

Malta

LX of 2020 – National Foreign Direct Investment Screening Office Act, 2020 (2020)

Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

18th December, 2020

Act No.LX of 2020

AN ACT to provide for the establishment of an Office to be known as the National Foreign Direct Investment Screening Office, and for the exercise by or on behalf of that Office of regulatory functions regarding the screening mechanism of foreign direct investments in Malta on grounds of security or public order, and to make provisions with respect to matters ancillary thereto or connected therewith.

ARRANGEMENT OF THE ACT

PART I

Preliminary

PART II

Applicability

PART III

Establishment, Function and Conduct of Affairs of the National Foreign Direct Investment Screening Office

PART IV

Notification and the Screening Process

PART V Executive Powers

PART VI

Administrative penalties

PART VII Appeal

PART VIII

Miscellaneous Provisions

SCHEDULE

(Articles 11 and 12)

18th December, 2020

Act No.LX of 2020

AN ACT to provide for the establishment of an Office to be known as the National Foreign Direct Investment Screening Office, and for the exercise by or on behalf of that Office of regulatory functions regarding the screening mechanism of foreign direct investments in Malta on grounds of security or public order, and to make provisions 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

PART I Preliminary

PART II Applicability

PART III Establishment, Functions and Conduct of Affairs of the National Foreign Direct Investment Screening Office

PART IV Notification and the Screening Process

PART V Executive Powers

PART VI Administrative Penalties

PART VII Appeal

PART VIII Miscellaneous Provisions

SCHEDULE Activities and Factors to be considered

PART I

Preliminary

Short title and commencement.

1. (1) The short title of this Act is the National Foreign Direct Investment Screening Office Act.
- (2) This Act shall come into force on the 11th October, 2020.

Interpretation.

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

"beneficial owner" means any natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction or activity is being conducted, and:

(a) in the case of a body corporate or a body of persons, the beneficial owner shall consist of any natural person or persons who ultimately own or control that body corporate or body of persons through direct or indirect ownership of ten percent (10%) plus one (1) or more of the shares or more than ten percent (10%) of the voting rights or an ownership interest of more than ten percent (10%) in that body corporate or body of persons, including through bearer share holdings, or through control through other means, other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with European Union law or equivalent international standards which ensure adequate transparency of ownership information:

Provided that a shareholding of ten percent (10%) plus one (1) share or more, or the holding of an ownership interest or voting rights of more than ten percent (10%) in the customer shall be an indication of direct ownership when held directly by a natural person, and of indirect ownership when held by one (1) or more bodies corporate or body of persons or through a trust or a similar legal arrangement, or a combination thereof:

Provided further that if after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner in terms of this paragraph has been identified, subject persons shall consider the natural person or persons who hold the position of senior management official or officials to be the beneficial owners, and shall keep a record of the actions taken and any difficulties encountered to determine who the beneficial owner is in terms of this paragraph;

(b) in the case of trusts, the beneficial owner shall consist of:

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, where applicable;

(iv) the beneficiaries or the class of beneficiaries, as may be applicable; and

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations and legal arrangements similar to trusts, the beneficial owner shall consist of the natural person or persons holding equivalent or similar positions to those referred to in paragraph (b);

"Board" means the Board established in accordance to sub-article 5(2);

"Chairperson" means the Chairperson of the Board;

"Commission" means the Commission of the European Union as established in the Treaty of the European Union;

"cooperation mechanism" means such mechanism as established in articles 6 and 7 of the Regulation, as the case may be;

"Council" means the Council of the European Union as established in the Treaty of the European Union;

"European Union" shall have the same meaning assigned to it by article 2 of the European Union Act;

"foreign direct investment" means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links in order to carry on an economic activity in Malta, including investments which enable effective participation in the management or control of a company carrying out an economic activity and any investments made pursuant to a public procurement process;

"foreign direct investment undergoing screening" means a foreign direct investment undergoing a formal assessment or investigation pursuant to the screening mechanism;

"foreign investor" means a natural person or an undertaking of a third country intending to make or having made a foreign direct investment in Malta;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"group company" means, in relation to any company, any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the definition "group" shall be construed accordingly as well as meaning a parent undertaking and all its subsidiary undertakings;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution;

"management or control" means having the possibility of exercising decisive influence on an undertaking, in particular:

(a) through ownership or the right to use all or part of the assets of an undertaking; or

