

**A BILL
entitled**

AN ACT to provide for the establishment of an Authority to be known as the Malta Digital Innovation Authority, to support the development and implementation of the guiding principles described in this Act and to promote consistent principles for the development of visions, skills, and other qualities relating to technology innovation, including distributed or decentralised technology, and to exercise regulatory functions regarding innovative technology, arrangements and related services and to make provision with respect to matters ancillary thereto or connected therewith.

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

ARRANGEMENT OF THE ACT

		Articles
Part I	Preliminary	1 - 2
Part II	Guiding Principles	3 - 4
Part III	Establishment, Functions and Conduct of Affairs of the Authority	5 - 10
Part IV	Officers and Employees of the Authority	11 - 12
Part V	Financial Provisions	13 - 25
Part VI	Principles relating to Recognition, Powers of the Authority	26 - 33
Part VII	Regulatory Powers	34 - 38
Part VIII	Enforcement and Sanctions	39 - 44
Part IX	Administrative Review Tribunal	45 - 54
Part X	Co-ordination with Other Competent Authorities	55 - 57
Part XI	Miscellaneous Provisions	58 - 61
First Schedule -	Relations with other National Competent Authorities	
Second Schedule -	The Joint Regulatory Efficiency Board	
Third Schedule -	Regulatory Laws	

C 902

PART I

Preliminary

Short title and commencement.

1. (1) The short title of this Act is the Malta Digital Innovation Authority Act, 2018.

(2) This Act shall come into force on such date as the Minister for Digital Economy may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes of the Act.

Interpretation.

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

"this Act" means the Malta Digital Innovation Authority Act, 2018, and includes any regulations made, and rules and guidelines issued thereunder unless the context otherwise requires;

"Authority" means the Malta Digital Innovation Authority established by article 5 and any references in this Act or any other law to the Authority shall, unless the context otherwise requires, be construed as including a reference to any person authorised by the Authority to act for or on its behalf;

"authorisation" shall include all forms of recognition as defined in this article;

"Board" means the Board of Governors of the Authority composed of the Chairman and members appointed in accordance with article 5;

"Chairman" means the Chairman of the Authority and includes, in the circumstances mentioned in article 5(3), the Deputy Chairman or any other person appointed to act as Chairman;

"decision" includes any directive, determination, direction, condition, measure, requirement or specification, howsoever described, made by the Authority;

"directive" means a directive issued by the Authority in terms of article 6;

"DLT", "distributed ledger technology", "decentralised ledger technology" means a database system in which information is recorded, consensually shared, and synchronised across a network of multiple nodes, or any variations thereof, as further described in the First Schedule of the Innovative Technology Arrangements and Services Act, 2018, and the term "node" means a device and data

Bill No 43.

point on a computer network;

"innovative technology arrangements" means the intrinsic elements including software, codes, computer protocols and other architectures which are used in the context of DLT, smart contracts and related applications as well as other arrangements as may be further defined in the Innovative Technology Arrangements and Services Act, 2018; Bill No 43.

"innovative technology services" are those services in relation to innovative technology arrangements as are designated in the Innovative Technology Arrangements and Services Act, 2018; Bill No 43.

"Member State" means a Member State of the European Union;

"Minister" means the Minister responsible for Digital Economy;

"national competent authorities" means the authorities and other bodies referred to in the First Schedule;

"public officer" in relation to article 12, has the same meaning assigned to it by article 124 of the Constitution;

"recognised jurisdiction" means a member of the European Union or the EEA or the Organisation for Economic Co-operation Development as well as any other jurisdiction approved by notice of the Minister from time to time for the purpose of this definition;

"recognition" refers to the formal recognition by the Authority which is sought with reference to an innovative technology services provider or an innovative technology arrangement and which the Authority is entitled to grant through or by the provision, issuance, validation, confirmation, certification or otherwise in writing to an applicant and includes any licence, permission, authorisation, approval, confirmation, certification by or registration with the Authority in terms of any special law which the Authority is entitled to administer or enforce and the terms "authorisation" or "authorisation holder" in the provisions of this Act shall be construed accordingly;

"smart contract" means a form of innovative technology arrangement consisting of:

- (a) a computer protocol; and, or
- (b) an agreement concluded wholly or partly in an electronic form which is automatable and enforceable by execution of computer code, although some parts may require

C 904

human input and control and which may be also enforceable by ordinary legal methods or by a mixture of both;

"special law" means an Act of Parliament and any regulations made thereunder;

Cap. 490. "Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

"user" means any person who uses or otherwise participates or engages with in an innovative technology arrangement of any type whether he is a holder of any direct or indirect ownership or control rights or otherwise and includes but is not restricted to miners, consumers, oracles, persons with governance, compliance, regulatory or other functions and may form part of a class of users with the same rights and powers or otherwise.

(2) The Minister, acting on the advice of the Authority, may by regulations and the Authority, with the consent of the Minister, may by guidelines clarify any definition in sub-article (1) or provide additional definitions in support of the definitions in sub-article (1).

(3) Where reference is made in this Act, or in any special law which the Authority is entitled to administer or enforce, to the protection of the public interest and consumers, it is intended to refer to whenever members of the public and consumers in any country may use the innovative technology arrangements or smart contracts, and shall not be construed solely as a reference to members of the public or consumers in Malta.

PART II

Guiding Principles

Promotion and development of the Authority's interests.

3. The Government shall, through the establishment of the Authority in Malta, seek to promote and develop the innovative technology sector in Malta by means of proper recognition and regulation of relevant innovative technology arrangements and related services.

This shall be done:

(a) in full respect of the importance of not hindering innovation and the efforts and potential of the start-up sector in this area of activity;

(b) considering that the approach to recognition and regulation will be moderated by the pace of change and

development taking place in this sector; and

(c) in a manner ensuring that there are standards in place for the protection of consumers and investors, the integrity of the market and the public interest in general to be protected against abuse and non-compliance with mandatory laws intended for such purposes.

4. (1) The Government shall determine Malta's policies and objectives with regard to innovative technology arrangements and services to support the development of Malta as a centre of excellence for innovative technology arrangements and shall appropriate such funds and provide such resources, as it considers necessary to achieve such aims. Main policies and objectives.

(2) The Authority shall endeavour to achieve the following main objectives and policies:

(a) to promote governmental policies that favour the deployment, within the public administration, of innovative technology arrangements, by the Government where necessary or appropriate;

(b) to foster, promote and facilitate the advancement and utilisation of innovative technology arrangements and their design and uses;

(c) to promote education on ethical standards and legitimate exploitation of innovative technology arrangements;

(d) to safeguard, maintain and protect the reputation of Malta in the use of innovative technology arrangements;

(e) to protect users of innovative technology arrangements, including consumers and the public in general and to ensure standards to meet their legitimate expectations and protect against misuse;

(f) to provide a sound financial basis for the Authority to be able to achieve its purposes;

(g) to harmonise practices, and, where applicable, to facilitate the adoption of standards, on innovative technology arrangements in Malta in line with international norms, standards, rules and, or laws and with those of the European Union in particular;

(h) to assist the competent data protection authorities in

C 906

safeguarding the data protection rights of data subjects and assist other competent authorities in the protection of vulnerable persons and the promotion of fair competition and consumer choice;

(i) to promote, and if required enforce, ethical and legitimate criteria in the design and use of innovative technology arrangements and any application, software or derivative product from it or intrinsically part of or connected to it as well as to ensure quality of services and security therein;

(j) through collaboration with other regulatory bodies and competent authorities with responsibility for the prevention of money laundering and the financing of terrorism and crime in general, to support the prevention of money laundering, terrorist financing and the commission of any other crime in or through the use of innovative technology arrangements;

(k) to promote transparency and auditability in the use of innovative technology arrangements, and any application, software, or derivative product from it or intrinsically part of or connected to it;

(l) to promote ease of accessibility to the facilities provided by publicly available innovative technology arrangements and the recognition and implementation of the right of exit, withdrawal or termination of participation from any arrangement in the use of innovative technology arrangements; and

(m) to promote legal certainty in the application of laws, in a national and cross-border context, and the development of appropriate legal principles for the effective application of law to innovative technology arrangements.

(3) The Authority shall endeavour to promote the development of innovative technology in as wide a manner and for as many uses as possible so as to achieve its benefits in as many economic and social sectors as possible, including, but not limited to, in financial services, health and education, voluntary organisations, public administration and transport.

(4) The Authority shall also encourage the development of regulatory processes in relation to innovative technology arrangements to support all national competent authorities regulating different sectors to better administer the laws entrusted to their administration for the public benefit.

PART III

Establishment, Functions and Conduct of Affairs of the Authority

5. (1) There shall be a body, to be known as the Malta Digital Innovation Authority, the affairs and business of which shall be carried out by a Board composed of a Chairman and not less than four and not more than eight other members, who, in the opinion of the Minister, shall be persons with the relative qualifications and experience *inter alia* in matters relating to innovative technology arrangements and innovative technology services, financial services, audit and accounting, law, regulation and other subjects which may be relevant to the supervisory and regulatory competence of the Authority under this Act or under any special law which the Authority is entitled to administer or enforce.

Establishment
and composition
of the Malta
Digital
Innovation
Authority.

(2) The members of the Board shall be appointed by the Minister for a term of one year or for such longer period as may be specified in the instrument of appointment subject to a maximum of three years and the members so appointed may be re-appointed on the expiration of their term of office.

(3) The Minister may designate one of the members of the Board other than the Chairman as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during the Chairman's absence or inability to act as Chairman or during any vacancy in the office of Chairman.

(4) A person shall not be qualified to hold office as a member of the Board if he -

(a) is a Minister, Parliamentary Secretary or a member of the House of Representatives; or

(b) is a judge or magistrate of the courts of justice; or

(c) has a financial or other interest in any enterprise or activity which is likely to affect, in a general manner, the discharge of his functions as a member of the Board as a result of a conflict of interest:

Provided that should any nominee to such a position declare a conflict of interest or potential conflict of interest based on a specific context only and provided full information, this may be reviewed by the Minister and the Board, and if the conflict of interest is not considered one which would disqualify the nominee, this disqualification shall not apply but it shall be the subject of a written guidance on the part of the Minister,

C 908

and, or the Board which shall apply to the member for as long as such specific context subsists, and this without prejudice to sub-article (9); or

(d) has been convicted of a criminal offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft or fraud or of bribery or of money laundering, or of a criminal offence under a regulatory law referred to in the Third Schedule, or is being investigated for such criminal offence.

(5) Subject to the provisions of this article, the office of a member of the Board shall become vacant -

(a) at the expiration of his term of office; or

(b) if any circumstances arise that, if he were not a member of the Board, would cause him to be disqualified for appointment as such.

