition of new article 14 to the principal Act.
- "Vending  
machines, etc. 14. No person shall place any vending machine or any machine known as kiddie ride machine in any street without the necessary authorisation as may be prescribed."
- 119.** Articles 26 and 27 of the principal Act shall be renumbered as articles 15 and 16 thereof. Renumbering of articles 26 and 27 of the principal Act.
- 120.** Part VII of the principal Act shall be renumbered as Part IV thereof. Renumbering of Part VII of the principal Act.
- 121.** Article 28 of the principal Act shall be renumbered as article 17 thereof and for paragraph (f) thereof, there shall be substituted the following new paragraph: Renumbering and amendment of article 28 of the principal Act.
- "(f) for establishing the penalties or administrative sanctions to which any offender against the provisions of this Act and regulations made thereunder shall be liable;"
- 122.** Article 29 of the principal Act shall be renumbered as article 18 thereof. Renumbering of article 29 of the principal Act.

Renumbering and amendment of article 30 of the principal Act.

**123.** Article 30 of the principal Act shall be renumbered as article 19 thereof and amended as follows:

(a) in subarticle (1) thereof, for the words "as may be prescribed in respect of that offence" there shall be substituted the words "and, or administrative sanctions as may be prescribed in respect of that offence";

(b) for subarticle (2) thereof there shall be substituted the following:

"(2) The Minister shall prescribe the penalties and administrative sanctions that may be demanded by the regulatory authority in relation to any specified offence."; and

(c) in subarticle (3) thereof, after the word "penalty" there shall be added the words "and, or administrative sanctions".

Renumbering of articles 31 to 33 of the principal Act.

**124.** Articles 31, 32 and 33 of the principal Act shall be renumbered as articles 20, 21 and 22 thereof.

## PART XXII

### AMENDMENTS TO THE CULTURAL HERITAGE ACT

Amendments to the Cultural Heritage Act. Cap. 445.

**125.** (1) This Part amends the Cultural Heritage Act and it shall be read and construed as one with the Cultural Heritage Act, hereinafter in this Part referred to as "the principal Act".

(2) This Part shall come into force upon publication of this Act.

Amendment of article 33 of the principal Act.

**126.** In sub-article (1) of article 33 of the principal Act, for the words "the requirements of articles 31 or 32." there shall be substituted the words "the requirements of articles 31 or 32:" and immediately thereafter there shall be inserted the following proviso:

"Provided that the decision of the Minister to grant or to refuse an application shall be notified in writing to the applicant within four months from the date of receipt of the application. Failure to notify the applicant about the decision regarding an application for a warrant within the time established shall be deemed, for reasons of public interest, to be a refusal of the warrant applied for. Where no decision has been notified to the applicant within the time established, such applicant may appeal before the Court of Appeal constituted as

provided in article 41(6) of the Code of Organization and Civil Procedure:

Provided further that an application for a warrant shall not be deemed to have been filed by an applicant unless it is duly filled in and accompanied with all required information and documentation."

**127.** Article 33A of the principal Act shall be substituted by the following new article:

Substitution of article 33A of the principal Act.

"Temporary provision of services. Cap. 451.

33A. (1) Without prejudice to the Mutual Recognition of Qualifications Act and notwithstanding the provisions of article 31 of this Act, any person established in another Member State may practise the profession of a restorer in Malta on a temporary and occasional basis provided that such person:

(a) is legally established in another Member State for the purpose of pursuing the restorer's profession in that Member State; and

(b) has pursued the restorer's profession for at least two years during the ten years immediately preceding the provision of services where the restorer's profession is not regulated in that Member State.

(2) Persons referred to in subarticle (1) shall inform the Board by means of a written declaration to be made in advance, which declaration shall include the following:

(a) the details of an insurance cover or other means of personal or collective protection relative to professional liability. This declaration shall be made once a year if the service provider intends to provide temporary or occasional services during the year;

(b) proof of the nationality of the service provider;

(c) an attestation certifying that the warrant holder is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising the profession of a restorer even temporarily, at the moment of delivering the attestations;

(d) evidence of professional qualifications; and

(e) where applicable, any means of proof that the service provider has pursued the restorer's profession for at least two years during the previous ten years immediately preceding the provision of services.

(3) Where the Board, in exercising its authority under this article, deems that there is a substantial difference between the professional qualifications of the service provider and the academic qualifications required under article 31, to the extent that the difference is such as to be harmful to public health, safety and security, the Board shall give the service provider the opportunity to show, in particular by means of an aptitude test, that he has acquired the knowledge or competence which he lacks.

(4) The Board shall assess the temporary and occasional nature of the provision of the services on a case by case basis.