(b) through rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking; provided that even persons or undertakings not holding such rights or entitled to such rights under the contract concerned are deemed to have acquired control if they have the power to exercise the rights deriving therefrom;

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

"Minister" means the Minister responsible for investment and includes, to the extent of the authority given, any person authorised to act on his behalf for any purpose of this Act;

"Office" means the National Foreign Direct Investment Screening Office established in accordance to article 5(1);

"procurement" means acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the supplies, works or services are intended for a public purpose;

"Regulation" means Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union;

"screening" means a procedure intended to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;

"screening decision" means a measure adopted in application of the screening mechanism;

"screening mechanism" means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order;

"Tribunal" means the Administrative Review Tribunal as established by means of the Administrative Justice Act;

"third country" means any country which is not a Member State of the European Union;

"undertaking of a third country" means an undertaking constituted or otherwise organized under the laws of a third country;

"unwind" means the revocation, modification and, or termination of a foreign direct investment, or part thereof, by means of an order adopted as part of the screening mechanism.

Implementation.

3. This Act implements the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

PART II

Applicability

Applicability of the Act.

4. (1) Subject to the provisions of sub-article (2), the provisions of this Act shall apply to foreign direct investments made or planned to be made in Malta and to all persons involved in a foreign direct investment, including foreign investors aiming to establish or to maintain lasting and direct links in order to carry on an economic activity in Malta, including investments which enable effective participation in the management or control of a company carrying out an economic activity.

(2) This Act shall not apply to portfolio investments.

PART III

Establishment, Function and Conduct of Affairs of the National Foreign Direct Investment Screening Office

Establishment of the National Foreign Direct Investment Screening Office.

5. (1) There shall be established an office to be designated as the National Foreign Direct Investment

Screening Office.

(2) There shall be a Board which shall direct and be responsible for the affairs of the Office.

(3) The Board shall consist of a minimum of five (5) and a maximum of seven (7) members to be appointed by the Minister, who shall designate one (1) of the said members to be the Chairperson.

(4) (a) A person shall not be eligible to be appointed or to hold office as Chairperson or as a member of the Board if he is:

(i) a Minister, Parliamentary Secretary, a member of the House of Representatives or a member of any local council; (ii) a Judge or a Magistrate of the Courts of Justice;

(iii) legally incapacitated;

(iv) has been declared bankrupt or had entered into a composition agreement or arrangement with his creditors;

(v) has committed an offence involving fraud, or has contravened any provision of law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons involved in business activities or in carrying on a profession, or has engaged in any business practice appearing to the Minister to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflects discredit on his methods of conducting business or his profession; or

(vi) is otherwise not a fit and proper person to hold such office.

(b) In determining whether a person is a fit and proper person under paragraph (a)(vi), the Minister shall have regard to that person's integrity, to his competence and soundness of judgment for fulfilling the responsibilities of that office, to the diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of any person are, or are likely to be in any way threatened by holding that office.

(c) Any person whom the Minister has appointed or proposes to appoint as a member of the Board shall, whenever requested by the Minister to do so, furnish to him such information as the Minister considers necessary for the performance of the Minister's duties under paragraphs (a) and (b).

(5) Without prejudice to sub-articles (6) and (7), members of the Board shall be appointed for a term of two (2) years, and may be re-appointed for a further period or periods of two (2) years.

(6) A member of the Board may resign his office at any time by giving notice in writing to the Minister.

(7) The Minister may at any time remove a member of the Board on grounds of proved inability to perform his functions, bankruptcy or neglect of duty or for any of the reasons listed in subparagraphs (i) to (vi) of sub-article (4)(a).

(8) The quorum necessary for meetings of the Board shall be the Chairperson and half of the remaining members forming part of the Board.

(9) The Minister shall designate a person to act as the secretary of the Board:

Provided that the Minister or a representative on his behalf may appoint a substitute secretary in the following cases:

(a) in cases of urgency if the designated secretary is, for whatsoever reason, not available to perform his duties; and

(b) in cases where the designated secretary abstains for the same reasons that a member of the Board may abstain as mentioned above.

(10) Every member of the Board shall have one (1) vote each and the Chairperson shall be entitled to a casting vote.

(11) The Chairperson, the members of the Board and the Secretary shall be paid such honorarium as the Minister may determine.

Distinct legal personality.

6. The Office 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.

Legal and judicial representation.

7. The legal and judicial representation of the Office shall be vested in the Chairperson of the Board:

Provided that the Chairperson may, from time to time, appoint any one or more of the Board members, or any one or more of the officers or employees of the Office, to appear in the name and on behalf of the Office in any judicial proceedings or on any act, contract, instrument or other document whatsoever.