(6) A member of the Board may only be removed from office by the Minister for any one or more of the following reasons:

(a) if the member due to infirmity of mind or of body or for any other cause is effectively unable to continue to discharge his duties as a member;

(b) if the behaviour or performance of the member brings into question his suitability or ability to continue as a member, in particular for behaviour that affects or may affect his reputation, independence or autonomy, or the reputation, independence or autonomy of the Authority;

(c) if the member fails to perform his duties for a prolonged period without any valid justification and it shall be a cause for the removal of a member if that member for any reason fails to perform his duties, including attending Board meetings, for a continuous period exceeding six months.

(7) If the Minister removes a member of the Board from office, such removal shall be made public by no later than the effective date of removal from office. At the same time, the Minister shall provide the member concerned with a statement of reasons for his removal, and the member shall have the right to request that the statement of reasons for his removal be made public, in which case the Minister shall publish such statement.

(8) If a member resigns or if the office of a member of the

Board is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Board; and any person so appointed shall cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(9) Any member of the Authority who has any direct or indirect interest in any decision or contract made or proposed to be made by the Board, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge; such disclosure shall then be recorded in the minutes of the Board, and the member having an interest as aforesaid shall withdraw from any meetings at which such decision or contract is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

(10) With reference to conflicts of interest, the Board shall, with the consent of the Minister, issue guidelines which shall determine which conflicts of interest require the member concerned to resign.

6. (1) It shall be the purpose of the Authority to address the development in Malta of all innovative technology arrangements and innovative technology services in order to achieve the principles and objectives outlined in Part II.

Purpose,
functions and
powers of the
Authority.

(2) It shall be the duty of the Authority to exercise such supervisory and regulatory functions in the field of innovative technology arrangements and innovative technology services as may from time to time be assigned to the Authority by any special law.

(3) The Authority shall, without prejudice to any other power or function conferred to it by this Act or any other law, and in accordance with any laws which may be applicable to it:

(a) regulate, monitor and supervise the provision of such innovative technology arrangements and innovative technology services in or from Malta;

(b) keep under review all practices, operations and activities relating to any matter regulated by or under this Act or any other special law which the Authority is entitled to administer or enforce;

C 910

(c) promote the general interest and legitimate expectations of users of innovative technology arrangements and innovative technology services and promote fair competition, practices and consumer choice in the sector;

(d) provide facilities for the recognition, certification, registration, or otherwise grant or issue of any authorisation for the carrying out of any lawful operation or activity relating to any matter regulated by any special law which the Authority is entitled to administer or enforce;

(e) regulate the innovative technology products, operations or activities relating to any matter regulated by any special law which the Authority is entitled to administer or enforce, and ensure high standards of conduct and governance throughout the innovative technology arrangements industry;

(f) establish minimum quality, compliance and security standards for any innovative technology arrangements and innovative technology services and regulate such sectors as may be necessary to protect the general public;

(g) monitor the working and enforcement of laws that directly or indirectly affect the use and operation of innovative technology arrangements and innovative technology services and undertake or commission such study, research or investigation which it may deem necessary in this regard;

(h) provide information and issue guidelines relating to any matter regulated by or under this Act, or any other special law which the Authority is entitled to administer or enforce;

(i) establish the minimum qualifications, if any, to be possessed by any person who is engaged or employed in any activity regulated by this Act or by any special law which the Authority is entitled to administer or enforce;

(j) ensure that international obligations entered into by Malta relative to matters regulated by or under this Act, or any other special law which the Authority is entitled to administer or enforce, are complied with;

(k) advise the Minister on the formulation of policy in relation to matters regulated by or under this Act, or any other special law which the Authority is entitled to administer or enforce, and in particular in relation to Malta's international obligations;

(l) advise the Minister on any matter connected with its functions under this or any other law;

(m) formulate and implement the policies and strategies with short-term and long-term objectives in relation to the matters connected with its functions under this or any other law;

(n) advise the Minister on the planning and development of the innovative technology arrangements industry;

(o) support innovation in the development and use of innovative technology arrangements and innovative technology services;

(p) support and liaise with non-profit organisations and educational institutions in Malta which are established for the promotion of the use and development of innovative technology arrangements and innovative technology services;

(q) keep under review developments on relevant subjects relating to innovative technology arrangements and innovative technology services including, but not limited to, digital assets and their issuance, cryptography in the context of innovative technology arrangements as well as the uses thereof, the development of standards within the industry and all related matters, so as to ensure that activity in Malta is generally consistent with internationally recognised standards and norms of good practice;

(r) investigate allegations of practices and activities detrimental to consumers of innovative technology arrangements and innovative technology services, and generally keep under review trading practices relating to the provision of innovative technology services and identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers and users of innovative technology arrangements and innovative technology services; and

(s) perform such other functions, including functions aimed at promoting innovative technology arrangements and innovative technology services, as may from time to time be assigned to it by the Minister.

(4) (a) The Board of the Authority may, in consultation with the Minister, establish committees of the Board, composed of

C 912

members of the Board and others persons who may be invited to participate in the committee, to address particular issues as may be assigned to it by the Board.

(b) The Board may also establish a National Technology Ethics Committee for the purpose of ensuring that the proper standards of ethics are reflected in the area of innovative technology arrangement uses which are recognised by the Authority and to guide other authorities in Malta when such matters are referred to it by such other authorities which note that innovative technology arrangements are being used in areas of their competence. The National Technology Ethics Committee shall have the functions and shall be composed of the persons as may be determined by the Board in consultation with the Minister, other national competent authorities, voluntary organisations with purposes related to the sector and persons operating within the sector.

(5) In carrying out its functions under this Act and any special law the Authority is entitled to administer or enforce, the Authority shall pay regard to the nature, features and facilities of the innovative technologies which fall within its competence and shall seek to reflect such elements in its policies and administration.

In particular the Authority shall have the power, strictly for the purposes of its functions:

(a) in relation to any innovative technology arrangement which it recognises under this Act or any special law it is entitled to administer or enforce, and in a manner satisfactory to the Authority and without in any way implying liability on the Authority's part, to receive and access information on the innovative technology arrangement and its activities strictly in pursuance of its regulatory mandate and to enforce compliance when the arrangement has adopted, subscribed or undertaken to apply regulatory rules or guidelines or licence conditions, including mandatory legal obligations, in its operations:

Provided that under no condition shall this paragraph imply a right of the Authority to obtain information on source codes of the software used in the innovative technology arrangement which is confidential and commercially sensitive and when the Authority requires such information for regulatory purposes it shall seek such information under conditions acceptable to the holder of the innovative technology authorisation intended to protect his commercial interest or otherwise under the conditions established by the First Hall,

Civil Court;

(b) to be a user and hold any wallet, account or other facility in relation to any form of digital assets in order to be able to carry out regulatory compliance functions, including, *inter alia*, to access information within the particular arrangement which is recognised under this Act or any other special law which the Authority is entitled to administer or enforce; and

(c) to engage with such facilities or persons administering or representing the same and to carry out transactions which it may consider necessary for the carrying out of its functions.

(7) It shall be the duty of the Authority to carry out its functions as established by or under this Act or any other law in an impartial, transparent and timely manner and to ensure compliance therewith, and without prejudice to the generality of the foregoing, to ensure that, to the extent they are so bound, persons providing any services, products, operations and activities in or from Malta relating to any matter regulated by the Authority, comply with this Act and with any other special law which the Authority is entitled to administer or enforce, and with any decisions issued by or under this Act or any such other special law.

(8) The Authority shall also have such other functions, responsibilities and powers as are set out by or under this Act or as may be assigned to it by or under any other law including all such powers as are necessary for or incidental to the performance of its functions by or under this Act or any other law.

(9) The Authority shall in the carrying out of its functions seek to ensure that the measures taken are proportionate having regard also to the objectives of the Authority.

7. (1) The affairs and business of the Authority shall be the responsibility of the Board which responsibility shall be exercised through the Chairman:

Conduct of the affairs of the Authority.

Provided that the Board may delegate or devolve all or part of the executive conduct of the Authority, its administration and organisation and the administrative control of its officers and employees, to a Chief Executive Officer or any other officer or officers of the Authority, who shall also have such other powers as may from time to time be delegated or devolved to him or to them by the Board. The first Chief Executive Officer shall be appointed by the

C 914

Minister.

(2) The Authority shall exercise its functions through such officer or officers as the Board may from time to time designate in accordance with the provisions of sub-article (1).

(3) The Authority may exercise any one or more of its functions either directly or through any of its officers or employees or through an agency authorised for that purpose, or through a contractor or other person with whom an agreement for the performance of any one or more of such functions has been entered into:

Provided that nothing in this sub-article shall authorise the Authority to contract out or delegate any of:

(a) its regulatory functions; or

(b) its recognition or authorisation functions, unless such functions are expressly delegated to another public authority established by law, in particular another national competent authority as defined in this Act.

Autonomy of
the Authority
and relations
between the
Minister and the
Authority.

8. (1) Except as expressly provided for in other provisions of this Act, the Authority shall act independently and shall not seek or take instructions from any other body or person.

(2) (a) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time give to the Authority policy directions in writing of a general character, not inconsistent with the provisions of this Act, on the policies to be followed in the carrying out of the functions vested in the Authority by or under this Act.

(b) In determining policies which are the subject of a Ministerial direction, the Board shall respect the principles reflected by the policy direction given to it by the Minister.

(3) The Authority shall afford to the Minister facilities for obtaining information with respect to its property and activities, other than matters which are confidential to any applicant or regulated person, and furnish the Minister with returns, accounts and other statistical information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

Cap. 174.

(4) The provisions of article 72 of the Financial Administration and Audit Act shall not apply to the Authority

9. (1) The Authority shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

Legal personality and representation of the Authority.

(2) The legal and judicial representation of the Authority shall vest in the Chairman:

Provided that the Authority may appoint one or more members of the Board, the Chief Executive Officer, if any, or one or more officers of the Authority to appear in the name or on behalf of the Authority in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman, or such other member of the Board, the Chief Executive Officer, if any, or officer of the Authority as may, in accordance with sub-article (2), be vested by the Board with the legal and judicial representation of the Authority, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

10. (1) The meetings of the Board shall be called by the Chairman as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members of the Board.

Meetings.

(2) Half the number of members for the time being constituting the Board shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman, or in his absence the Deputy Chairman or other person appointed to act as chairman, shall have an initial vote and, in the event of an equality of votes, a casting vote. Without prejudice to the other requirements of this Act, no decision shall be valid which is not supported by at least two members of the Board.

