

IT-TRIBUNAL DWAR SERVIZZI FINANZJARJI

Pierre Lofaro LL.D. – Chairman
Frank Bonello FCIB – Membru
Mario Bonello ACIB – Membru

Illum, it-Tnejn, 19 ta' Ottubru 2009

Deċiżjoni Finali tat-tribunal fl-appell intavolat mill-promoturi ta' Sibylline Capital Management Company Limited (in formation) Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira premezz ta' ittra datata 23 ta' Awissu 2006.

L-Appell tal-Promoturi ta' Sibylline Capital Management Company Limited (in formation) Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira

1. Fl-24 ta' Awissu 2006 it-tribunal irċieva s-segwenti ittra minghand l-Avukat Dottor Pio M. Valletta għan-nom tal-promoturi ta' Sibylline Capital Management Company Limited (in formation) Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira:

This is an application for an appeal in terms of Article 21 of the Malta Financial Services Authority Act – Chapter 330 of the Laws of Malta and Article 19 of the Investment Services Act – Chapter 370 of the Laws of Malta filed by the undersigned on behalf of Peter J.

Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi and Mario W. La Pira as per attached mandate which is being marked "APP 1".

An appeal is being sought from the decision by the Malta Financial Services Authority dated the 4th August, 2006 to refuse an application for a license to provide an Investment Service, and to hold or to control clients' money or customers' assets, but not to deal for the Applicant's account or to underwrite (Category 2 Licence). The licence was originally submitted by my clients Messrs. Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi, Mario W. La Pira and Joseph N. Fava, however during the processing stage Joseph N. Fava withdrew his interest in the application. Copies of the letter of refusal of the 4th August, 2006 and of the Application are being attached herewith and marked "APP 2" and "APP 3"

Also attached are copies of all correspondence exchanged between the applicants or their legal counsel and the Malta Financial Services Authority, which copies are collectively marked "APP 4".

GROUND^S for REFUSAL

From an examination of the Malta Financial Services Authority's letter of the 4th August, 2006 and from a reading of all previous correspondence the grounds for refusal are the lack of the MFSA's competence requirements including the failure on the part of the Applicants to satisfy the fit and proper test as set out in the applicable legislation and regulations.

GROUND^S for APPEAL

Lack of MFSA's competence requirements and failure on the part of the applicants or any of them to satisfy the fit and proper test as set out in the applicable legislation and regulations.

MFSA's refusal to grant the license requested on the ground of lack of competence requirements apart from constituting an abuse of the authority's discretion and is manifestly unfair taking account of the local general situation, is based on the wrong application of the applicable provisions of the relevant and applicable legislation.

*According to Article 6 (1)(a) and Article 6 (3) of the Investment Services Act 1994 and of Section 2 of the Investment Services Guidelines (Part A) it is clearly envisaged and provided that the fit and proper test is aimed at establishing whether an applicant is a **"fit and proper person to provide the relevant Investment Services and***

that the same applicant will comply and observe the appropriate rules and regulations.”

Moreover according to the applicable Investment Services Guidelines the three criteria which must be met to satisfy the “fit and proper” test are: a. **Integrity**; b. **Competence**; and c. **Solvency**.

None of the facts, situations and circumstances on the basis of which the MFSA are founding their refusal adversely affect or can be interpreted as adversely affecting the three criteria required to satisfy the fit and proper test according to the Investment Services Guidelines, which guidelines clearly set the parameters within which the Supervisory Council must exercise its discretion.

In fact according to the Investment Services Guidelines integrity “**involves the Licence Holder and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties**”. There is nothing in the declared findings of the MFSA which in any way adversely affects the **integrity criteria** as defined in the Investment Services Guidelines and hence the application and interpretation of MFSA’s findings as adversely affecting the integrity criteria under the Investment Services Guidelines is clearly an excess of the discretionary powers of the MFSA, is manifestly unjust and is based on the wrong application and the interpretation of the applicable regulation. No clear and factually verifiable objective reason has been brought to confirm, substantiate or corroborate the MFSA’s contention that the findings of the due diligence exercise indicate or prove that my clients “**are likely not to act honestly and in a trustworthy fashion in relation to their clients and other parties**”.

