

CHAPTER 484

SECURITISATION ACT

To provide for securitisation, to regulate existing laws in support of securitisation and to introduce new rules on securitisation vehicles.

1st September, 2006

ACT V of 2006, as amended by [Legal Notice 427 of 2007](#), and Acts [X of 2011](#), [XX of 2013](#) and [V of 2020](#).

PART I

GENERAL

1. The short title of this Act is the Securitisation Act. Short title.
2. In this Act, unless the context otherwise requires:
 - "the competent authority" means the Malta Financial Services Authority established by the [Malta Financial Services Authority Act](#); Interpretation.
Amended by:
[X. 2011.89](#);
[V.2020.51](#).
Cap. 330.
 - "financial instruments" has the same meaning assigned to it by the [Financial Markets Act](#); Cap. 345.
 - "investment company" means an investment company with fixed share capital or an investment company with variable share capital, which respective terms shall have the same meaning respectively assigned to them in the [Companies Act](#); Cap. 386.
 - "the Minister" means the Minister responsible for the regulation of financial services;
 - "originator" or "assignor" means a person, including Government or any Local Council, who:
 - (a) transfers by any means securitisation assets to a securitisation vehicle, or
 - (b) enters into any arrangement with a securitisation vehicle for the purpose of transferring any risk in whole or in part to the securitisation vehicle, or
 - (c) obtains a loan or other facility from a securitisation vehicle, such loan or facility being secured directly or indirectly over securitisation assets, and the term originator or assignor shall also include all its subsidiary undertakings or affiliates;
 - "receivable" means a right to receive payment of a monetary sum whatsoever, including a right to receive payment of future undetermined sums from debtors who are not yet determined;
 - "risks" means any risks whatsoever, including those arising from any rights relating to assets, whether movable or immovable, tangible or intangible, future or existing, risks resulting from any obligations or activities of third parties and risks arising from any event or circumstance;
 - "securities" has the same meaning assigned to it by the [Financial Markets Act](#); Cap. 345.

"securitisation" means a transaction or an arrangement whereby a securitisation vehicle, directly or indirectly:

- (a) acquires securitisation assets from an originator by any means, or
- (b) assumes any risks from an originator by any means, or
- (c) grants secured loan or other secured facility or facilities to an originator,

and finances any or all of the above, directly or indirectly, in whole or in part, through the issue of financial instruments, and includes any preparatory acts carried out in connection with the above;

"securitisation asset" means any asset, whether existing or future, whether movable or immovable, and whether tangible or intangible, and where the context so allows, includes risks;

"securitisation creditors" means all creditors or classes of creditors of a securitisation vehicle, in relation to a securitisation transaction, whose credit is secured by any means whatsoever, whether by security collateral or title transfer collateral, including, without prejudice to the generality of the foregoing, the originator, any person holding one or more financial instruments issued by the securitisation vehicle, other than a shareholder of the securitisation vehicle, if applicable, any lender, hedge counterparty, liquidity provider and credit support provider of the securitisation vehicle and any trustee acting on any of their behalf;

"securitisation vehicle" means a vehicle as referred to in article 3;

"security collateral" means collateral provided by a collateral provider by way of security in favour of, or to, a collateral taker, and where the full ownership of the collateral remains with the collateral provider, when the security right is established;

"title transfer collateral" means collateral provided by a collateral provider, including by repurchase agreements and assignments by way of security, whereby the collateral provider transfers full ownership of the collateral to a collateral taker for the purpose of securing or otherwise covering the performance of any obligation;

"underlying debtor" means, where applicable, a person whose obligation towards an originator has been the object of a securitisation transaction;

"writing" shall have the same meaning assigned to it in the [Interpretation Act](#) and shall include facsimile transmissions and electronic mail communications.

Cap. 249.

PART II

SECURITISATION VEHICLES

3. (1) A securitisation vehicle may be:
 - (a) a company, including an investment company;
 - (b) a commercial partnership;
 - (c) a trust created by a written instrument; or

Legal form of securitisation vehicle.

- (d) any other legal structure which the competent authority may, by notice, permit to be used for a securitisation transaction,

established under the laws of Malta or those of a jurisdiction recognised by the competent authority.