(3) Subject to the provisions of this Act the Board may regulate its own procedure.

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Authority shall be invalidated merely by reason of the existence of any vacancy among the members of the Board.

(5) All acts done by any person acting in good faith as a

C 916

member of the Board shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of article 5(9).

PART IV

Officers and Employees of the Authority

Officers of the Authority.

11. Without prejudice to the other provisions of this Act, the Authority shall appoint and employ, at such remuneration and upon such terms and conditions as it may establish with the concurrence of the Minister, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Officers and employees deemed to be public officers. Cap. 9.

12. All officers and employees of the Authority shall be deemed to be public officers within the meaning of the Criminal Code.

PART V

Financial Provisions

Authority to meet expenditure out of revenue.

13. (1) Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs so that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

(2) In furtherance of the provisions of sub-article (1), the Authority shall levy all fees, rates and other payments prescribed under this Act or any other law related to the powers and functions of the Authority.

(3) The Authority shall be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority:

Provided that any subvention received from Government shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being in force.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for the

purposes of the Authority; and without prejudice to the generality of the powers given to the Minister by this sub-article, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with sub-article (2) or any such excess as aforesaid.

(5) Any funds of the Authority not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

14. (1) For the purpose of carrying out any of its functions under this Act or any other special law which the Authority is entitled to administer or enforce, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

Power to borrow or raise capital.

(2) The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act or any other special law which the Authority is entitled to administer or enforce:

Provided that for any amount in excess of one hundred and forty-four thousand euro (€144,000), there shall be required the approval of the Minister in writing.

15. The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act or any other special law which the Authority is entitled to administer or enforce, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Advances from Government.

16. (1) The Minister, after consultation with the Minister responsible for finance, may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

Borrowing from Government.

C 918

(2) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable.

Estimates of the Authority.

17. (1) The Authority shall cause to be prepared in every financial year, and shall not later than three months after the end of each such year, adopt estimates of the income and expenditure of the Authority for the next following financial year:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or an appropriation Act or of any other law; and the Authority shall prepare the said estimates so as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparison with previous years as the Minister responsible for finance may direct.

(4) A copy of the estimates shall, upon their adoption by the Authority, be sent forthwith by the Authority to the Minister.

(5) The Minister shall, at the earliest opportunity and not later than three months after he has received a copy of the estimates from the Authority, approve the same with or without amendment.

Expenditure to be according to approved estimates.

18. (1) No expenditure shall be made or incurred by the Authority unless it has been approved by the Minister as provided in article 17.

(2) Notwithstanding the provisions of sub-article (1) -

(a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the Minister, whichever is the earlier date, the Authority may make or incur expenditure for carrying out its functions under this Act or any other special law which the Authority is entitled to administer or enforce not exceeding in the aggregate one-half of the amount approved by the Minister for the preceding financial year;

(b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister, given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or sub-head of the estimates;

(c) in respect of the first financial year, the Authority may make or incur expenditure not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;

(d) if in respect of any financial year it is found that the amount approved by the Minister is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

19. The Minister shall, at the earliest opportunity and not later than three months after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House of Representatives is not in session, within three months from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives.

Publication of approved estimates.

20. (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

Accounts and audit.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority and approved by the Minister:

Provided that the Minister may, prior to approving the accounts, require the books and accounts of the Authority to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(3) The Authority shall, not later than three months after the end of each financial year, cause a copy of the statement of accounts duly audited to be transmitted to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall, at the earliest opportunity and not later than three months after he has received a copy of every such

C 920

statement and report, or if at any time during that period the House of Representatives is not in session, within three months from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

Deposit of
revenues and
payment by the
Authority.

21. (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Authority. Such monies shall, as far as practicable, be paid into any such banks from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the Authority as the Authority shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Authority for that purpose and shall be countersigned by the Chairman, or such other member of the Board or officer of the Authority as may be authorised by the Authority for that purpose.

(4) The Authority shall also make provision with respect to -

(a) the manner in which and the officer or officers by whom payments are to be authorised or approved;

(b) the title of any account held with the bank or banks into which the monies of the Authority are to be paid, and the transfer of funds from one account to the other;

(c) the method to be adopted in making payments out of funds of the Authority;

and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Authority.

22. Without prejudice to any directions communicated by the Minister under article 8(2), the Authority shall not, except with the approval of the Minister granted for special reasons and after consultation with the Minister responsible for finance, award or enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to exceed one hundred and forty-four thousand euro (€144,000) in value, or such other amount as the Minister responsible for finance may by regulations prescribe, except after notice of the intention of the Authority to enter into the contract has been published and in conformity with the provisions of the Financial Administration and Audit Act and regulations made thereunder.

Contracts of supply or works.

Cap. 174.

23. The Authority shall, not later than three months after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year and containing such information relating to the proceedings and policy of the Authority as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than three months after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within three months from the beginning of the next following session, cause a copy of every such report to be laid on the Table of the House of Representatives.

Annual Report.

24. (1) An authorisation holder or persons acting on his behalf or under an arrangement with him shall fulfil any prevention of money laundering and the combating of funding of terrorism obligations as may be imposed on them by means of regulations made under article 12 of the Prevention of Money Laundering Act.

Money laundering.

Cap. 373.

(2) Where the Authority discovers facts or obtains information that is related to transactions which are known or suspected to be related to proceeds of criminal activity or the funding of terrorism, or to a person who may have been, is or may be connected with money laundering or the funding of terrorism, the Authority shall disclose those facts or that information, supported by the relevant documentation that may be available, to the Financial Intelligence Analysis Unit in a timely manner.

C 922

(3) Where through its monitoring, or through any other means, the Authority notices that there are areas of innovation technology arrangements and innovation technology services which are vulnerable to money laundering or the funding of terrorism, the Authority shall inform the National Coordinating Committee on Combating Money Laundering and the Funding of Terrorism established under article 12A of the Prevention of Money Laundering Act of its concerns and provide it with any analysis, statistics, studies, or any other information relative thereto.

Cap. 373.

Exclusion of liability.

25. The Authority and any Board member, officer or employee of the Authority, and any other person appointed to perform a function under this Act or any other special law which the Authority is entitled to administer or enforce, or under any rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any other special law which the Authority is entitled to administer or enforce, or rules or regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith.

PART VI

Principles relating to Recognition, Powers of the Authority

Condition for the issue of any innovative technology authorisation.

26. (1) The Authority may require from any applicant for any innovative technology authorisation any information, documentation and assurances as may be necessary or relevant for the Authority to carry out its functions and to grant recognition or otherwise authorise any innovative technology arrangement or any innovative technology service provider under this Act or under any other special law which the Authority is entitled to administer or enforce, and thereafter to consider the continuing suitability of the innovative technology arrangement or the innovative technology service provider to continue to hold any authorisation:

Provided that the Authority shall from time to time state by Notice what information, documentation and assurances will generally be required from any applicant so that applicants will be able to establish such requirements in advance of any application they may wish to submit.

(2) Rules shall be prescribed by the Authority in relation to all forms of recognition it may be empowered to grant or issue under any other special law which the Authority is entitled to administer or enforce.

(3) The rules may also determine the qualifications and

requirements for the issue of any innovative technology authorisations, the conditions under which innovative technology authorisations are issued, the types of innovative technology authorisations relative to innovative technology arrangements or innovative technology services and all related matters.

(4) The Authority may also determine when innovative technology arrangements and innovative technology services which may be the subject of requirements under any other special law which the Authority is entitled to administer or enforce are exempt from such requirements.

27. (1) The Authority may grant or refuse to grant an innovative technology authorisation applied for under this Act or under any special law which the Authority is entitled to administer and enforce, as follows:

Power of Authority to grant or refuse innovative technology authorisation.

(a) it may grant an innovative technology services authorisation when it is satisfied that the applicant is a fit and proper person to provide the innovative technology services concerned and that the applicant will comply with and observe any innovative technology authorisation rules and regulations made under this Act or any other special law which the Authority is entitled to administer or enforce and applicable to him, or the provisions of any other law which has mandatory application to the applicant or his activities in the specific context, as well as any conditions established by the Authority in the particular case; or

(b) it may grant an innovative technology arrangements authorisation when it is satisfied that the innovative technology arrangement is fit and proper and will comply with and observe any innovative technology authorisation rules and regulations made under this Act or any other special law which the Authority is entitled to administer or enforce and applicable to it, as well as any conditions established by the Authority in the particular case,

and reference hereafter to the term "innovative technology authorisation" shall encompass all types of recognition and authorisations, whether for services or for arrangements, and reference hereafter to the term "innovative technology authorisation rules" shall encompass all sets of rules and each shall be interpreted as the context shall require.

Such recognition and authorisations may be issued on the voluntary application of innovative technology service providers or

C 924

the technical administrators or other persons involved in any innovative technology arrangements.

(2) (a) In granting an innovative technology authorisation the Authority may subject it to such conditions as it may deem appropriate having regard to general market impacts, and having granted an innovative technology authorisation it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act, the Authority may, from time to time, issue and publish innovative technology authorisation rules which shall be binding on innovative technology authorisation holders and others as may be specified therein.

(c) In the interest of transparency and market awareness, such innovative technology authorisation rules may lay down additional requirements and conditions in relation to activities of innovative technology authorisation holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the Authority, reporting requirements, financial resources and related requirements, if any, and any other matters as the Authority may consider appropriate.

(3) When considering whether to grant or refuse to grant an innovative technology authorisation the Authority shall, in particular, have regard to -

(a) the protection of the general public and organisations;

(b) the protection of the reputation of Malta taking into account Malta's international commitments;

(c) the promotion of innovation, competition and choice; and

(d) the reputation and suitability of the applicant and all other parties connected with innovative technology arrangements.

(4) Every innovative technology service authorisation shall specify the innovative technology service which the holder thereof has been recognised as being able to provide and any innovative technology arrangement authorisation shall specify the innovative technology arrangement which has been recognised or authorised.

(5) The Authority shall establish a register containing a list of all holders of innovative technology authorisations. This register, which shall be publicly available, shall also indicate -

(a) the services in relation to which each innovative technology services authorisation and each innovative technology arrangement in relation to which an innovative technology authorisation was issued; and

(b) information on all matters which are required to be entered into the register for public information under the other provisions of this Act, the Innovative Technology Arrangements and Services Act, 2018, or the Virtual Financial Assets Act, 2018, or any other applicable law, Bill No 43.
Bill No 44.

and shall be updated on a regular basis.