With respect to **competence**, according to the Investment Services Guidelines the people carrying on the business of the Licence Holder must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. It is clear from the MFSA’s correspondence more particularly the letters of the 23rd June, 2006 and the 4th August, 2006 that the MFSA’s application and interpretation of its findings as adversely affecting the competence criteria is again in excess of the discretionary powers of the MFSA and is manifestly unfair as it is based on wrong and unlawful considerations. In fact the findings from the due diligence exercise conducted by the MFSA have absolutely no relevance whatsoever to the exercise of determining the competence criteria and when the MFSA considered these findings in its evaluation of this aspect of the criteria it exceeded its discretionary powers and based its decision on a wrong and unlawful consideration. According to the competence criteria set in the Investment Services Guidelines my clients had to

prove that they had an acceptable amount of knowledge about the activity they were requesting a licence for and clearly from objectively verifiable evidence submitted this can easily be established and confirmed. My clients also had to prove professional expertise and again they have clearly proven that they have the required professional expertise to undertake the licensable activity they applied for since persons capable of providing trading signals with very positive and satisfactory comments to back the successfulness of these signals surely qualify as experts in their field. The comment contained in your 23rd June 2006 letter, that providing trading signals on a web-site in an unregulated environment counters any claim for professional expertise is clearly a very superficial way of motivating a decision and is clearly a blatantly and highly biased view. It is clear that the MFSA has not tried to establish who the frequent users of this web-site are and what degree of importance these give to the signals which are provided. Nor did the MFSA attempt to investigate and establish what the comments provided by the vast users of the Global View web-site to the signals furnished by Messrs. Paul and Peter Azzopardi were. Clearly the MFSA based its judgment on other considerations rather than those clearly established and set in the Investment Services Guidelines. A clear indication of this is the MFSA's comment regarding Peter Azzopardi's degree. The MFSA should know that Spot FX market is not specifically covered in any syllabus leading to an Investment Services Business degree and is based on the application of technical factors and/or economic fundamentals. Moreover the competence criteria does not envisage a specific qualification in the particular activity but speaks of qualifications of a licence holder in general. The specific criteria lays importance on the knowledge, professional expertise and experience in the field. It may also be very pertinent if the MFSA had to delve through and investigate licences granted in the past to establish whether its treatment of my clients' application with reference to this specific criteria of the fit and proper test is consistent with its treatment of other applications for which licences were granted. This is being said since the MFSA as a regulator and also a provider of the required financial services licences must ensure equality of treatment in the processing of every licence submitted to it.

*With respect to the **solvency criteria** according to the Investment Services Guidelines this criteria is intended to ensure that proper financial control and management of liquidity and capital are applied meaning also that the business should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements established by the MFSA. It is clear from MFSA's letters of the 23rd June, 2006 and the 4th August, 2006 that no reason has been given why the Supervisory Council is not*

satisfied that this criteria (solvency) has been met. This means that again on this very specific criteria of solvency the MFSA has exceeded its discretionary authority and acted in a manifestly unjust and unfair manner when it clearly based its decision on wrong and unlawful considerations since it has ignored altogether the fact that my clients have clearly provided a system of operation which will apply and guarantee a proper financial control and management of liquidity and capital. Furthermore the MFSA is also in breach of the rules of fair hearing since as an authority vested with the power to decide whether to grant or not to grant a licence it is legally required to provide the full and clear reasons why the specific criteria required for the acceptance or refusal of the licence has been considered not to have been fulfilled.

*It may be relevant in this context to refer to specific and important excerpts attributed to highly notable legal masters in the field of Administrative Law. Specific reference is made to the book *Judicial Review of Administrative Action*, where the author Professor S. A. De Smith in page 253 (3rd Edition) amongst other things, states when writing about the Principles governing the exercise of discretionary powers:*

“The authority in which discretion is vested..... must act in good faith, must have regard to all relevant consideration and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.”

*Moreover the well known English Jurist Coke said that discretion was *scire per legem quod sit justum*; it was “a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences and not to do according to their wills and private affections.”*

These dictas help one to set out the rules of revision of any act of discretion such as that conferred to the MFSA by Article 6 of the Investment Services Act – Chapter 370 of the Laws of Malta.

When examining all the justifications and motivations advanced by the Malta Financial Services Authority to give strength to their decision that, there existed lack of the competence requirements provided under the relevant legislation in the persons assigned with the duty to exercise the licensable activity, it should result that those safeguards so ingrained in our legal system to counter any misuse or misapplication of discretion, have been overstepped.

