

Rule Eight

~~The Stock Exchange should be notified in the event of the stabilising manager determining, before the 30th day after the closing date, that no further stabilising action will be taken. This notification brings the stabilising period to an end.~~

Rule Nine

~~This outlines details of the record keeping that must be maintained when stabilising action is undertaken. These include the following:~~

- ~~The names of the persons to whom the relevant securities were allocated or issued and the amount issued;~~
- ~~The description of the security;~~
- ~~The price of each security;~~
- ~~The number of securities;~~
- ~~The date and time of the transaction; and~~
- ~~The identity of the counterparty to the transaction.~~

~~This is to provide a paper trail of any stabilising action that occurs so as to ensure compliance with the legislation and to ensure that an accurate record of the stabilising action exists in the event of any irregularities emerging.~~

~~A copy of this record must be given to the Stock Exchange on the day following the day in which the transaction was effected.~~

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Malta

Constitution of Two Special Tribunals – the Malta Stock Exchange Tribunal and the Financial Services Tribunal

Offering Shares to the Public – Market-places for Shares, Financial Services, Criminal Liability

Two separate tribunals in the financial services sector have recently been constituted and duly publicised in the Official Gazette.

The Malta Stock Exchange Tribunal

In June 1999, the Malta Stock Exchange Tribunal, created by Part III of the Malta Stock Exchange Act of 1990, was finally set up. This Tribunal consists of a Chairman, who must have a legal qualification, and two other members. It has been appointed for a period of three years. This has marked the first time that the Tribunal has been constituted; no cases had been submitted to it since the coming into force of the Act.

The primary function of the Tribunal is to investigate allegations or suspicions of insider dealing

or other 'irregular practices in Exchange dealings' on the Malta Stock Exchange. The Tribunal has no criminal jurisdiction, but it is the only authority which, under Maltese law, may order persons found guilty of insider dealing to pay compensation to an injured party who has suffered financial loss. The Insider Dealing Act of 1994 is largely a part of the criminal law, establishes a number of insider offences but provides no civil remedy for losses suffered consequent to a breach of the insider dealing provisions.

The 1990 Act assigns to this tribunal a number of other significant investor protection functions. It may investigate exchange dealings entered into by unauthorised operators and provide for the recovery of proceeds or other assets and the payment of compensation to clients. It may intervene and issue orders and directives to prevent a contravention of any of the provisions of the Act. In certain designated circumstances, it may cancel, suspend or restrict the licence of a stockbroker who is not abiding by the established regulations and Stock Exchange bye-laws.

The Act obliges the Tribunal to 'deal with any matter before it as expeditiously as possible and shall give its decision without delay'.

The Financial Services Tribunal

In February 1999, the Minister of Finance appointed the members constituting the Financial Services Tribunal for the first time. The Tribunal and its statutory functions were loosely modelled on a similar tribunal established by the Financial Services Act 1986 of the United Kingdom. Although the Tribunal is actually established by the Banking Act 1994, its functions extend considerably beyond this Act. Indeed, appeals may be submitted to it by applicants and licensees in terms of the Investment Services Act 1994, the Financial Institutions Act 1994, and the new insurance legislation passed during 1998. Since its creation in 1994, the Tribunal has not received any applications for review.

Unlike the Malta Stock Exchange Tribunal, this Tribunal has no significant investor protection function. The Tribunal was set up to provide a swift and competent mechanism of review for the benefit of operators who may feel aggrieved by a decision of a regulatory authority. The Tribunal may be requested to review certain decisions affecting licence-holders taken by the competent authorities under the 1994 laws regulating banking, investment services and other financial activities. The Tribunal has competence to review a variety of regulatory decisions taken by the competent authority in terms of the Investment Services Act. These include decisions regarding the 'refusal, variation, cancellation or suspension of a licence'. However the

reference can only be made on the ground that the competent authority had wrongly applied the law or had abused its discretion. The Investment Services Act is the principal legislation which regulates the provision of advisory and other services relating to securities transactions, advertising of securities and the formation of collective investment schemes.

The Tribunal may 'confirm, reverse or vary the decision of the competent authority'. Any party may appeal from an award of the Tribunal to the Court of Appeal on points of law only. Under the recent 1998 insurance legislation, the Tribunal has now also been assigned an additional and novel competence of determining applications from insurance companies wishing to transfer their long-term (life) insurance business.

The Tribunal is presided by a chairman having legal qualifications and two other persons competent in banking and financial services. The same persons constituting this Tribunal have been appointed to the Malta Stock Exchange Tribunal. Again, their appointment is for three years, which is the minimum term allowed by both Acts. The sittings of both Tribunals are open to the public, unless it is deemed more proper to conduct the proceedings in private in particular cases. The decisions are however always given in public. Though similarly constituted, these two tribunals have widely different functions.

Case Law

Criminal Liability of Corporations

Corporate Officers and Promoters; Directors – Directors' Liability for a Company's Wrongs; Criminal Liability, Relief from Liability

Under general criminal law in Malta, criminal liability is confined to individuals. Companies cannot be charged with a criminal offence and, accordingly, no criminal responsibility can attach to them. When a company is found to have breached the law and committed an offence, criminal responsibility has to be assigned to directors, managers or other officials of the company.

In *Police v G Cassar* (Court of Criminal Appeal, case no 217/96 decided on 26 August 1998), the non-executive chairman of a company which operated a catering establishment was charged with a number of offences against the food safety legislation following inspections by health inspectors. The Court held that the accused could be held criminally responsible for breaches of the legislation where the Court is not satisfied that the accused had personally employed sufficient diligence, in the concrete case before it, to ensure that such breaches did not occur. The Court explained that it was not possible for a

director (or manager or other official) of a company to escape criminal responsibility by merely remaining passive and by refraining from taking an active interest in whatever the company is doing. To escape such responsibility, the accused should be able to prove that – at least on a basis of probability – he had taken all the necessary steps to prevent the commission of the offence. In the present case, it was shown that the accused relied entirely on reports of his managers received mainly during board meetings.

The Court of Criminal Appeal commented that the accused had never carried out spot checks nor had he ever taken the initiative to ensure that established procedures were being followed. It was his right and duty to ensure proper safeguards were being implemented. The accused fell short of his responsibilities and was therefore found guilty.

In *Police v M Borg Costanzi* (Magistrates Court, decided on 25 May 1999) the managing director of a garment manufacturing company was accused of criminal breach of copyright and commercial fraud. The complainant company had alleged that the catalogue prepared by the company managed by the accused had illegitimately copied and reproduced the background used in the complainant's own promotional material. This consisted of a catalogue of original garment designs. In finding the accused not guilty, the Court accepted his defence pleas that the choice of his company's promotional material had been made exclusively by his company's employees and that he did not know that they had copied the work of another firm. The Court also remarked that the job of the managing director should be to focus his attention and supervision on the essential aspects of his company's business undertaking. It held that the preparation of the background for the company's designs in a catalogue was a mere incidental matter.

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Sweden

New Rules on Public Tender Offers on the Swedish Stock Market

Offering Shares to the Public – Market-places for Shares

Introduction

The Swedish Industry and Commerce Stock Exchange Committee has recently published a revised version of its recommendations on public tender offers on the Swedish Stock Market (NBK Take-over Recommendation). The recommendations, first issued in 1971, are modelled on the London City Code on Take-overs and Mergers.