28. (1) The Authority, acting in line with the governing principles and in furtherance of the regulatory objectives established by this Act, or any other special law which the Authority is entitled to administer or enforce, shall refuse to grant an innovative technology authorisation in any of the following instances: Refusal to grant an innovative technology authorisation.

(a) if the application is not submitted in accordance with the established form or in accordance with applicable procedure; or

(b) if the applicable fees have not been paid; or

(c) if the Authority, in its reasonable discretion, is not satisfied that the applicant and all relevant persons, including any innovative technology service providers who are rendering services, are fit and proper; or

(d) if, where applicable and in the reasonable opinion of the Authority, it appears on the basis of the assessment carried out, as may be prescribed by the Authority, the innovative technology services or innovative technology arrangements that the applicant intends to offer do not satisfy the minimum requirements of quality or security for their respective types; or

(e) if it transpires that any information or submission made to the Authority is false, misleading, inaccurate or incomplete in a material respect; or

(f) if the Authority, in its reasonable discretion, is not satisfied, as the circumstances of the context require, that:

C 926

(i) the applicant is capable of sustainably financing the service or technology; or

(ii) the applicant has the necessary competence, technical know-how and resources to carry out the service; or

(iii) the applicant has a business model to carry the service in a viable way and in a way that is compliant with the applicable regulatory instruments in force; or

(iv) the applicant will comply with all regulatory requirements applicable to authorised persons of the relevant category and with any additional requirements that the Authority considers, on the basis of a risk-based approach, necessary to impose on the applicant, which requirements may include but are not limited to financial safeguards, protection of users and, or the implementation of any policies and procedures.

(2) For the avoidance of doubt, reference in this article to carrying out functions to the satisfaction of the Authority shall refer to both services rendered personally by the applicant as well as services rendered through engagement of delegates and through automated technology systems approved by the Authority.

(3) When the Authority refuses to grant recognition under this Act or any other special law which the Authority is entitled to administer or enforce, it shall state on its website the fact that it has refused the application and the principal reasons for so doing and shall maintain such information on its website for three months from the notification to the applicant of its determination.

Where
Authority may
refuse to grant
an authorisation.

29. The Authority, acting in line with the governing principles and in furtherance of the regulatory objectives established by this Act, or any other special law which the Authority is entitled to administer or enforce, may additionally refuse to grant an authorisation in any of the following instances:

(a) if the Authority believes that the innovative technology service or innovative technology arrangement being proposed is not compliant with the regulatory instruments in force; or

(b) if the Authority believes that granting an authorisation to the applicant may pose a risk to the reputation of Malta or be otherwise not in the public interest or contrary to regulatory objectives established by the Act.

30. (1) The Authority may, in furtherance of the regulatory objectives under this Act or any other special law which the Authority is entitled to administer or enforce and in applying a risk-based approach in line with the governing principles: Further requirements.

(a) establish, where appropriate or necessary, by means of binding instruments, more extensive, reduced or amended requirements for an applicant to qualify for recognition or an authorisation in certain pre-defined circumstances; and, or

(b) impose on an applicant, where appropriate or necessary, specific additional requirements by means of a binding instrument.

(2) Where the Authority has imposed specific requirements on an authorised person or several authorised persons, or where the Authority deems necessary or appropriate to impose new specific requirements on an authorised person or several authorised persons, by whichever binding instrument such imposition is made, the Authority shall have the power to make or vary such imposition during the term of the authorisation:

Provided that where a variation or a new imposition consists of making requirements more onerous on an authorised person, unless such variation or imposition has been requested by the authorised person itself, the Authority shall by notice in writing inform the authorised person of the Authority's intention to vary the said requirements or to impose new requirements, calling upon the said authorised person to show cause, within such period being not less than twenty days after the issue of the notice as may be specified in the same notice, why such requirement should not be varied or such new condition should not be imposed, and the Authority shall consider any representations made by the authorised person within the period specified in the notice, before varying the requirement or before imposing a new requirement:

Provided further that in case where, in the Authority's reasonable opinion, there is serious prejudice or an imminent threat of serious prejudice to public security, public health, users' financial security, Malta's reputation, or other overriding reasons of public interest, the Authority shall be authorised to impose immediate compliance with the variation or a new requirement.

31. The burden of proving the applicant's qualification to receive recognition or be granted an authorisation or to continue being so recognised or to continue holding an authorisation shall be solely on the applicant or the authorised person, as the case may be. Burden of proof.

C 928

Variations of purposes and others features.

32. The general purposes of an innovative technology arrangement recognised by the Authority and the specific matters on which it has received assurances through the systems audit or specific undertakings by any person in connection with any recognition under this Act, or any special law which the Authority is entitled to administer or enforce, shall not be amended or substituted unless the authorised person has obtained a prior written approval by the Authority of any such amendment or substitution:

Provided that any substitutions or amendments which refer to upgrades, maintenance, innovative evolution or mere replacement of any supporting software which does not change the functionality shall not require prior approval by the Authority but shall be notified to the Authority if, in the opinion of the recognised innovative technology services provider, they may have material impact on the users of the innovative technology arrangement or in any manner are not in accordance with the regulatory principles of this Act:

Provided further that the Authority, following a risk-based evaluation, may prescribe mandatory notification in general or give directions in particular cases.

Transferability.

33. (1) An authorisation granted by the Authority cannot be assigned or transferred.

(2) The Authority is to be notified where any transactions which have the effect of the assignment or transfer of power of control in relation to an innovative technology services provider which is a legal organisation are taking place and unless otherwise stated in rules or guidelines by the Authority, a transfer of power of control shall take place when the transferor enjoys ownership rights of twenty-five per cent or more of the organisation's shares or otherwise controls the organisation, directly or indirectly.

(3) The Authority shall designate from time to time the holders of office or other functionaries within the applicant who shall have the duties of notification to the Authority under this Act.

(4) The Authority may implement such procedures under this Act applicable to transferees and transferors.

(5) Any requirement in this Act that a person be a fit and proper person to carry out innovative technology services shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any qualifying shareholder or member, director or officer of such person, when a legal organisation, be a fit and proper person to carry out such activities or functions or the role such person has assumed

with regard to the legal organisation.

For the purposes of this Act "qualifying shareholder" means a person who holds more than 25% of the shares or ownership interests in the legal organisation or who, through provisions of the statute, has special voting or other rights permitting him to exercise control over the activities of the organisation:

Provided that any person being a lender, financier or other funding supporter of an applicant who is not involved in the day to day administration of the service or innovative technology arrangement shall not be considered to be a "qualifying shareholder" if the relationship is one of holding security or otherwise of a temporary nature and this until such time as it becomes permanent or he becomes involved in the day to day administration of the operation, including through the appointment of directors with executive functions on the board of directors.

(6) The transfer to a wholly owned subsidiary of an applicant or to another legal organisation which is owned and controlled by the same persons shall not be considered to be a transfer.

(7) The Authority shall issue guidelines on requirements applicable to changes in control in relation to any innovative technology arrangement.

PART VII

Regulatory Powers

34. (1) The Authority may at any time revoke, cancel or suspend an innovative technology arrangement authorisation or an innovative technology services authorisation in accordance with the provisions of this Act or any other special law which the Authority is entitled to administer or enforce.

Power of competent authority to revoke, cancel or suspend innovative technology arrangements authorisations and innovative technology services authorisations.

(2) The Authority may revoke, cancel or suspend an innovative technology services authorisation -

(a) if it considers that the holder thereof is not a fit and proper person to provide the innovative technology service he is authorised to provide; or

(b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or any other special law which the Authority is entitled to administer or enforce or of any innovative technology services rules or regulations made thereunder, or has failed to

C 930

satisfy or comply with any obligation or condition to which he or the innovative technology arrangement is subject by virtue of or under this Act or any other special law which the Authority is entitled to administer or enforce, or any conditions established by the Authority in the particular case; or

(c) if the Authority has been furnished by or on behalf of the innovative technology services authorisation holder with information which is false, inaccurate or misleading, or if the innovative technology services authorisation holder has obtained the innovative technology services authorisation by making false statements or by any other irregular means; or

(d) if the innovative technology services authorisation holder has not commenced to provide the service he has been authorised to provide within the time provided for in the innovative technology services authorisation, if any, or has ceased to provide such service; or

(e) if it considers it desirable to revoke, cancel or suspend the innovative technology services authorisation for the protection of the general public, and the reputation of Malta taking into account Malta's international commitments; or

(f) at the request of the innovative technology services authorisation holder; or

(g) in any of the circumstances under which the Authority would have been precluded from issuing the innovative technology services authorisation under this Act or any other special law which the Authority is entitled to administer or enforce or where under such Act or any other special law which the Authority is entitled to administer or enforce it would have been entitled to refuse the grant of such innovative technology authorisation; or

(h) after proper communication and investigation, at the written request of another national competent authority, as well as the Financial Intelligence Analysis Unit acting under the Prevention of Money Laundering Act, which is carrying out regulatory functions in relation to the relevant innovative technology services authorisation holder simultaneously with the Authority.

Cap. 373.

(3) In the case of an innovative technology authorisation with reference to an innovative technology arrangement, the Authority may revoke, cancel or suspend an authorisation -

(a) if it considers that the persons who assume any responsibility towards the Authority with reference to the innovative technology arrangement are not fit and proper persons to carry out the functions required of them in connection with the arrangement or if there are no such persons in office as stipulated or required by the innovative technology authorisation; or

(b) if it considers that the requirements of any provision of this Act, or any other special law which the Authority is entitled to administer or enforce, are not being fulfilled, or there has been a contravention of any such provision as aforesaid, or an obligation or condition to which the authorisation is subject by virtue of or under this Act, or any other special law which the Authority is entitled to administer or enforce, has not been satisfied or complied with; or

(c) if information has been furnished to the Authority by or on behalf of or in relation to the innovative technology arrangement which is false, inaccurate or misleading; or

(d) if the innovative technology arrangement has not commenced the activities within the time provided for in the authorisation or has ceased to carry on such activities; or

(e) if it considers it desirable to cancel or suspend the innovative technology authorisation for the protection of the general public and the reputation of Malta taking into account Malta's international commitments; or

(f) at the request of the innovative technology authorisation holder; or

(g) in any of the circumstances under which the Authority would have been precluded from issuing the innovative technology authorisation under this Act or any other special law which the Authority is entitled to administer or enforce or where under this Act or any other special law which the Authority is entitled to administer or enforce it would have been entitled to refuse the grant of such authorisation; or

(h) after proper communication and investigation, at the written request of another national competent authority as well as the Financial Intelligence Analysis Unit acting under the Prevention of Money Laundering Act which is carrying out regulatory functions in relation to the relevant innovative technology arrangement simultaneously with the Authority. Cap. 373.