- (2) When a securitisation vehicle is established under this Act:
- (a) the objects and purposes of such vehicle shall be limited to such matters which are necessary to carry out all or any transactions intended or required to implement or participate in a securitisation transaction and all related and ancillary acts including, without limitation, the acquisition, management and collection of credits and other receivables or other securitisation assets, the assumption of risks, the granting of secured loans, the issue of financial instruments or the borrowing of funds to finance the acquisition of assets or assumption of risks, the engagement of service providers to administer or support its activities and the entering into derivative instruments; and
- (b) its constitutive document shall state expressly that it is a vehicle established subject to the provisions of this Act.

4. (1) A securitisation transaction may take place through the use of more than one securitisation vehicle, whether established under the laws of Malta or otherwise, and the provisions of this Act shall be construed accordingly.

Securitisation transactions.

(2) Securitisation vehicles established under this Act may not carry on any trade or business, other than that relating or ancillary to the securitisation transaction.

5. Notwithstanding the provisions of any other law, and whatever the nature of the securitisation assets acquired or risks assumed by the securitisation vehicle, but without prejudice to article 5A, the securitisation vehicle shall not be required to obtain any licence, permit or authorisation other than as provided in this Act or in regulations made under the same Act and in particular, but without limitation to the generality of the foregoing, shall not require any licence under the [Investment Services Act](#), the [Banking Act](#), the [Financial Institutions Act](#) and, save for what is provided in article 5A, the [Insurance Business Act](#). The issuing and offering of financial instruments by a securitisation vehicle shall however still continue to be governed by the relevant provisions of the [Companies Act](#) and the Investment Services Act:

Securitisation vehicle not required to obtain any licence.
Amended by:
XX. 2013.105.

Cap. 370.
Cap. 371.
Cap. 376.
Cap. 403.

Cap. 386.

Provided that nothing contained in this article shall affect any of the provisions of the [Income Tax Act](#) and the [Income Tax Management Act](#).

Cap. 123.
Cap. 372.

5A. Unless otherwise provided in the Insurance Business Act or in any regulations issued thereunder, the provisions of this Act shall not apply to a reinsurance special purpose vehicle established and regulated by any regulations made under the Insurance

Non-applicability.
Added by:
XX. 2013.106.
Cap. 403

Business Act in terms of article 64 of the said Act:

Cap. 123.
Cap. 372.

Provided that nothing contained in this article shall affect any of the provisions of the [Income Tax Act](#) and the [Income Tax Management Act](#) in relation to such securitisation vehicles.

Securitisation vehicles not be considered as collective investment schemes.
Cap. 370.

6. Securitisation vehicles shall not be considered to be collective investment schemes as defined in the [Investment Services Act](#):

Provided that the competent authority may designate by notice that certain categories of securitisation vehicles shall be collective investment schemes, and in such a case the competent authority may determine the extent to which the provisions of the Investment Services Act, shall apply to the said categories of securitisation vehicles.

Securitisation vehicle separate and independent from originator.
Cap. 386.

7. No proceedings taken in relation to the originator under the [Companies Act](#), or any other law, including any dissolution and winding-up proceedings, any company recovery procedure, any company reconstruction and any proceedings affecting creditors' rights generally shall have any effect on:

- (a) the securitisation vehicle;
- (b) any securitisation assets acquired or risks assumed by the securitisation vehicle, as well as any cashflow or other asset of the securitised vehicle;
- (c) any payments due by the underlying debtors in connection with the securitised assets.

Delegation of administration duties and functions by securitisation vehicles.

8. (1) The securitisation vehicle may delegate the management responsibility for the day to day administration of the securitisation vehicle or of the assets or risks thereof, including the collection of any claims, to any third party, including the originator.

(2) When such administration has been delegated by the securitisation vehicle to the originator, the latter shall not require any licence from or other recognition by the competent authority under any applicable law.

(3) Unless the agreement between the securitisation vehicle and such person specifically provides otherwise, the person delegated with such administration shall be obliged to segregate such assets from his own and those of other customers. Such segregation shall clearly identify the receivables or securitisation assets which belong to the securitisation vehicle and such person shall keep detailed records of all assets received and disposed of.

(4) Any assets held by any such third party for a securitisation vehicle shall be considered as being held on trust by such third party for the benefit of the securitisation vehicle.

PART III

THE TRANSFER OF SECURITISATION ASSETS

Transfer of securitisation assets.