It will result that in the examination of all the facts provided to MFSA by the applicants with respect to the ground of refusal, MFSA failed to take regard of all relevant considerations, the spirit of the legislation was not sought and furthermore the arguments used to back this ground for refusal lacked objectivity and were highly arbitrary and capricious.

Competence is assessed on qualifications, training and work experience, in this order. These three criteria are however to be solely relevant and judged by reference to that type of market one intends to deal in. Judging these criteria by reference to markets which one does not intend to deal with would clearly mean that one is to bring into the exercise of his discretion irrelevant considerations.

The Spot FX market is distinct and separate from the derivatives market and therefore qualifications for the latter in no way apply to the former. Spot FX traders simply make decisions using technical factors and / or economic fundamentals. Mr Peter Azzopardi, a UK graduate in Economics and Accountancy, therefore without doubt satisfies the 'qualifications' criteria.

On the other hand, a person can be 'qualified' without having a degree or diploma. Mr. Jay Meisler's letter submitted with the applicants' letter confirms that Mr Paul Azzopardi is qualified in providing trading signals. This was evident from the beginning; one hardly expects that a premiere FX site like Global-View.com would allow an 'incompetent' to manage a pay service on their esteemed site. The provision of consistently correct trading signals, coupled with a multi-defence risk management strategy, are the sole keys to successful FX trading.

Furthermore, 'track-records' can also serve as a 'qualification', especially if the results achieved are favourable. Whilst it is accepted that consistent profitable past performances can never be assessed as a guide to future achievements, the opposite is to be also more than true. Therefore, unprofitable past performances automatically signify 'incompetence'. A verifiable accumulation of 'pips' attained for years 2002, 2003 and 2004 respectively would prove this. Regrettably, applicants offer for an audit, to be conducted by a prime audit firm, confirming net 'pip' acquisitions, together with their respective monetary value, under the protective umbrella of their highly effective risk management strategy, was dismissed as almost irrelevant by the MFSA.

The other two criteria namely training and experience, coupled with qualifications, are more than inter-linked, in fact either cannot exist without the other. One cannot have work-experience without having undergone training. Furthermore, for one to undergo training means that one must have a knowledge of the subject matter. This knowledge on the other hand cannot be simply restricted to information acquired from books, courses etc., but must be more profound, as we have demonstrated above, vis-à-vis positively consistent trading signals, coupled with our risk-management strategy.

In this respect, research conducted on the System in 1998, using data extrapolated from the 6 previous years, confirmed that the results yielded in 1998 were no fluke and that the system maintained a notable level of accuracy. This massive exercise served as a pseudo form of training for both Mr. Peter Azzopardi and Mr. Paul Azzopardi considering that the trading environment was an important factor of this research.

Work-experience can, on the other hand, be said to have initiated during 2001, precisely when Paul Azzopardi and Peter Azzopardi started posting trading recommendations on the Forex Forum of Global-View.com. Since 2002 Paul Azzopardi and Peter Azzopardi were invited to start a trading signal recommendation service, which is still active to date.

Furthermore it is not correct to argue as MFSA have done and continue to do, that in the absence of training / qualifications and in order to satisfy the competence test, one must prove undergoing relative work experience of a minimum number of years with an authorised financial institution. In the first instance there is an unlimited number of authorised financial institutions, but only a select few can be deemed to be specifically authoritative on the subject matter. In the second instance one must discern exactly what designation the word 'trader' implies. The majority of so called 'traders' simply follow 'in-house' signals and can be simply termed as 'deal-executors'. A sound and authoritative financial institution would have a team of 'technical and economic' advisors, whose sole purpose would be to generate trading signals. Traders and advisors work independently of each other, with the latter enjoying the only onerous role. It would therefore be correct in saying that traders working for a top notch financial institution cannot be considered as competent to generate trading signals and this irrespective of the number of years in the institution's employment. On the other hand advisors, by MFSA's standards, would not qualify as being competent, primarily because they have never actually traded.

In the case of the applicants however MFSA was informed that both Mr. Peter Azzopardi and Mr. Paul Azzopardi had positive signalling skills and the art of actual trading, the latter coupled with an effective risk management strategy.