C 932

(4) Revocations, cancellations and suspensions shall be reflected in the register of authorisations appearing on the website of the Authority. The Authority shall have the power to publicise more widely the revocation, cancellation or suspension of its authorisations should it consider that this would be necessary for the protection of the general public.

Cap. 248.

(5) No action shall lie against the Authority in terms of the Press Act, or any other law relating to defamation or slander, for the issuing of *bona fide* public statements in terms of this article.

(6) The Authority may issue guidelines on how this article will apply with regard to innovative technology arrangements, the whole or parts of which are automated or in relation to a decentralised autonomous organisation or similar contexts.

Procedure when
taking a
measure under
article 34.

35. (1) The Authority shall, before proceeding to take any of the measures under article 34, write to the person concerned, warning him of the measure that may be taken and the specific reason why it may be taken, requiring him to cease or rectify his acts or omissions and, or to make his submissions thereto within such period not being less than twenty-five days which period, without prejudice to the provisions of sub-article (4), may be abridged if the Authority considers that the continuance of the infringement impacts negatively the effective exercise by the Authority of its regulatory functions and, or warrants the immediate intervention of the Authority:

Provided that where the measure is an administrative fine the person concerned shall also be informed of the amount of the fine:

Provided further that when issuing a warning under this sub-article, the Authority may impose such conditions as it may consider reasonable in the circumstances.

(2) If the person concerned remedies the infringement within the period established by the Authority in accordance with sub-article (1), and agrees in writing to abide with any condition that the Authority may impose, the Authority may at its discretion desist from proceeding any further, this without prejudice to any regulatory measures that may have already been imposed.

(3) If, after the lapse of the period mentioned in sub-article (1), the Authority considers that the person concerned has not given any valid reasons to demonstrate why no measure should be taken against him, the Authority shall notify the person concerned in writing, specifying the nature of the infringement, stating the measure being taken, and if the measure is an administrative fine, stating the amount of the fine being imposed.

(4) Notwithstanding the provisions of sub-article (1), where the Authority has *prima facie* evidence that the infringement -

(a) represents an immediate and serious threat to public security; or

(b) creates or may create serious economic or operational problems for other providers or users of innovative technology arrangements; or

(c) would result in significant harm to competition in the innovative technology arrangements sector,

the Authority may take urgent interim measures to remedy the situation in advance of reaching a final decision, including ordering the immediate cessation of the act or omission giving cause to the infringement and the imposition of administrative fines:

Provided that the person against whom such measures are contemplated shall, thereafter, be given a reasonable opportunity to state his view and propose any remedies:

Provided further that the interim measures shall be valid for a maximum of three (3) months, subject to extension for a further period of three months, in circumstances where enforcement procedures have not been completed.

(5) The notification as referred to in sub-article (3) shall, upon the expiry of the time limit for appeal therefrom, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure: Cap. 12.

Provided that if the person against whom the notice has been issued files an appeal before the Tribunal within the twenty-day period referred to under article 30, and concurrently with or before the filing of his appeal requests the Tribunal to suspend the effects of the notice, then the Authority shall desist from issuing a judicial act as referred to in this sub-article until such time as the request for suspension has been determined, withdrawn or otherwise dealt with:

Provided further that the Tribunal shall determine any requests for suspension referred to in this sub-article expeditiously. Before determining any such request the Tribunal shall give the Authority a reasonable opportunity to reply and make its submissions.

(6) Interest at the rate of five percentage points or such other

C 934

rates as may be established by the Minister for Finance from time to time shall run as from the date set by the Authority for the payment of any administrative fine imposed by it in terms of this Act or any special law which the Authority is entitled to enforce. In cases where the Tribunal or the Court of Appeal, as the case may be, after having upheld an application to suspend the fine pending proceedings, finally decides that the fine is due, such fine shall be due together with any interests accrued thereon as from the date originally set by the Authority for payment including the period during which the payment of the said fine was suspended.

(7) The Authority shall give its reasons for any decision taken under this article.

(8) Notwithstanding the provisions of any law, no precautionary warrant or order shall be issued by any court restraining the Authority from taking any urgent prevention or management measure, under this Act, or under any regulations issued hereunder or any other law. Without prejudice to the power of the Authority to declare to the court that a measure is one contemplated by this article, the Minister may from time to time make regulations to better define what constitutes a material prevention or management measure for the purpose of this Act.

Notification of proposed refusal, variation, revocation, cancellation or suspension of an innovative technology authorisation.

36. (1) Where the Authority proposes -

(a) to vary any condition to which the innovative technology authorisation is subject or to impose a condition thereon; or

(b) to refuse an application for an innovative technology authorisation or to cancel or suspend an innovative technology authorisation,

it shall give the applicant or, as the case may be, the innovative technology authorisation holder, notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours), make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

(3) The Authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given

under sub-article (1).

37. (1) Without in any way disclosing information on specific applicants or matters of commercial sensitivity, the Authority shall seek to regularly publish information relating to its rulings, determinations and policy positions when they affect applications, interpretation of the provisions of this Act, or any special law which it is entitled to administer or enforce, so as to ensure that applicants and the public in general are aware of the position taken by the Authority on matters of general interest relating to innovative technology arrangements.

Publication of
policy
guidelines.

(2) The publication of such information shall not in any way limit the freedom of the Authority to vary its policies or approach on any issue based on further review and experience or development of technology or law generally. When such variations take place the Authority shall notify in later publications the connection and review to previous publications.

(3) Such publications are intended for the benefit of the sector and predictability of the recognition, review and enforcement processes envisaged by this Act.

38. (1) This article applies only:

Exemptions.

(a) in circumstances where under provisions of any special law applicable at any time, it is prohibited to carry on any specified activities or it is so prohibited except when authorised permitted to do so, not being a law of general application to achieve public order the application of which cannot be waived;

(b) with reference to innovative technology services or innovative technology arrangements of a designated type and not generally, and in particular where the innovative technology arrangement has embedded within it certain software features which may substitute for existing regulatory requirements, which may, due to its area of operation or its effects, fall within the prohibitions above referred to.

(2) The Minister shall, on the written recommendation of the Authority and subject to the concurrence of the relevant Minister and, or national competent authority based on which person has the power to grant exemptions or waivers under the relevant special law, have the power to:

(a) make regulations to exempt from the provisions of any law requiring authorisation to carry on relevant activities

C 936

which may be applicable to it; or

(b) to introduce rules which postpone the application of rules for a period of time or to introduce thresholds based on the volume of activities based on transactions, values or otherwise; or

(c) to waive particular regulatory requirements.

PART VIII

Enforcement and Sanctions

Provision of
information.

39. (1) Without prejudice to the enforcement powers that it has at law, the Authority may require any person to provide it with any information, including information on codes, software protocols, and financial information, that the Authority considers necessary for the purpose of ensuring the quality and integrity standards required by this Act for purposes of recognition or compliance with the provisions of this Act or any other special law which the Authority is entitled to administer or enforce, or decisions or directives made in accordance with this Act or such other special law:

Provided that nothing in this sub-article shall imply the power of the Authority to request information relating to confidential source codes for software which is commercially sensitive or to cryptographic keys owned personally by such person, but this shall not interfere with the powers of any other national competent authority under applicable law in relation to the enforcement of such applicable law.

(2) Any information required by the Authority under sub-article (1) shall be proportionate to the performance of its functions and obligations under this Act or any other special law which the Authority is entitled to administer or enforce and, in requiring any information as aforesaid, the Authority shall state why it requires the information requested.

(3) Except in cases where the recipient of a request may refuse to provide such information, which refusal shall be in writing and shall state the basis for such refusal, a person who is notified with a requirement under sub-article (2) shall comply promptly with the requirement within the time-scales and according to any level of detail as may be required by the Authority:

Provided that any such person may, in complying with the provisions of this sub-article, state clearly to the Authority if any information provided by him is to be considered as confidential for commercial reasons and the Authority shall respect the confidentiality requested subject to the provisions of the Professional Secrecy Act. Cap. 377.

(4) The same rules stated above shall apply to the innovative technology authorisation holder who, in carrying out the authorised services, may review or receive information as described in the proviso to sub-article (1). Such innovative technology authorisation holder shall not be required to provide information to the Authority if such information was obtained under confidence or under non-disclosure obligations whilst carrying out his functions for the benefit of any applicant.

40. (1) For the purposes of the exercise by the Authority of any of its functions under this Act or under any other special law which the Authority is entitled to administer or enforce, the Authority may, as may be applicable in the context and subject to the limitations in the applicable laws on professional secrecy: Enforcement powers of the Authority.

(a) enter, at any reasonable time, any premises other than a place of residence, or any other place or any vehicle or vessel where any activity regulated by or under this Act or any other special law which the Authority is entitled to administer or enforce, takes place, or in the opinion of the Authority takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein;

(b) require any person to produce for inspection and take extracts or copies from any books, documents or records relating to any activities regulated by or under this Act or any other special law which the Authority is entitled to administer or enforce, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the Authority such information as the Authority may reasonably require in relation to any entries in such books, documents or records;

(c) remove and retain such books, documents or records for such period as may be reasonable for further examination;

(d) require any person to maintain such books, documents or records for such period as may be reasonable as the Authority directs;

(e) require any person to give to the Authority any

C 938

information that may be required with regard to any innovative technology arrangement regulated by or under this Act or any other special law the Authority is entitled to administer or enforce;

(f) make such inspections, including site inspections, to enable the Authority to carry out its functions at law and in doing so the Authority may also undertake tests and measurements of any machinery, apparatus, appliances and other equipment at any place as the Authority may consider necessary:

Provided that where the person concerned fails to abide with any requirements made by the Authority under this sub-article, the Authority may then take any such measures as it may consider appropriate in the circumstances including the switching off or modification of the use of any such apparatus.

(2) Any officer of the Authority or any other person duly authorised by the Authority to act on its behalf, when exercising a power conferred by this Act or by any other special law which the Authority is entitled to administer or enforce, shall, if requested by any person thereby affected, produce to that person for inspection a certificate issued by the Authority stating that he is duly authorised to act for and on behalf of the Authority.

(3) In the course of the exercise of any of the powers conferred by this Act or by any other special law which the Authority is entitled to administer or enforce the Authority may request the assistance of the Police.