9. (1) The originator and the securitisation vehicle shall be at liberty to select any method of transferring the securitisation assets,

including, without limitation, by novation, sale, assignment and declaration of trust.

(2) Subject to the other provisions of this Act, such transfer of securitisation assets from an originator to a securitisation vehicle shall be valid and enforceable in accordance with its terms and with this Act and shall not be subject to re-characterisation for any reason whatsoever.

(3) The provisions set out in this Act shall apply *mutatis mutandis* to all transfers made by an originator to a securitisation vehicle or securitisation creditors, as well as to all transfers made by a securitisation vehicle to other securitisation vehicles or securitisation creditors.

10. (1) When a securitisation asset is assigned to a securitisation vehicle in accordance with this Act, such assignment shall be treated as final, absolute and binding on the originator, the securitisation vehicle and on all third parties and such assignment shall not be: Assignments.

- (a) subject to annulment, rescission, revocation or termination, variation or abatement by any person and for any reason whatsoever;
- (b) subject to any rights of the creditors of the originator for any reason whatsoever;
- (c) subject to any rights of a liquidator, provisional administrator, receiver, curator, controller, special controller of the originator or other similar officer of the originator for any reason whatsoever.

(2) The provisions of subarticle (1) shall apply notwithstanding any underlying contractual or statutory prohibition or restriction on the originator to assign in whole or in part the securitisation asset to any third party. The Minister, acting on the advice of the competent authority, may by notice declare types of contracts to which this provision shall not apply.

- (3) The provisions of subarticles (1) and (2) shall not apply:
- (a) when there is fraud on the part of the securitisation vehicle, or
 - (b) in respect of any assignment entered into at a time at which the securitisation vehicle knew or ought to have known that an application for the dissolution and winding up of the originator by reason of insolvency was pending, or that the originator had taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency;

Provided that, unless the securitisation vehicle had actual knowledge of such matter, for the purposes of paragraph (b), it shall be deemed that the securitisation vehicle could not have known that an application for the dissolution and winding up of the originator by reason of insolvency was pending, or that the originator had taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency, if no

document or other record was registered to this effect with the Registrar of Companies and was publicly accessible.

(4) In case of an assignment in favour of a securitisation vehicle, it shall not be required that the assignment have a price, or when a price is agreed, a fixed or determinate price. It shall also be lawful for the consideration to be determinable by reference to any formula as may be agreed, or be in consideration of and in accordance with the terms of a securitisation transaction.

(5) Unless the terms of any transfer to a securitisation vehicle provides otherwise, or the securitisation vehicle expressly assumes any obligation, the underlying debtor shall have no right or claim against the securitisation vehicle in connection with any obligation relating to the securitisation assets. The underlying debtor shall continue to enjoy all rights under the assigned contract against the originator who shall remain solely responsible for the performance of all obligations thereunder.

(6) An assignment in favour of a securitisation vehicle is not valid unless it is evidenced in writing. The assignment of assets to a securitisation vehicle is complete and the ownership of the asset is *ipso jure* acquired by the securitisation vehicle as soon as the assignment is reduced to writing in accordance with this Act and the provisions of article 1469 of the [Civil Code](#) shall not apply.

Cap. 16.

Assignment of existing securitisation assets.

11. (1) The assignment of a securitisation asset to a securitisation vehicle shall be valid and effective if the assignment identifies at least two of the following features of the class of receivables being subject to the assignment:

- (a) the type of debt or asset or contract giving rise to the debt;
- (b) the class or type of debtors;
- (c) the repayment period when the debts fall due;

so as to enable any interested party to reasonably determine which receivables are included in the assignment and it shall not be necessary to specify the name of the debtor or debtors, the date or the amount of any particular debt.

(2) Where the parties to an assignment claim that a debt is not included in the assignment, the matter shall be resolved as provided for in the assignment, and the aggregate price, if any, for the transfer shall be adjusted, if the claim is justified, by the value of the disputed debt being reduced therefrom, and such adjustment shall not in any way affect the validity or effects of the assignment of other receivables.

Assignment of future receivables.

12. (1) It shall be lawful for future receivables of an originator, including future claims against future debtors, to be the subject matter of an assignment in favour of a securitisation vehicle. Such an assignment shall be valid and effective if it identifies at least one of the features of the class of receivables being subject to the assignment from each of the Features A and Features B, listed in subarticle (2), in order to enable any interested party to reasonably determine which receivables are included in the

assignment and it shall not be necessary to specify the name of the debtor or debtors, the date or the amount of any particular debt.