Conduct of the affairs of the Board.

8. (1) Subject to any other provisions of this Act, the Board may regulate its own procedure and set meetings in such a manner as it deems proper.

(2) The Board shall meet at least once (1) every calendar quarter.

(3) The Board may exercise its functions notwithstanding any vacancy in its membership, as long as such vacancies do not exceed three (3) in number.

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

Functions of the Office.

9. (1) The functions and duties of the Office shall be to:

- (a) establish and update a mechanism to screen foreign direct investments carried out in Malta which may affect the security or public order of Malta;
- (b) establish and implement appropriate rules of procedure to be followed in executing its obligations emanating from this Act;
- (c) commence ex officio investigations when deemed necessary in accordance with this Act;
- (d) act as the relevant body concerning screening of foreign direct investment in Malta;
- (e) carry out screening procedures of foreign direct investments falling under this Act;
- (f) assess, investigate, authorise, condition, prohibit or unwind a foreign direct investment on grounds of security or public order in Malta;
- (g) implement a screening decision as defined in this Act;
- (h) impose any obligation in order to ensure adherence with conditions that may be imposed as part of a screening decision;
- (i) perform monitoring as part of a condition that may be imposed as part of a screening decision;
- (j) report annually to the Commission the foreign direct investments that took place in Malta for the preceding calendar year and the information provided to requests received from Member States;
- (k) provide to the Commission any information that may be duly justified in terms of this Act and the Regulation;
- (l) establish and implement the system by which Malta shall participate in the cooperation mechanism established in the Regulation;
- (m) participate in the cooperation mechanism established in the Regulation, as deemed necessary;
- (n) liaise with responsible authorities of third countries on issues relating to the screening of foreign direct investments;
- (o) charge any such fee which may be deemed reasonable and justifiable for the carrying out of the functions of the Office;
- (p) exercise such other functions and duties as may be prescribed.

(2) In its deliberations on specific cases or investments, the Office may require the input of persons engaged in the public sector. Furthermore, the Office may also request appropriate expertise from, or collaboration with, third parties, as it may deem necessary and may enter into agreements with public entities in order to carry out its functions in terms of sub-article (1):

Provided that persons engaged in the public sector shall be obliged to provide any information that may be requested from them in terms of this sub-article within ten (10) working days from receipt of request.

(3) In the exercise of its powers and functions under this Act, the Office shall have the right of access to all relevant information, and may seek clarifications and explanations that it may deem necessary for its deliberations and conclusions.

(4) Save as may be otherwise required for the purposes of this Act, in the exercise of its powers and functions under this Act, the Office shall act in a transparent and non-discriminate manner:

Provided that in ensuring the transparency and nondiscrimination of the process, the Office shall not prejudice the commercial sensitivity of the foreign direct investment.

(5) Any information which the Office may obtain in terms of this Act shall be used only for the purpose for which it was originally obtained.

(6) Save as may be otherwise required for the purposes of this Act or any other applicable law, or in the course of a prosecution for any offence committed in relation to this Act, or where ordered by the Courts of Justice, or where the Prime Minister otherwise directs:

(a) every person having an official duty or being employed in the administration of this Act shall regard and deal with all documents and information relating to matters contemplated by or pursuant to the provisions of this Act as secret and confidential and shall make and subscribe before a Commissioner for Oaths a declaration on oath to this effect in the form prescribed which shall be deposited with the State Advocate;

(b) no such person shall be required to produce to or before any court, tribunal, board, committee of enquiry or any other authority, or to divulge to any court, tribunal, board, committee or any other authority, any matter or thing coming to his notice or being in his possession in the performance of his duties under this Act.

(7) Notwithstanding the provisions of sub-article (6), the internal auditor of the Office shall have access to any records and documents as may be necessary for the performance of his duties, as the law may allow.

(8) Any person who, except as provided for or allowed under this Act or for the purposes thereof, communicates or attempts to communicate to any other person any matter or thing that came to his attention or was in his possession in the performance of his duties as an officer or employee of the

attention or was in his possession in the performance of his duties as an officer or employee of the Office in accordance to this Act, shall be guilty of an offence and on conviction, shall be liable to a fine (multa) of not less than one thousand euro (€1,000) and not more than twenty thousand euro (€20,000), or to imprisonment for a period not exceeding six (6) months, or to both such fine and imprisonment.