(4) Any persons who are or have been in charge of the innovative technology arrangement falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(5) Any person who -

(a) obstructs, impedes or assaults an officer of the Authority or any other person duly authorised by the Authority to act on its behalf in the exercise of any of the powers conferred by this Act or by any other special law which the Authority is entitled to administer or enforce;

(b) fails or refuses to comply with a requirement under this article;

(c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce;

(d) falsely represents himself to be an officer of the Authority or a person authorised by the Authority to act on its behalf; or

(e) furnishes any information to the Authority which it may require in the exercise of its functions under any special law it is entitled to administer or enforce, which he knows, or has reasonable cause to believe to be false or misleading,

shall be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) not exceeding twelve thousand euro (€12,000) or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

(6) The Minister may make regulations on how this article will apply with regards to innovative technology arrangements, their protocols, nodes and users, including when the whole or parts of which are automated or in relation to a decentralised autonomous organisation or similar context, so as to ensure that users or designated classes of users are not subjected to the exercise of such powers when they are not personally involved in the activity being investigated or upon which enforcement is being taken.

41. (1) Except where otherwise provided by law, a person shall not knowingly disclose confidential information obtained by him while performing the duties of a member of the Board, or of an officer or employee of the Authority or of an adviser or consultant to the Authority, unless he is duly authorised by the Authority to do so:

Disclosure of
confidential
information.

Provided that any such person shall remain bound by the requirements of this article even after his appointment or employment, howsoever described, with the Authority has come to an end.

(2) In this article "confidential information" means any information, howsoever described, which is considered by the Authority to be confidential, or has been notified of such status by the person providing it, and in relation to which the Authority has notified the persons concerned of their duty of non-disclosure.

(3) A person who contravenes the provisions of this article

C 940

shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) not exceeding ten thousand euro (€10,000).

(4) Nothing in this article shall prevent the disclosure of any information to the Authority or, by or on behalf of the Authority to the Minister or as may be required at law.

Quantum of an administrative fine.

42. (1) An administrative fine imposed shall not, unless provided otherwise by or under this Act or any special law which the Authority is entitled to enforce, exceed three hundred and fifty thousand euro (€350,000) for each infringement or failure to comply and, or twelve thousand euro (€12,000) for each day of infringement or non-compliance as the case may be:

Provided that if the act or omission which constitutes an infringement is committed by an undertaking and the Authority considers that such act or omission has especially significant effects on the market to the detriment of competitors and, or consumers, the stated amount that may be imposed as an administrative fine may be increased to an amount that is not more than five per cent (5%) of the turnover of the undertaking in the calendar year immediately preceding the year when the infringement was committed:

Provided further that any daily fine imposed may be back-dated to the date of the commission or commencement of the infringement.

(2) In determining the amount of an administrative fine, regard shall be had in particular to the nature and extent of the infringement, its duration and its impact on the market and on consumers.

(3) The Minister may, by regulations made under this Act, establish the administrative fines that may be imposed by the Authority for breaches of the said regulations:

Provided that the amount of the fines that may be so prescribed shall not exceed the maximum amounts referred to under sub-article (1).

Administrative infringements by bodies corporate.

43. Where an administrative infringement of any provision of this Act or any other special law which the Authority is entitled to administer or enforce is committed by a body corporate and is proved to have been committed with the consent or involvement of or to be attributable to the gross negligence on the part of a person being an administrator of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he was responsible for the said infringement.

44. The prosecution of a criminal offence or the initiation of proceedings to impose an administrative fine under this Act or under any other special law which the Authority is entitled to administer or enforce shall be prescribed by the lapse of two years from the date on which the offence or administrative infringement is alleged to have been committed.

Prescription for offences and administrative infringements.

PART IX

Administrative Review Tribunal

45. (1) The Administrative Review Tribunal shall be competent to hear and determine appeals from decisions of the Authority as provided in this Act or in any law or regulations.

Administrative Review Tribunal.

(2) The provisions of the Administrative Justice Act, in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Authority.

Cap. 490.

46. (1) Unless otherwise provided by law, an appeal shall lie to the Tribunal from a decision of the Authority made under this Act, any other decisions that the Authority may take under any other special law which the Authority is entitled to administer or enforce; and any decision taken by or on behalf of Government or by any public authority in relation to or having a substantial bearing on innovative technology services or innovative technology arrangements.

Appeals from decisions of the Authority other than the imposition of administrative fines.

(2) The right of appeal to the Tribunal shall be competent to any person aggrieved by the decision:

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

(3) An appeal from a decision of the Authority shall be made by application and shall be filed with the Secretary of the Tribunal within twenty (20) days from the date on which the said decision has been notified.

(4) There shall be a right of appeal from decisions of the Tribunal to the Court of Appeal in accordance with the provisions of Part IV of the Administrative Justice Act.

Cap. 490.

C 942

Appeals against
an
administrative
fine imposed by
the Authority.

47. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to appeals against administrative fines imposed by the Authority shall be regulated by the provisions of this article.

(2) A person who is notified with a notice in writing given under article 35 may, within twenty (20) days from the date of such notification, lodge an appeal before the Tribunal objecting to the administrative fine so fixed.

(3) The Tribunal shall not annul an administrative fine as aforesaid unless it results to it that such fine could not at law be imposed in the circumstances of the case, or could not at law be fixed in the amount established by the Authority due account being given to the principle of proportionality.

(4) The Tribunal shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than forty (40) days from the date of the service of the appeal on the Authority.

(5) The appeal, and the notification of the date fixed for hearing, shall be notified to the Authority without delay, and the Authority shall file its reply thereto within twenty (20) days from the date of the notification of the appeal.

(6) The decision of the Tribunal upon an appeal referred to in sub-article (2), confirming the imposition of a fine established by the Authority or reducing any such fine, shall upon becoming *res judicata* be deemed to be a decision of the Tribunal.

(7) There shall be a right of appeal on points of law to the Court of Appeal to any of the parties to the proceedings before the Tribunal.

Decisions of the
Appeals
Tribunal.

48. In determining an appeal the Tribunal shall take into account the merits of the appeal, and may, in whole or in part, confirm or annul the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

Procedure of the
Tribunal.

49. (1) The Tribunal shall endeavour to determine an appeal within one hundred and twenty (120) days from the lapse of the period by when the Authority may file its reply to the aforesaid appeal and in any case shall deliver its final decision not later than sixty (60) days from when the parties declare that they have concluded with their evidence and made their final submissions.

(2) The Tribunal may, in order to assist it in the exercise of its

functions, appoint independent and impartial experts to advise it on any issue that may be relevant to any appeal lodged before it. In such cases the Tribunal shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of such experts by any of the parties to the appeal.

(3) The Minister may, subject to the provisions of this Act, by regulations prescribe the procedure to be followed before the Tribunal, and subject thereto and to any other provisions of this Act, the Tribunal may regulate its own procedure.

(4) The Minister may by regulation amend any of the periods stated in sub-article (1).

50. (1) The decision of the Authority, pending an appeal whether before the Tribunal or the Court of Appeal, shall stand and shall be adhered to by all the parties to whom the decision applies.

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

(2) The 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 in whole or in part the decision which is the subject of the appeal pending the final determination of the appeal. The Tribunal or the Court of Appeal in deciding whether or not to suspend the decision shall state its reasons and shall take into account all the relevant circumstances, including -

- (a) the urgency of the matter;
- (b) the effect on the party making the request if the application for suspension is not upheld; and
- (c) the effect on competition and, or on users of the innovative technology services or innovative technology arrangements if the application is upheld:

Provided that a party, in making an application under this article, shall state the factual and legal grounds establishing a *prima facie* case for the suspension of the decision. The Tribunal or the Court of Appeal, as the case may be, shall on receipt of any such application order the notification thereof to the other party or parties to the appeal affording them reasonable opportunity to make their response thereto:

Provided further that the Tribunal, in determining any such application, may include such conditions as it considers necessary in the circumstances.

C 944

Service of notices.

51. Where a notice, howsoever described, is required to be given by the Authority to any person whether under this Act or under any other law administered by the Authority, the notice shall be addressed to that person and shall be given to the person in any of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices has been provided by the person, by leaving it at such address, or sending it by registered post addressed to the person to that address;
- (e) in any case where the Authority considers that the immediate giving of the notice is required by sending it by electronic mail to a device or facility for the reception of electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the facility of the sender for the reception of electronic mail generates a message confirming receipt of the electronic mail:

Provided that the provisions of this paragraph shall not apply to the notification of documents filed before the Tribunal or any Court.

Proceedings for debts due to the Authority.

52. (1) Where the Authority desires to sue for the recovery of a debt due to the Authority under any other special law which it is entitled to administer or enforce for any innovative technology authorisation fee or other similar fee or charge howsoever described that may be due, the Chairman or an officer of the Authority duly authorised by the Authority to act on its behalf may make a declaration on oath before the registrar of the Courts, a judge or a magistrate wherein he states the nature of the debt and the name of the debtor and confirm that it is due.

(2) The declaration referred to in sub-article (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the debtor shall, within a period of twenty (20) days from service upon him of the said declaration, oppose the claim by filing an application

demanding that the court declare the claim unfounded.

(3) The application filed in terms of sub-article (2) shall be served upon the Authority, which shall be entitled to file a reply within a period of twenty (20) days. The court shall appoint the application for hearing on a date after the lapse of that period.

(4) Any debts due to the Authority in accordance with this article shall be prescribed by the lapse of the period of five (5) years from the date on which the debt was due.

53. (1) Without the written prior consent or instructions of the Authority, or except where permitted to do so in general guidelines issued by the Authority on the subject matter, no person shall make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

Name of the Authority not to be used in any advertisement.

(a) any innovative technology services supplied by any person or any innovative technology arrangements have the approval of the Authority; or

(b) any activity carried out by any person or provided by or on an innovative technology arrangement has the approval or is conducted with the co-operation or assistance of the Authority.

(2) Where the name, trade name, trademark or the designation of any innovative technology arrangement appears in relation to a representation referred to in sub-article (1), that person shall be deemed for the purposes of this article to have caused the representation to be made unless such person proves that the representation was made without his knowledge or connivance.

(3) A person convicted under this article shall be liable to a fine (*multa*) of not less than five thousand euro (€5,000) and not more than ten thousand euro (€10,000) if the person is registered or certified by the Authority or forms part of a legal organisation which is so registered or certified and not more than twenty thousand euro (€20,000) if the person is not and does not form part of a legal organisation which is registered or certified.

54. The Authority shall be exempt from any liability for the payment of income tax, duty on documents and transfers, and customs and excise duty, under any law for the time being in force.

Exemption from taxes.

PART X

Co-ordination with other Competent Authorities; Simplification

Co-ordination
with other
national
competent
authorities.