(2) There shall be indicated as:

Features A -

- (a) the type of debt or asset or contract giving rise to the debt;
- (b) the class or type of debtors;
- (c) the assets, including future assets, which give rise to the receivables; and

Features B -

- (a) the time period during which the debt may arise;
- (b) the repayment period when the debts may fall due.

(3) An assignment of one or more future receivables is deemed to be effective at the time of the conclusion of the original contract of assignment between the assignor and the assignee, without a new act of transfer being required to assign each such receivable on it coming into existence.

(4) A notice of assignment duly given in terms of this Act at the time of the securitisation transaction shall be valid and effective in relation to the future receivable and need not be repeated once the receivable comes into existence.

(5) It shall also be lawful for future receivables to be the subject of any security collateral or title transfer collateral.

13. (1) Notwithstanding the provisions of the [Civil Code](#), in case of an assignment of a securitisation asset to a securitisation vehicle, the debtor will be deemed to be notified of the assignment upon one of the following events taking place at the option of the assignor or assignee:

Form of
notification.
Cap. 16.

- (a) on notification to the debtor in writing by any means;
or
- (b) on the publication of a notice as follows:
 - (i) in a daily newspaper circulating wholly or mainly in Malta, or
 - (ii) where it appears that the majority of the debtors reside outside Malta, in a daily newspaper circulating wholly or mainly in such other jurisdiction outside Malta, or
- (c) where there is doubt as to where the majority of the debtors reside, in a daily newspaper which has wide international circulation.

(2) Such notification shall be effective for all the purposes and effects of the [Civil Code](#) with regard to third parties, including the debtor, as follows:

Cap. 16.

- (a) if notification is made in terms of article 187 of the [Code of Organization and Civil Procedure](#), on the date of service and the provisions of the Code of

Cap. 12.

Organization and Civil Procedure shall determine such date of service; or

- (b) if notification is made by mail, two days after despatch by mail by the assignor or assignee of the notice in writing to the debtor's last known address; or
- (c) if notification is made by publication in a newspaper, the time of the opening of business in the place of publication of the notice in the newspaper; or
- (d) if notification is made by any electronic means, one day after despatch of the electronic notification,

as the case may be, unless the said notice expressly mentions a later date for the effects to commence.

Cap. 16.

(3) The same rules shall apply, *mutatis mutandis*, to notifications required in relation to the pledge of securitisation assets, and article 1966 of the [Civil Code](#) shall be construed accordingly.

(4) If, during the period between the date of assignment of the securitisation assets and the notification as per the above sub-articles, the assignor shall have become insolvent, such insolvency shall not have any effect on the said assignment and any notification of the assignment made in accordance with the above sub-articles shall be valid and effective.

(5) The notice of assignment shall identify the features of the class of receivables as set out in articles 11 or 12, as the case may be.

Modification of certain provisions of the Civil Code.
Cap. 16.

14. (1) The following provisions of the [Civil Code](#) shall not apply in case of an assignment of a securitisation asset to a securitisation vehicle:

- (a) article 1483(1);
- (b) article 1056(1); and
- (c) article 2013(3).

Cap. 16.

(2) The following provisions of the [Civil Code](#) shall apply subject to the modifications herein stated:

Cap. 16.

- (a) article 1968(1) of the Civil Code shall not apply, and where the thing pledged to the securitisation vehicle is a debt, the securitisation vehicle shall, unless otherwise agreed with the originator, be responsible for the collection of such debt on maturity and the securitisation vehicle may place the moneys or other things received either as agreed or, failing such agreement, may hold the same as security for the debt until due;

Cap. 16.

- (b) without prejudice to the right of the parties to assign rights by means of public deeds and register the same in accordance with articles 2051 and 2052 of the [Civil Code](#), when a right arising from a public deed, including any hypothecary rights, is transferred to or from a securitisation vehicle, article 1470(2) shall not

apply; and

- (c) articles 1980 to 1984 of the Civil Code shall not apply and a securitisation vehicle shall have a right of use over and the right to sub-pledge any securitisation assets which have been pledged, assigned or delivered to it for the purpose of a securitisation transaction. Cap. 16.