Conflict of Interest.

10. Any officer or employee of the Office who has any direct or indirect interest in any foreign direct investment made or planned to be made and where the officer or employee is involved in any manner in the determinations made in terms of article 12, shall, as soon as this comes to his knowledge, disclose the nature of his interest with the Board, and the Board shall, at its sole discretion, decide whether the officer or employee may be involved or otherwise in the process leading to the mentioned determination:

Provided that where an officer or employee does not disclose such interest, the Board may at its sole discretion, suspend or dismiss such an officer or employee and impose such penalty as it deems fit while taking into consideration the level of interest of that officer or employee in the foreign direct investment in question.

PART IV

Notification and the Screening Process

Notification of foreign direct investment.

11. (1) In the following circumstances, foreign investors and all persons involved in a foreign direct investment shall be obliged, prior to carrying out the investment or effecting any changes mentioned in paragraphs (b), (c) or (d), to notify the Office with the investment and provide information regarding the entity carrying out the investment and any information which may be necessary for the proper observance of this provision or which may be requested by the Office:

- (a) where an investment that affects any of the factors or activities mentioned in the Schedule is planned to be carried out in the future;
- (b) where, having carried out an investment in Malta, plan to change the business activity of the foreign investor to one which affects any of the factors or activities mentioned in the Schedule;
- (c) where, having carried out an investment in Malta which affects any of the factors or activities mentioned in the Schedule, the ownership structure of the investor changes such that at least ten percent (10%) is owned by foreign investors; or
- (d) where, having carried out an investment, the direct or indirect controlling interest of the company or the group company changes and passes onto a foreign investor.

(2) The information referred to in sub-article (1) shall include:

- (a) the ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned to be made or has been made, including information on the ultimate investor and, or beneficial owner and participation in the capital;
- (b) the approximate value of the foreign direct investment;
- (c) the products, services and business operations of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed;
- (d) the jurisdictions, including Member States, in which the foreign investor and the undertaking in which the foreign direct investment is planned or has been completed conduct relevant business operations;
- (e) the funding of the investment and its source;
- (f) the date when the foreign direct investment is planned to be completed or has been completed; and
- (g) any other information as the Office may reasonably require for the proper execution of its functions in accordance with this Act.

(3) Any undertaking, organization, foundation or other entity wherein at least ten percent (10%) of its share is owned by a foreign investor and, or where the beneficial owner of the foreign investor is a third country national or an undertaking of a third country and, or which has any direct or indirect controlling interest by a foreign investor and which plans to carry out any investment mentioned in sub-article (1) shall, for the purposes of this Act, be subject to the obligation stated in sub-article (1).

(4) For the purposes of sub-article (3), a foreign investor's proportion of the aggregate ownership in an undertaking, organization, foundation or other entity shall include any shares owned by:

- (a) an undertaking, organization, foundation or other entity belonging to the same foreign investor;
- (b) an undertaking, organization, foundation or other entity belonging to the same group company as the foreign investor; or
- (c) a member of the foreign investor's family, who is related to the foreign investor by consanguinity or affinity in the direct line in any degree or in the collateral line up to the third degree inclusively or by an undertaking, organization, foundation or other entity over which such a family member exercises authority.

Screening process.

12. (1) The Office shall upon receipt of the notification mentioned in article (5) and not later than five (5) working days from the mentioned receipt, determine whether the foreign direct investment shall be subject to screening.

(2) In reaching its decision, the Office may request any necessary additional information from the foreign investor and may seek the clarifications and explanations that it may deem necessary for its deliberations and conclusions. The process initiated in terms of subarticle (1) and the time-frame established therein shall be suspended until all the information and clarifications requested are duly provided to the Office.

(3) Saving that provided in sub-article (2), where the Office concludes that the foreign direct investment shall not be subject to screening, it shall, within five (5) working days from the date of its decision, inform the foreign investor of its decision.

(4) Where the Office concludes that the foreign direct investment shall be subject to screening, according to the nonexhaustive list of factors and activities mentioned in the Schedule, it shall inform the foreign investor within five (5) working days from the date of its decision, trigger the cooperation mechanism, and shall within sixty (60) calendar days from the date of the decision rendering the investment subject to screening, determine whether the foreign direct investment may affect the security or public order of Malta:

Provided that where it deems necessary, the Office may extend the period required to determine whether the foreign direct investment may affect security or public order of Malta.