(5) The Board shall, within one month from the date of receipt of the declaration referred to in subarticle (2), inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Whenever a decision cannot be given during the established time, the Board shall notify this information to the service provider within the period established in this subarticle. The Board may extend this period only once for another period of one month.

(6) In the event that the Board does not give its decision within the period referred to in subarticle (5), the restoration services may be provided.

(7) A person exercising the profession under this article shall be deemed to be a warrant holder and the provisions of this Act and of any other applicable law shall apply to him in the same manner and to the same extent as with any other warrant holder."

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## FIRST SCHEDULE

[Article 6(1)]

Services and matters excluded from the application of article 6(1)

(1) Services of general economic interest, *inter alia*:

(a) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service;

(b) in the electricity sector, services covered by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;

(c) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;

(d) water distribution and supply services and waste water services;

(e) treatment of waste.

(2) Matters covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 on the posting of workers in the framework of the provision of services.

(3) Matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(4) Matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

(5) The activity of judicial recovery of debts.

(6) Matters covered by Title II of Directive 2005/36/EC as transposed into Maltese law by virtue of the Recognition of Professional Qualifications Regulations, 2007, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession.

(7) Matters covered by Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons or self employed persons and to members of their families moving within the Community.

(8) As regards administrative formalities concerning the free movement of



persons and their residence, matters covered by the provisions of Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the member states with which beneficiaries must comply.

(9) As regards third country nationals who move to another Member State in the context of the provision of a service, the possibility for Member States to require visa or residence permits for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders or the possibility to oblige third country nationals to report to the competent authorities on or after their entry.

(10) As regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

(11) Copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 as transposed into Maltese law by virtue of the Copyright Act, and regulations made thereunder, on the legal protection of topographies of semiconductor products and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, as well as industrial property rights.

(12) Acts requiring by law the involvement of a notary public.

(13) Matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts.

(14) The registration of vehicles leased in another Member State.

(15) Provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

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## **SECOND SCHEDULE**

[(Article 8(3) and (4)]

Cooperation with a competent authority of another Member State

(1) When a service is being provided in another Member State by a provider established in Malta, a competent authority shall cooperate with the relevant competent authority of another Member State, and fulfill its obligations as

stipulated hereunder:

(a) when receiving a request from the relevant competent authority of another Member State, a competent authority shall confirm whether a provider is established in Malta and that to its knowledge the provider is not exercising his activity in an unlawful manner;

(b) the competent authority shall carry out such checks, inspections and investigations as requested and, or necessary, and shall inform the relevant competent authority in the other Member State of the results and, or of any measures taken by it:

Provided that a competent authority may decide on which measures are appropriate;

(c) in the event that a competent authority encounters difficulty in meeting a request for information or in carrying out checks, inspections or investigations, it shall rapidly inform the requesting competent authority with such difficulties in order to find a solution.

(2) Upon gaining actual knowledge of any conduct or specific acts by a provider established in Malta which provides services in other Member States, that, to its knowledge, could cause serious damage to the health and safety of persons or to the environment, the competent authority shall inform all other relevant competent authorities of other Member States and the Commission within the shortest possible period of time.

(3) When a service is being provided in Malta, in the event of a temporary movement by a provider established in another Member State:

(a) at the request of the relevant competent authority of the Member State of establishment, the competent authority shall carry out checks, inspections and investigations necessary for ensuring the effective supervision by the competent authority of establishment:

Provided that a competent authority may decide on the most appropriate manner to meet the request by the Member State of establishment;

(b) the competent authority may, on its own initiative, conduct checks, inspections and investigations on the spot, provided that those checks, inspections and investigations are not discriminatory, motivated by the fact that the provider is established in another Member State and are proportionate;

(c) in the event that a competent authority encounters difficulty in meeting a request for information or in carrying out checks, inspections or investigations, it shall rapidly inform the requesting competent authority with

such difficulties in order to find a solution;

(d) with respect to the requirements imposed by the competent authority in terms of article 6(3), the competent authority shall take all measures necessary to ensure that the provider complies with these requirements and shall carry out checks, inspections and controls necessary to supervise the service provided.

(4) Where a competent authority becomes aware of serious and specific acts or circumstances relating to a service activity that could cause serious damage to health and safety of persons or to the environment in Malta or in the territory of other Member States, the competent authority shall inform the relevant competent authority of the Member State of establishment, the other Member States concerned and the Commission within the shortest possible time.

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### **THIRD SCHEDULE**

[Article 8(6)]

#### **Procedure to be followed on transmission of information on the good repute of a provider**

(1) In complying with a request for information on the good repute of a provider, a competent authority shall abide by the provisions of disclosure of information provided under any other law.

(2) Without prejudice to paragraph (1), a competent authority upon receipt of a request by another competent authority shall supply any information on disciplinary or administrative decisions or on any other decision concerning a state of insolvency or bankruptcy which are directly relevant to the provider's competence or reliability.