(3) For the purposes of article 1475 of the [Civil Code](#) and for the purposes of a securitisation transaction - Cap. 16.

- (a) unless the assignment expressly provides otherwise, the assignment of a debt shall also include every suretyship, warranty or indemnity for the payment of the debt;
- (b) the assignment of a debt shall include every suretyship, warranty or indemnity, accessory to the debt and this notwithstanding any contractual prohibition or restriction against such assignment of the debt in the contract of suretyship, guarantee or indemnity. The Minister, acting on the advice of the competent authority, may by notice declare types of suretyships, guarantees or indemnities to which this provision will not apply; and
- (c) any notices of assignment made to the debtor or class of debtors in accordance with this Act, shall have effect in relation to all persons granting any suretyship, guarantee or indemnity without the need of further notice or other formalities in their regard.

15. (1) Any and all risks can be assumed by a securitisation vehicle and securitised in accordance with this Act. The assumption of risks.

(2) The securitisation vehicle may assume risks by acquiring assets, guaranteeing or assuming obligations, entering into derivative contracts or by committing itself in any other way.

(3) Unless the parties expressly determine otherwise in writing, an assumption of risk and any hedging or derivative transaction or product entered into in the context of a securitisation transaction for whatever reason shall not be deemed to be a contract of insurance for all effects and purposes at law.

16. (1) Unless otherwise specifically determined in writing in the terms of issue of securities: Securitisation creditors.

- (a) holders of securities issued by a securitisation vehicle shall have a privilege over the securitisation assets and such privilege shall rank prior to all other claims at law, except for other securitisation creditors who enjoy a prior ranking granted to them with the consent or knowledge of the said holders; and
- (b) the said privilege extends to the proceeds derived from the securitisation assets, to any funds received in payment and to the assets, if any, in which they are invested.

(2) If an acquisition vehicle is used in a securitisation transaction and such vehicle is different from the securities issuing vehicle, the said privilege shall arise over the securitisation assets of the acquisition vehicle.

(3) The said privilege arises by operation of law and does not need to be registered in any register.

(4) The conditions of issuance of any financial instruments by the securitisation vehicle shall be binding upon the securitisation vehicle, the securitisation creditors or other persons who have given their consent thereto, including in the case when the securitisation vehicle is placed under any dissolution and winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting creditors' rights generally.

(5) It shall not be lawful for any person, other than a securitisation creditor, to demand the issuance or enforcement of any precautionary act or warrant against the securitisation vehicle, except when the court is satisfied that there has been fraud on the part of the securitisation vehicle.

Private
International Law
rules.

17. (1) Parties to a securitisation transaction shall be free to choose any law to govern contracts relating to or ancillary to a securitisation transaction.

(2) The Minister, acting on the advice of the competent authority, may make rules on the law applicable to matters relating or ancillary to securitisation transactions, where the law of a country, other than Malta, may be applicable including, without limitation:

- (a) rules on the proper law of any contract;
- (b) formal and material validity of any contract;
- (c) rights of third parties upon the completion of any contract;
- (d) proprietary issues relating to securitisation transactions; and
- (e) the priorities of rights of third parties.

PART IV

REGULATION OF SECURITISATION VEHICLES

Securitisation
vehicles.

18. No vehicle established under the laws of Malta shall commence business as a securitisation vehicle in or from within Malta unless it has given notice on the appropriate form to the competent authority that it intends to enter into one or more securitisation transactions.

Public
securitisation
vehicles.
*Amended by:
L.N. 427 of 2007.*

19. (1) For the purposes of this article:

- (a) a public securitisation vehicle shall mean a securitisation vehicle which issues or which is desirous of issuing financial instruments to the public on a continuous basis; and

- (b) the term "issuing financial instruments to the public" shall have the same meaning assigned to the term "offers made to the public", as set out in article 2(3) of the [Companies Act](#).

Cap. 386.

(2) A public securitisation vehicle shall, before issuing financial instruments to the public, apply in writing to the competent authority for a licence under this Act.

(3) All applications for a licence for public securitisation vehicles shall be in such form and accompanied by such information, and shall conform with such requirements as may be prescribed from time to time by directive and an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused.