(5) In reaching the decision mentioned in sub-article (4), the Office may request any additional information that may be required from the foreign investor and the process initiated in terms of the same sub-article and the time-frame established therein shall be suspended until all the information requested is duly provided.

(6) Where, following the process conducted in terms of subarticle (4), the Office concludes that the foreign direct investment does not affect the security or public order of Malta, it shall, within five (5) working days from the date of its decision, inform the foreign investor with the decision.

(7) Where the Office concludes that the foreign direct investment affects the security or public order of Malta, it may condition, prohibit or unwind such an investment, as the case may be, and shall inform the foreign investor in writing with its decision. The notification with the decision shall include a simple reasoned justification.

(8) Where an investment is conditioned, prohibited or unwound pursuant to a decision of the Office in terms of sub-article (7), the foreign investor and any other person, undertaking, organization, foundation or other entity having an interest in the said investment shall not be entitled to claim any compensation or reimbursement for whatsoever reason.

(9) In conducting the processes mentioned in sub-articles (1) and (4), the Office may obtain further information and statements from other public authorities, to the extent deemed necessary.

(10) Where the information provided by the foreign investor is considered by the Office as being incorrect, or where the foreign investor, having been informed that the information provided is incomplete, fails to provide the requested information within twenty (20) days from the day of service of a request by the Office, the screening process shall cease, the application shall be withdrawn and the investment shall be unwound. The foreign investor and any other person, undertaking, organization, foundation or other entity having an interest in the said investment shall not be entitled to any form of compensation or reimbursement, for whatsoever reason.

Notification methods.

13. (1) Where any notice, decision or other instrument or document whatsoever is required or authorised to be served or given in accordance to this Act, it may be served or given in any of the following manners:

(a) by delivering it to the person on whom it is to be served or to whom it is to be given;

(b) by leaving it at the usual or last known place of abode of that person, or at his place of work, or if such person has furnished an address for service, at that address;

(c) by sending it by means of a registered letter addressed to that person at the place of abode or the address for service aforesaid;

(d) in the case of a body corporate or other body of persons, by delivering it to an officer or employee thereof at the registered or principal office, or by sending it by means of a registered letter addressed to such body at that office; or

(e) in any case in which it is not reasonably possible to effect service in any of the foregoing manners, whether on all or on any one or more of the persons on whom service is to be made or notice is to be given, by affixing the notification, decision or any other instrument or document to be served or delivered in a conspicuous place on the property to which it relates and keeping it so affixed for five (5) working days and by publishing the said notification, decision or any other instrument or document in a local newspaper. Where the notification, decision or any other instrument or document to be served or

delivered is affixed on the property but is removed before the expiry period of five (5) working days, the reaffixing of the said notification, decision, or any other instrument or document shall only be for the remaining period after the document was removed.

PART V Executive Powers

Imposition of conditions.

14. Where an investment is subjected to a condition or a number of conditions as permitted by article 12, the Office shall serve the foreign investor with its decision and shall allow reasonable time for the foreign investor to take all necessary measures in order to satisfy the said conditions:

Provided that should the foreign investor fail to satisfy the conditions imposed by the Office within the prescribed time, the Office shall prohibit or unwind the foreign direct investment.

Unwinding of investments.

15. (1) Where an investment is declared unwound, the Office shall serve the foreign investor with its decision and shall allow reasonable time for the foreign direct investor to reverse or modify any such decision affecting the investment.

(2) Where a foreign investor fails to provide sufficient proof that any such decision affecting the investment according to subarticle (1) has been revoked, the Office shall have the power, following the lapse of sixty (60) calendar days from date of service of the decision mentioned in sub-article (1), to commence any judicial proceedings which may be deemed necessary in terms of the Code of Organization and Civil Procedure requesting a Civil Court of competent jurisdiction to revoke any such decision as may be required in order to prohibit or unwind the foreign direct investment, as the case may be.

Failure of notification

16. Where any of the persons involved in a foreign direct investment fails to notify the Office in terms of article 11, the investment shall automatically be considered to be in violation of the provisions of this Act and the Office may, at its own discretion, take all necessary measures to unwind the said investment.

PART VI

Administrative penalties

Offences and administrative penalties.

