

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

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

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

Case Law

Criminal Liability of Corporations

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

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

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

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

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

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

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Sweden

New Rules on Public Tender Offers on the Swedish Stock Market

Offering Shares to the Public – Market places for Shares

Introduction

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