(3) In the event that a request concerns the disclosure of information relating to sanctions and administrative decisions, a competent authority shall ensure that such sanctions and decisions are final.

(4) In the event that a request concerns the disclosure of information on any other enforceable decision, the competent authority shall clearly indicate whether the decision is final or subject to appeal. Should the latter be the case, the competent authority shall provide the expected time when the decision of appeal is expected to be delivered.

(5) In the event that a competent authority receives a request from a competent authority in another Member State relating to the disclosure of information on a criminal sanction of a service provider which is directly relevant

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to the provider's competence or professional reliability, the competent authority shall refer such request to the Commissioner of Police and relay back the information received to the requesting competent authority:

Provided that a request made pursuant to the objectives mentioned in this sub-article must be duly substantiated, and the reason of the request is made known to the competent authority.

(6) The competent authority which supplies the information shall inform the service provider that that information has been disclosed.

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## **FOURTH SCHEDULE**

[(Article 6(3))]

### **Mutual assistance in the case of a case-by-case derogation**

(1) Where a competent authority intends to take a measure pursuant to article 6(3) of this Act, the following procedure shall apply without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

(2) A competent authority shall request the competent authority in the Member State of establishment to take measures with regard to the provider, supplying all relevant information on the services and the circumstances of the case.

(3) The competent authority in the Member State of establishment shall, within the shortest time possible, check whether the provider is operating lawfully and verify the acts underlying the request.

(4) Following a reply from the competent authority in the Member State of establishment of the measures taken or envisaged to be taken or, as the case may be, the reason why it has not taken any measures, the competent authority shall notify the European Commission and the competent authority in the Member State of establishment of its intention to take measures, for the following reasons:

(a) why it believes the measures taken or envisaged by the competent authority in the Member State of establishment are inadequate;

(b) why it believes the measure it intends to take fulfills the following conditions:

(i) the national measure has not been subject to Community harmonisation in the camp of the safety of services;

(ii) the measure provides for a higher level of protection of the recipient than would be the case in a measure taken by the relevant competent authority in the Member State of establishment in accordance with its national provisions;

(iii) the relevant competent authority in the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred in sub-paragraph (ii);

(iv) the measures are not proportionate.

(5) The measures may not be taken before fifteen working days from the date of notification as provided in paragraph (4).

(6) However the competent authority shall, in case of urgency, refrain from following the above procedure, and shall notify the measures taken, together with the reasons of urgency, within the shortest possible period of time to the Commission and the relevant competent authority in the Member State of establishment.

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## **FIFTH SCHEDULE**

[Article 10(1) and (2)]

### Information to be provided to a recipient

(1) A provider established in Malta shall make the following information available to a recipient at all times:

(a) his name, legal status and form, the registered geographic address at which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(b) where the provider is subject to a code of conduct, is a member of a trade association or professional body which provides recourse to settlement dispute proceedings other than judicial proceedings, the details of such body and the manner how the information on the characteristics and conditions relating to such proceedings may be obtained;

(c) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;

(d) where the activity is subject to an authorisation scheme, the

particulars of the relevant competent authority or the single point of contact;

(e) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment;

(f) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted;

(g) the general conditions and clauses, if any, used by the provider;

(h) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and, or the competent courts;

(i) the existence of an after-sales guarantee, if any, not imposed by law;

(j) the price of the service, where a price is pre-determined by the provider for a given type of service;

(k) the main features of the service, if not already apparent from the context;

(l) where he is subject to an insurance cover or other guarantee, the contact details of the insurer or guarantor and the territorial coverage.

The information referred to in subparagraphs (a) to (l):

(i) shall be provided at the provider's initiative; and

(ii) shall be easily accessible to the recipient at the place where the service is provided or the contract concluded; or

(iii) can be easily accessed by the recipient electronically by means of an address supplied by the provider; or

(iv) appears on all documentation supplied to the recipient by the provider which sets out a detailed description of the service he provides.

(2) A provider shall make the following information available at the recipient's request:

(a) the price of the service and if an exact price cannot be quoted, the method for calculating the price or a detailed estimate;

(b) a reference to the professional rules applicable in the Member State of establishment and how to access them;

(c) information on their multi-disciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. Such information shall be included in any information document in which providers give a detailed description of their services;

(d) information, if any, on the provider's code of conduct, or membership of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

(3) The provider shall ensure that the information supplied in accordance with paragraphs (1) and (2) is made available or communicated in a clear and unambiguous manner, and in good time, before the conclusion of the contract and, where there is no written contract, before the service is provided.

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Passed by the House of Representatives at Sitting No. 177 of the 14th December, 2009.

LOUIS GALEA  
*Speaker*

PAULINE ABELA  
*Clerk to the House of Representatives*