(4) The competent authority shall have the power to require any public securitisation vehicle to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

(5) No public securitisation vehicle shall be granted a licence unless:

- (a) the public securitisation vehicle has an adequate organisation and adequate resources to exercise its business;
- (b) all persons who will effectively direct the business of the public securitisation vehicle are suitable persons to ensure its prudent management; and
- (c) the public securitisation vehicle satisfies such other conditions as may be laid down by directives issued by the competent authority.

(6) The competent authority shall determine each application for a licence within one month of receipt of the application or, if the application does not comply with subarticle (3), or additional information is required, within one month of compliance with the said subsection or the furnishing of the information as the case may be, whichever be the later. In any event an application shall be determined within two months of its receipt.

(7) The competent authority shall determine an application by doing any of the following:

- (a) granting a licence without conditions;
- (b) granting a licence subject to such conditions as it may deem appropriate;
- (c) refusing to grant a licence; and if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal.

(8) Where the competent authority for any reason fails to determine an application for a licence within the time prescribed under subarticle (6), such fact shall be deemed to constitute a refusal to grant a licence.

- (9) (a) Without prejudice to any of the powers conferred on it by this Act, the competent authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.
- (b) The power to give directives under this subarticle shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.
- (c) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this subarticle.
- (10) A licence shall automatically cease to have any effect if the holder:
- (a) renounces its licence; or
- (b) does not commence business pursuant to the licence within twenty-four months of its issue or within such other period of time as may be specified in the licence; or
- (c) is declared bankrupt or goes into liquidation.
- (11) The competent authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances:
- (a) if any document or information accompanying such an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act; or
- (b) if the holder fails to comply with any of the provisions of this Act or a directive issued thereunder or with the conditions under which the licence is granted; or
- (c) if the holder is likely to become unable to meet its obligations.
- (12) The competent authority shall have the power to vary or remove any restrictions imposed under the foregoing subarticle.
- (13) Where the competent authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention to the public securitisation vehicle; such notice shall specify the grounds upon which the competent authority intends to take action and shall specify a period in which the public securitisation vehicle shall be entitled to make representations to the competent authority as to why such action should not be taken. Unless the competent authority decides that the matter is urgent, it

shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(14) Any person who is aggrieved by a decision of the competent authority:

- (a) to refuse an application for a licence;
- (b) to impose any condition on the grant of a licence;
- (c) to impose or vary a restriction;
- (d) to revoke a licence; or
- (e) by failure of the competent authority to determine an application for a licence under subarticle (7),

may appeal against the decision to the Financial Services Tribunal within such period and under such conditions as established under the [Malta Financial Services Authority Act](#).

Cap. 330.

(15) Any person who contravenes or fails to comply with the provisions of subarticle (2), or contravenes or fails to comply with any condition, obligation, requirements, directive or order made or given under this article, shall be guilty of an offence.

(16) A person guilty of an offence under the provisions of subarticle (15) shall, on conviction, be liable to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67). No proceedings for an offence under this article shall be commenced without the consent of the Attorney General.

20. (1) For the better carrying out of the provisions of this Act or of the provisions of any regulations relating to securitisation vehicles or securitisation transactions, the competent authority may, from time to time, issue and publish rules as may be necessary or appropriate in connection therewith. The rules shall be binding on securitisation vehicles and securitisation creditors and other persons as may be specified therein.

Rules.
Amended by:
V.2020.52.

(2) In addition and without prejudice to the generality of the foregoing, the competent authority may issue rules as it shall deem fit for:

- (a) the purpose of establishing conditions which need to be satisfied by a public securitisation vehicle in order to obtain a licence under this article;
- (b) the regulation of the custody of assets and financial instruments of the public securitisation vehicle; and
- (c) the purposes of requiring any periodical statements of the public securitisation vehicles.

PART V

MISCELLANEOUS

21. (1) Any data or information which is transferred between persons within the context of a securitisation transaction shall accordingly be transferable without any restriction or limitation, although such data or information shall retain its secret or

Professional
secrecy,
confidentiality and
data protection.

confidential status for other effects and purposes.

Cap. 586. (2) Within the context of a securitisation transaction, in so far as obligations arising from the [Data Protection Act](#) are concerned:

(a) any transfer of personal data shall be deemed to be for a purpose that concerns a legitimate interest of the transferor and transferee of such data, unless it is shown that such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy; and

Cap. 586. (b) any transfer of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 10 of the [Data Protection Act](#) shall not require the authorisation of the Data Protection Commissioner, where the controller provides adequate safeguards, which may result particularly by means of appropriate contractual provisions, with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their exercise.