55. (1) The provisions of this Part shall be implemented by each national competent authority with reference to matters relating to or involving innovative technology arrangements or services subject to any mandatory provisions in the legislation establishing the said authorities, provisions on their functions and powers or any other special law relating to their jurisdiction or competence. For all intents and purposes this Part shall be deemed to form part of the laws establishing the relevant competent authorities and shall be applied *mutatis mutandis*.

In the following provisions:

(a) the term "Authority" when applied by another national competent authority shall be a reference to the said authority itself with the Authority being considered to be another national competent authority;

(b) the term "this Act" shall be a reference to the special law establishing the relevant authority or any other special law which they may be entitled to administer or enforce;

(c) the term "confidentiality" shall refer to information which is sensitive to a specific context of a commercial nature, refers to personal data of an applicant or licensee or is confidential to protect the national interest but shall not be interpreted to refer to matters which are statistical, operational, administrative, related to research and other such matters.

(2) The Authority shall act in conjunction with other national competent authorities when:

(a) their remit may affect the providers of services relating to the innovative technology authorisations or affect innovative technology activities and sectors governed by this Act and any other special law which the Authority is entitled to administer or enforce;

(b) other special laws simultaneously impact on the innovative technology arrangements regulated by the Authority and the other national competent authorities;

(c) matters of common interest arise in connection with the application of this Act and of any other special law which the Authority is entitled to administer or enforce.

(3) (a) The Authority on the one hand and other national competent authorities on the other hand shall provide each other with the support, guidance and information, excluding any information which is confidential, necessary in the relevant context for the application of:

(i) the provisions of this Act, or any other special law which the Authority is entitled to administer or enforce, and any regulations made thereunder;

(ii) the special laws and regulations administered by the other national competent authorities;

(iii) any other relevant special law of common interest to the Authority and the other national competent authority;

(iv) the communication required between national competent authorities when two, or more, approvals or authorisations for or with reference to the same applicant may be issued by two, or more, competent authorities;

(v) the type of support which each of the national competent authorities referred to in sub-paragraph (iv) shall give to each other in matters of common interest with regard to the issue of innovative technology authorisations;

(vi) the exercise of joint monitoring and supervision by two, or more, national competent authorities in the case of two, or more, approvals or authorisations being issued as referred to in sub-paragraph (iv); and

(vii) notwithstanding the provisions of any other law, any agreement reached between the relative national competent authorities as to which one of them shall exercise the power of lead authority in such circumstances,

which information shall be provided within an appropriate time-frame taking into consideration the particular circumstances of the issues involved.

(b) Notwithstanding the provisions of any other law but subject to any confidentiality obligations, as defined in this Part, which each Authority may have, the Authority and the national competent authorities are permitted to share information necessary

for the implementation of the provisions of this Part without restrictions. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as is binding upon the originating authority by applicable law.

(4) Where a higher degree of specialisation is required to be relied upon or assumed by one competent authority with reference to another, the authority enjoying the specialisation shall establish a specialised unit with a focus on knowledge relevant to other areas of specialisation for the co-ordination and communication with the other authority in order to ensure consistent, streamlined and efficient processes of analysis and decision making in the processing of applications and ongoing supervision.

(5) In carrying out its functions under this Act and any special law it is entitled to administer or enforce, the Authority shall, consistently with the provisions in this Part -

(a) seek the support and make use of the resources and facilities made available to it by other national competent authorities with reference to their areas of competence so as to achieve the purpose of efficiency as stated in this Act and other applicable laws generally;

(b) when addressing investigation or enforcement issues under this Act simultaneously with those under other special laws relating to subject matters falling within the competence of other national competent authorities, it shall, where the competence for such investigation or enforcement at law lies within the other national competent authorities, follow the lead of investigation and enforcement by the other national competent authorities responsible for the subject matter and support as necessary in the context; and

(c) it shall generally seek the design, development and implementation of innovative technology arrangements in all areas of regulation for itself and for and in collaboration with other national competent authorities, including with reference to compliance with and enforcement of special regulatory laws.

(6) The Authority and the other national competent authorities shall co-ordinate with regards to the recognition of qualifications and competencies of persons and organisations which review and audit the innovative technology arrangements in the authorisation processes which each are responsible for and shall maintain and publicise lists of such persons for use by the respective industries falling under their statutory areas of responsibility.

(7) The Authority and the other national competent authorities shall from time to time enter into memoranda of understanding among themselves so as to clarify any matters which they consider useful to clarify and to address issues of detail and practice which they consider relevant to achieve the best outcomes in the implementation of the principles of this Part, together with any reservations they may wish to record on the basis of provisions of law applicable to themselves.

A copy of any such memoranda of understanding shall be delivered to the Joint Regulatory Efficiency Board.

In so far as matters are such as need to be decided upon by an authority in an independent and autonomous manner, the provisions of the articles in this Part shall be interpreted accordingly and shall not impinge on such independence and autonomy.

56. (1) In assessing an application for an innovative technology authorisation, the Authority shall avoid duplicating procedures, controls, reviews and assessments carried out by other national competent authorities relating to the same persons or innovative technology arrangements, as long as such other processes have been conducted within a reasonable time from the assessment of the relevant application, as may be established by the Authority.

No duplication of controls and simplification of procedures.

(2) The Authority may rely on other national competent authorities, in the collation of information and making assessments on specific matters, if they agree that the review and assessment is covering the same ground. This reliance may take place on all relevant matters, including those relating to identification and the consideration of whether a person or innovative technology arrangement is fit and proper for the role referred to in the application:

Provided that the Authority may, on a case by case basis, also take into account procedures and controls already carried out by a competent authority in any other jurisdiction which the Authority considers to provide equivalent safeguards to those provided under Maltese law, or as may be established by the Authority.

(3) When requested to rely on procedures and controls or other measures carried out by a competent authority in another jurisdiction, the Authority shall be authorised to subject such measures to verification and shall not be bound to accept them if, in the Authority's discretion, such procedures, controls or other measures do not provide equivalent safeguards to those provided under Maltese law or as may be established by the Authority.

(4) In assessing an application for an innovative technology

C 950

authorisation, where it considers it justified on the basis of a risk-based examination of the applicant, information available to the Authority and previous regulatory performance and circumstances of the applicant, the Authority shall apply the principle of simplification of procedures and requirements for an efficient processing of the application.

Joint Regulatory
Efficiency
Board.

57. (1) There shall be a Joint Regulatory Efficiency Board which shall be a body established for the purpose of ensuring effective cooperation between the Authority and the other competent authorities in the area of innovative technology uses and which shall have the functions set out in this article.

(2) The Board shall be composed of the persons nominated in accordance with the Second Schedule, who shall be persons having senior or executive authority with decision-taking powers in the relevant competent authorities.

(3) Each member of the Board may appoint one (1) other representative, with similar powers and capacity as the member appointing him, to participate as a non-voting observer at meetings of the Board. The Chairman may co-opt other non-voting observers if there are vacancies at any time.

(4) (a) The Board shall have the function to facilitate co-operation between the relevant authorities in matters impacting on the use of technology, innovation and the development of Malta as an innovative technology arrangements hub as well as the implementation of other guiding principles underlying this Act.

(b) In addition, it shall have the following functions:

(i) to formulate policy recommendations designed to support the use of innovative technology arrangements in a wide manner as possible in all sectors where it is necessary for the continued development of Malta's economy, attractiveness for investment, including for start-ups, education and technical development of its workforce and supporting qualifications and which may be communicated to all or one or more of the relevant competent authorities or other relevant statutory bodies or public institutions;

(ii) to give advice about whether and how an authority or public institution should act in respect of innovative technology arrangements, where the issue appears to the Joint Regulatory Efficiency Board to be

relevant to the development of innovative technology arrangement uses and related services in Malta;

(iii) to act as the medium to establish national standards when asked to do so by any national competent authority with reference to innovative technology arrangements and their uses, and in particular to adopt codes of best practices against which the competent authorities benchmark their requirements in carrying out its functions,

and any such recommendation, advice or assessment made by the Board shall be taken into consideration by a public authority or public institution in Malta in the execution of its functions.

(5) It shall be the duty of such public authority or public institution to seek the opinion of the Board prior to exercising any functions in matters which may impact on innovative technology arrangements or services.

(6) The Board shall also seek to establish protocols and procedures to ensure that when the use of innovative technology arrangements falls within the remit of one or more competent authority, clear lines of communication and decision-taking are established to ensure that duplication is avoided, that information submitted to one can be relied upon by the other, that analysis carried out by one can be used and relied upon when needed by the other and that regulatory decisions by one can be relied upon by the other so as to achieve simplicity, efficiency and consistency of process.

(7) To the extent applicable in the specific context, the following provisions shall operate subject to any reservations in the relevant laws or in any memorandum of understanding entered into by the relevant authority based on the principles of independence and autonomy with which they are bound to carry out their respective obligations:

(a) where there are any inefficiencies created within the system the Board may direct authorities to change their procedures and adopt best practices in any context, generally or specifically, and the relevant national competent authority shall engage with the Board and fully cooperate in resolution of the inefficiencies;

(b) without prejudice to the mandatory and policy obligations of the national competent authorities involved in a dispute or deadlock, in case a dispute or deadlock develops

between two or more national competent authorities on how to address an issue which arises in relation to a policy approach, a formal procedure, application process or otherwise, the Chairman of the Board shall, on being asked to do so by any member of the Board, or an applicant for authorisation to any such authority, and after receiving submissions by the relevant authorities or other members of the Board or other national competent authorities, should they wish to make submissions on the subject matter of the dispute or deadlock, determine in writing the manner in which the dispute or deadlock should be resolved and the relevant authorities shall act in accordance with such decision which shall be final.

All such decisions shall then be referred to the Board which shall develop broader policies based on that experience and decision for dissemination among all authorities for the avoidance of the same issues in other cases and each of the national competent authorities shall adopt and implement the said solutions in their own operations within three (3) months of receiving such direction. Each authority shall advise the Board in writing when it has done so.

(8) The Board shall meet as often as may be necessary or expedient but in any case not less frequently than once every month. The meetings shall be convened by the Chairman either on his own initiative or on the written request of any three members.

(9) The Board may act notwithstanding any vacancy amongst its members provided there is a quorum consisting of not less than three (3) members present at the meeting.

(10) The Board may from time to time invite representatives of authorities, public bodies and institutions which may not have the power to nominate members of the Board when the competence, mandate and functions render it relevant to any discussion taking place or determination of a policy or other decision being made and this for such meetings, or part thereof, as are relevant in the context.

(11) Subject to the provisions of this article, the Board shall regulate its own procedure.

(12) The Minister shall have the power to allocate funds to the Board for the proper exercise of its functions, in accordance with annual budgetary estimates which shall be presented to him by the Board for his consideration.