17. (1) The Office may, by notice served on the offender, impose administrative penalties amounting to:

- (a) not less than five thousand euro (€5,000) and not exceeding fifty thousand euro (€50,000) on any person for failure to notify the Office in accordance with article 11;
- (b) not less than one thousand euro (€1,000) and not exceeding five thousand euro (€5,000) on any person who fails or refuses to provide information in accordance with articles 11 and 12;
- (c) not less than five thousand euro (€5,000) and not exceeding one hundred thousand euro (€100,000) on any party who provides incorrect, inaccurate or incomplete information, in accordance with articles 11 and 12.

(2) Any person who being requested to take any necessary measures in terms of articles 13 and 14, fails to carry out such measures within the time established by the Office for such purpose, shall be liable to an administrative penalty of five hundred euro (€500) for every day that elapses from the date stipulated by the Office:

Provided that the imposition of any administrative penalty shall be without prejudice to any other right or remedy which may be competent to the Office in terms of this Act.

(3) The notice relating to the administrative penalty imposed under sub-articles (1) and (2) shall specify:

- (a) the date and nature of the offence;
- (b) a summary of the facts upon which the charge of the offence is based;
- (c) any other matters that the Office may deem relevant to the imposition of the penalty;
- (d) the amount of the penalty due; and

(e) the offender's right to appeal the administrative decision according to article 17, and shall be endorsed by a reference stipulating the provisions of this article.

(4) Any administrative penalty to which a person becomes liable in terms of this Act shall be due and payable by that person, and that person shall not be relieved from a higher or from a further penalty to which he may have become or may become liable in terms of the relevant provisions of this Act.

(5) Penalties under sub-article (2) shall accrue until sufficient proof is provided that the necessary measures were taken effectively.

(6) In special cases, where there are cogent and compelling reasons to do so, the Office may waive compulsory penalties wholly or in part.

(7) Administrative penalties shall be due to the Office as a civil debt, and the provisions of article 466 of the Code of Organization and Civil Procedure shall mutatis mutandis apply thereto.

PART VII Appeal

PART VII Appeal

Right of appeal.

18. (1) The Administrative Review Tribunal established by article 5 of the Administrative Justice Act shall be competent to hear and determine:

- (a) objections made by any person aggrieved by a decision taken according to article 12;
- (b) objections made by any person aggrieved by an administrative penalty imposed on that person in terms of this Act:

Provided that unless otherwise prescribed by law, an appeal application lodged in terms of this sub-article to the Administrative Review Tribunal shall be filed within twenty (20) days from the receipt of the decisions mentioned in paragraphs (a) and, or (b).

(2) Notwithstanding anything contained in the Administrative Justice Act, the Administrative Review Tribunal shall serve the appeal applications filed in its registry on the respondent without delay. The respondent shall have the right to file a written reply within twenty (20) days from the date of service. The Tribunal shall subsequently set a date for hearing within eight (8) working days from the filing of a reply by the respondent or following the lapse of twenty (20) days from when the respondent is served with the appeal, even if no reply is filed by the respondent within such time-frame. The Tribunal shall, after appointing the appeal application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible, but not later than six (6) months from the day when the application has been duly notified.

(3) There shall be a right of appeal on points of law in accordance with the provisions of Part IV of the Administrative Justice Act from decisions of the Administrative Review Tribunal under subarticle (1) and such appeal shall be to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure.

(4) The right of appeal mentioned in sub-article(3), shall be exercised within twenty (20) days from the date of the Tribunal's decision and a copy of the appeal application shall be served on the respondent, who may file a written reply within twenty (20) days from the date of service.

(5) In the absence of an appeal application in terms of subarticle (1)(b), the decision of the Office to impose administrative penalties shall become final and shall constitute an executive title for the purpose of Title VII of the Code of Organization and Civil Procedure as if the decision had been delivered by a judgment of a Court of Civil jurisdiction.

PART VIII

Miscellaneous Provisions

Data protection legislation.

19. In the performance of its functions and duties under this Act, the Office shall observe the obligations imposed by data protection legislation, including the provisions of the General Data Protection Regulation.

Powers of the Minister.

20. The Minister may, in order to achieve the purposes of this Act, make regulations and issue such orders as may be necessary in order to give effect to the provisions of this Act.

SCHEDULE

(Articles 11 and 12)

Activities

(a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;

(b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No. 428/2009 (15), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies;

(c) supply of critical inputs, including energy or raw materials, as well as food security;

(d) access to sensitive information, including personal data, or the ability to control such information; or

(e) the freedom and pluralism of the media.

Factors to be considered

(a) whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;

(b) whether the foreign investor has already been involved in activities affecting security or public order in a Member State; or

(c) whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