(3) For the purposes of the foregoing paragraphs, data or information which is transferred between persons within the context of a securitisation transaction shall be deemed to include data or information transferred between the originator and the securitisation vehicle, or between one securitisation vehicle and another, or between the securitisation vehicle and any person delegated with administration duties and functions, or between the securitisation vehicle and a representative of the investors, or between the originator or securitisation vehicle and any credit rating agencies, or between the originator or the securitisation vehicle and any counter-party in a derivative contract, lender, liquidity provider or credit support provider.

Miscellaneous provisions.

22. (1) Notwithstanding the provisions of any other law, it shall be lawful:

(a) for the constitutive documents of the securitisation vehicle:

(i) to vest the power to appoint directors in any securitisation creditor or class thereof, to the exclusion of other persons;

(ii) to vest the power to demand or place the securitisation vehicle under any dissolution and winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting creditors' rights generally, in any securitisation creditor or class thereof, to the exclusion of other persons;

(b) for the securitisation vehicle to enter into any agreement which contains provisions by which securitisation creditors or any shareholder of the securitisation vehicle, including the originator, accept to restrict or waive their right to commence the process

leading to dissolution and consequential winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting the rights pertaining to creditors generally in connection with a securitisation vehicle, or to transfer such a right to any person; and

- (c) for the securitisation vehicle to enter into an agreement with the originator to the effect that the originator is given rights by the securitisation vehicle over all or part of the securitisation assets of the securitisation vehicle which may be available after payment of the securitisation creditors.

(2) The provisions of article 110(1) of the [Companies Act](#) shall not apply to the provision of financial assistance by a securitisation vehicle, unless the securitisation vehicle is constituted as a public limited liability company. Cap. 386.

(3) Unless otherwise provided for in the constitutive documents of the securitisation vehicle, a securitisation vehicle shall have the power to issue financial instruments whose value or yield is linked to specific compartments, assets or risks, or whose repayment is subject to the repayment of other instruments, certain claims or certain categories of shares. If the acquisition vehicle is different from the issuing vehicle, the value, yield and the conditions of repayment may also be linked to the assets and the liabilities of the acquisition vehicle. Holders of such financial instruments shall enjoy the privilege arising by virtue of article 16(1).

(4) Any contract entered into in connection with a securitisation transaction shall be valid and enforceable in accordance with its terms, and where the parties agree in writing as to the effects that will arise on the occurrence of a specified event, it shall not be necessary for either party to obtain any court judgement or declaration confirming that the specified event has occurred or otherwise.

(5) The provisions of Title XVII of the [Civil Code](#) or of any other part of the Civil Code or of any other law in so far as they limit or restrict the charging of interest and compound interest shall not apply to debts or any other obligations arising within the context of a securitisation transaction under this Act; and it shall be lawful for the amount of interest due in respect of any such debt or other obligation to exceed the amount of capital due in respect of any such debt or obligation. Cap. 16.

(6) No court or arbitral tribunal may grant or sanction any moratorium or stay whatsoever in connection with a securitisation vehicle.

23. (1) The Minister, acting on the advice of the competent authority, may make regulations as may be required for carrying into effect any of the provisions of this Act and may amend or revoke such regulations.

Power to make
regulations.
Amended by:
V.2020.53.

(1A) Without prejudice to the generality of the foregoing, the Minister, acting on the advice of the competent authority, may make regulations to provide for and regulate the payment by any person, body, company or securitisation vehicle, as the case may be, of fees and such other charges in respect of any request, application or other matter that may be submitted to the competent authority under this Act including the fees and charges in respect of any permission, licence, authorisation, registration, recognition, exemption or other benefit, as well as fees and charges in respect of the competent authority's regulatory, supervisory or investigative functions, payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed.

(2) Regulations made under any of the provisions of this Act may be made in the English language only.

Applicability of
this Act.

24. This Act shall only apply to securitisations or securitisation transactions where:

- (a) the value of the securitisation transaction or the value of the financial instruments issued by the securitisation vehicle exceeds such minimum value as may be stated in a notice issued by the competent authority from time to time, or
- (b) a specific securitisation transaction has been otherwise approved in writing by the competent authority.

English text to
prevail.

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