(13) For the purposes of this article, "Board" shall mean the Joint Regulatory Efficiency Board.

PART XI

Miscellaneous Provisions

58. (1) The Minister may, acting on the advice of the Authority, make regulations to give effect to the provisions of this Act, or to prescribe anything that is to be or which may be prescribed in terms of this Act, any special law which the Authority is entitled to administer or enforce or any other regulatory instrument and provide for any matter consequential, incidental to or connected therewith.

Power of the Minister to make regulations and of the Authority to issue guidelines.

(2) Without prejudice to the generality of the foregoing the Minister may, by such regulations:

(a) regulate recognition and authorisation processes under this Act or any other special law which the Authority is entitled to administer or enforce; and the overall requirements and conditions for such recognition and authorisations, their grant, amendment, renewal, suspension, revocation and termination and other similar actions;

(b) regulate persons involved in activities regulated by or under this Act or any other special law which the Authority is entitled to administer or enforce; and all matters related thereto including the exemption of certain persons or categories of persons from any or all requirements of recognition and authorisations;

(c) establish methods of review relating to the processes and procedures adopted by the Authority in carry out its functions;

(d) lay down any penalties for any breaches of the provisions of this Act;

(e) implement any international convention or any EU Regulation or Directive, to the extent necessary, to which Malta has adhered to in the context of the innovative technology arrangements sector;

(f) lay down rules establishing any fees and tariffs which may be levied by the Authority in relation to the recognition of any innovative technology arrangements or services under the provisions of this Act or any special law which the Authority is entitled to administer or enforce;

(g) lay down rules for the better carrying out of any of the provisions of this Act;

C 954

(h) amend, revoke or substitute any of the definitions or Schedules;

(i) lay down rules which are to apply to the operation of innovative technology arrangements so as to ensure high standards of security and integrity, to establish such audits including security audits which need to be carried out prior to launch and generally to protect users and investors;

(j) lay down rules which are to apply in case of forking of any innovative technology arrangement, any transfers of controlling or qualifying interests, any merger or division thereof, any migration to Malta or from Malta, any reorganisation or restructuring and any such events and determine, in the particular case, the manner in which the rules applicable to legal organisations, including segregated cells thereof, apply to such events when such legal organisations own or control innovative technology arrangements;

(k) lay down rules on qualifying shareholders, members or token holders with reference to the application of the provisions of this Act or any other special law which the authority is entitled to administer or enforce and in case of a law of other relevant laws, after consultation with the relevant Minister or, if another regulatory law, with the relevant national regulatory authority;

(l) lay down rules with respect to any aspect of trading on an innovative technology arrangement; and

(m) issue further guidance regarding the form, accessibility and minimum contents of information to be made available to users of innovative technology arrangements in the English language on relevant matters as described in the Act.

The Minister may authorise the Authority to devise all necessary details of any of the above requirements and conditions by way of guidelines and other binding instruments to be issued by the Authority which shall be ancillary to or independent of any regulations issued under the above powers.

(3) The Minister may make regulations to establish a supervisory body or institution to monitor and supervise the functions and activities of the Authority under this Act and to establish the principles which shall guide the said supervisory body in carrying out its functions, its constitution, mode of procedure and any other matter which shall be necessary for the proper functioning of such

supervisory body.

(4) The Minister may make regulations laying down rules on specific processes whereby any type of innovative technology services or any type of innovative technology arrangements is recognised under the provisions of this Act or any other special law which the Authority is entitled to administer or enforce, including the tests to be applied to establish when an innovative technology arrangement or person is fit and proper.

(5) Without prejudice to the generality of the foregoing, the Minister may, acting on the advice of the Authority, and in conjunction with the Minister for Finance, make regulations providing for the taxation of the activities of and transactions involving innovative technology arrangements and innovative technology services providers and any other matter related thereto.

(6) The Minister shall, with the support of the Authority, promote initiatives, including the establishment of structures dedicated to the purpose, for the review of all the laws of Malta in order to ensure that such laws are rendered compatible and consistent with innovative technology arrangements in order to achieve the best outcomes and ecosystem for the use of such innovative technology arrangements.

(7) Regulations made under this Act, and any amendment or revocation of such regulations, may be published in the English language only.

59. In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

Conflict
between texts.

60. Sub-article (1) of article 32A of the Second Schedule to the Civil Code shall be amended as follows:

Consequential
amendment to
the Civil Code.
Cap. 16.

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

(b) in paragraph (c) thereof, for the words "and do all relative and ancillary acts." there shall be substituted the words "and do all relative and ancillary acts; and"; and

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

"(d) a foundation may, subject to such authorisations as may be necessary under applicable laws, carry out any

C 956

trading activity resulting from such foundation owning, administering or otherwise operating an innovative technology arrangement, as defined in the Malta Digital Innovation Authority Act, 2018."

Consequential amendment to the Voluntary Organisations Act. Cap. 492.

61. Sub-article (4) of article 38 of the Voluntary Organisations Act shall be amended as follows:

(a) paragraph (g) thereof shall be re-numbered as paragraph (h); and

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

"(g) income which may be payable to voluntary organisations resulting from such voluntary organisations owning, administering or otherwise operating an innovative technology arrangement, as defined in the Malta Digital Innovation Authority Act, 2018;"

FIRST SCHEDULE

[Article 55]

Relations with other National Competent Authorities

For the purposes of this Act, "national competent authority" means the:

- (a) Malta Financial Services Authority;
- (b) Malta Gaming Authority;
- (c) Malta Information Technology Agency;
- (d) Malta Competition and Consumer Affairs Authority; and
- (e) Malta Statistics Authority.

PART I

The following are intended to be high level principles.

National competent authorities shall issue joint guidelines with the Authority regarding the combined supervision of sectors by the relevant national competent authority and the Authority. These guidelines shall ensure that the right priorities are applied in the particular case so as to achieve the best outcome.

An authority will have a principal responsibility (in which case it will take the regulatory lead) or a secondary responsibility (in which case it will carry out a supporting function) depending on the subject matter.

PART II

Guiding Principles relating to the establishment of co-ordinating units in National Competent Authorities relating to Innovative Technology Arrangements.

1. To avoid duplication it is necessary that National Competent Authorities are not required to act on areas beyond their natural competence. Given the fact that innovative technology arrangements will, in the near future, underpin many sectors of society, including many regulated areas, even to the extent of supporting the very regulatory functions through regulatory algorithms, it is important that the focus on the quality of regulation of the innovative technology arrangement itself be specialised and effective. Regulatory authorities, which have a different focus, should not all seek to build up regulatory capacity to deal with innovative technology arrangements when they arise in the areas of their specific competence as in such cases the innovative technology arrangement will be an ancillary factor.

C 958

This approach will ensure that there will be focus and concentration of knowledge at a deeper level in the Authority which is the appropriate authority created to regulate innovative technology arrangements and related innovative technology services, the competition for the very limited pool of persons with innovative technology arrangements competence among Malta's national competent authorities will be avoided, as will be the risk of not enough resources being available for the Authority and other authorities to meet their goals and carry out their functions to a level of excellence required.

It is for this reason that national competent authorities are to co-ordinate their teams having innovative technology arrangements and innovative technology services as their focus so that they will have specialised units having knowledge and sensitivity but not necessarily integrate the innovative technology arrangements team into their main regulatory functions. Any support that the specialised units require will be supplied by the Authority through its combined and integrated resources.

2. The Authority, being aware of the array of other national competent authorities who have established a specialised unit in their organisation, will seek to create subject matter teams within the Authority to ensure awareness of the context in which the specialised units are actually working, so that over time, shared information will establish a common understanding on the part of both authorities to achieve the best results for both authorities for the persons applying for innovative technology authorisations in all sectors as well as users or consumers in each sector.

When the Authority is aware that an application for the authorisation of an innovative technology arrangement is being made in the context of a project, and it is probable that the two applications will be progressing at the same time, it will be aware of the role of the another national competent authority, its duties and authorisation processes and its requirements for the particular type of authorisation being requested, so that when the innovative technology arrangement application is being considered the right priorities are applied to the context. The two authorities will be able to work together for the best outcomes.

The opportunity for the national regulatory system, through the above, is that through combined analysis, experience and supervision of each sector where two regulators (one regulating the subject matter and the other regulating the innovative technology arrangements) are involved, it will be possible to develop regulatory smart contracts and innovative technology arrangements which carry out regulatory functions for the benefit of every non-innovative technology regulator in its own area of specialisation where operators are using innovative technology arrangements.

SECOND SCHEDULE

[Articles 57(2)]

The Joint Regulatory Efficiency Board

(Article 57)

The Joint Regulatory Efficiency Board shall be composed of not less than 5 and not more than 11 persons, having expertise in the authorisation processes of the particular nominating authority or having general expertise based on past experiences or academic focus, and having senior or executive authority with decision-taking powers in the relevant competent authorities, who shall be nominated by the following persons:

- (i) the Minister responsible for Technology, the Minister for Justice and the Minister for Finance;
- (ii) the Chair of the Authority;
- (iii) The Governor of the Central Bank of Malta;
- (iv) the Chair of the MFSA;
- (v) the Chair of the MGA;
- (vi) the Chair of MCA;
- (vii) the Chair of MCCA;A;
- (viii) the Chair of MITA.

Each person appointed shall designate a substitute with similar experiences or qualifications to attend meetings when he or she is not able to attend.

The persons are appointed for three years and may be re-appointed.

The competent authorities not mentioned in the above list shall be invited to send a representative to participate in meetings which are of specific interest to them.

C 960

THIRD SCHEDULE

[Article 5(4)(d)]

Regulatory laws

For the purposes of article 5(4)(d) of this Act, "regulatory law" shall mean the:

- (a) Malta Financial Services Authority Act;
- (b) Banking Act;
- (c) Investment Services Act;
- (d) Insurance Business Act;
- (e) Financial Institutions Act
- (e) Gaming Act;
- (f) Malta Communications Authority Act;
- (g) Malta Competition and Consumer Affairs Authority Act;
- (h) Voluntary Organisations Act;
- (i) Lotteries and Other Games Act;
- (j) Data Protection Act.

Objects and Reasons

The object of this Bill is to provide for the establishment of an Authority to be known as the Malta Digital Innovation Authority, to support the development and implementation of the guiding principles described in this Act and to promote consistent principles for the development of visions, skills, and other qualities relating to technology innovation, and for the exercise by or on behalf of that Authority of regulatory functions regarding innovative technology arrangements including distributed or decentralised ledger technology, and related services and to make provision with respect to matters ancillary thereto or connected therewith.