In the light of the above consideration it is felt that the refusal on the part of MFSA to grant a licence based on the proposal submitted by my clients has wrongly applied the relevant provisions of the law regulating Investment Services and apart from being manifestly unfair constitutes an abuse of discretion. Consequently the Tribunal is respectfully requested to reverse the decision of the Malta Financial Services Authority and to grant a licence to the applicants under such conditions as the Tribunal may deem fit and appropriate and to order the Malta Financial Services Authority to issue the appropriate licence with all the appropriate and applicable conditions.

Ir-Risposta ta' L-Awtorita ghas-Servizzi Finanzjarji ta' Malta

2. L-Awtorita ghas-Servizzi Finanzjarji ta' Malta rrispondiet hekk:

Risposta ta' l-Awtorità ghas-Servizzi Finanzjarji ta' Malta ghan-nota ta' appell ta' l-avukat Pio M. Valletta tat-23 ta' Awissu 2006 ghan nom tal-promoturi ta' Sibylline Capital Management Co. Limited, Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira

L-Awtorità għas-Servizzi Finanzjarji ta' Malta (l-“MFSA” jew l-“Awtorità”) tikkontesta l-appell ta' Sibylline Capital Management Co. Limited, soċjetà ‘in formation’ (aktar il-quddiem imsejja “is-soċjetà”). L-MFSA tisottometti bir-rispett illi d-deċiżjoni tas-Supervisory Council għan-nom tal-MFSA hija korretta, xierqa u ġusta, kemm fl-apprezzament tal-fatti kif ukoll fl-applikazzjoni tal-liġi, u kemm bħala proċedura u kemm bħala kontenut. L-MFSA lesta turi li dan huwa il-kas b'xhieda dokumentata u xhieda oħra li disposta ittelligħa għal dan l-iskop. L-MFSA tikkontesta bħala kompletament infondati u bla bażi l-allegazzjonijiet tas-soċjeta' attriċi u għaldaqstant qegħda bir-rispett titlob lit-Tribunal sabiex jiċhad dan l-appell odjern, bl-ispejjeż, jekk ikun il-kas, kontra s-soċjetà attriċi.

L-MFSA mhix ser toqgħod tirrabbatti punt punt għal ħafna allegazzjonijiet fiergħa li għamlet is-soċjetà fil-konfront tagħha fl-ittra ta' l-appell tagħha, sakemm ma tkunx mitluba tagħmel dan mit-Tribunal, u ser tillimita ruhha għal xi punti selettivi dwar il-mertu u li

jidhrilha f'dan l-istadju li huma aktar relevanti sabiex wiehed jista jifhem ahjar ghala l-applikazzjonji giet miċhudha. Fost ir-raġunijiet li fuqhom l-MFSA qegħda tikkontesta l-appell tas-soċjetà jinkludu dawn il-kunsiderazzjonijiet li ġejjin, mingħajr preġudizzju għal raġunijiet oħra li jistgħu jittellgħu matul il-kontinwazzjoni tal-proċeduri quddiem dan it-Tribunal.

Skond is-subartiklu 9 ta' l-Artiklu 21 ta' l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta (Kap. 330 tal-Liġijiet ta' Malta), it-talba għad-deċiżjoni f'appell lit-Tribunal għandha tkun, għar-raġunijiet miġjuba mill-appellant –

- (a) jekk l-Awtorità tkunx, fid-deċiżjoni tagħha, applikat hażin xi waħda mid-disposizzjonijiet ta' dan l-Att; jew*
- (b) jekk id-deċiżjoni ta' l-Awtorità tikkostitwix abbuż ta' diskrezzjoni jew tkunx ingusta manifestament.*

Fil-fehma tal-MFSA u għar-raġunijiet esposti aktar 'l isfel jew li jirriżultaw mid-dokumentazzjoni tal-kas, l-appellant naqas milli juri b'liema mod l-MFSA naqset timxi bil-bwona fede jew b'xi mod ieħor abbużat mid-diskrezzjoni li tagħtiha l-liġi, jew inkella li applikat hażin xi waħda mid-disposizzjonijiet ta' dan l-Att, hekk kif filfatt qed isostni l-istess appellant. Fl-istess subartiklu 9 ta' l-artikolu 21 il-liġi tgħid ukoll illi d-diskrezzjoni ta' l-Awtorità kompetenti ma tistax, sakemm tkun giet eżerċitata b'mod xieraq, tiġi mistħarrġa mit-Tribunal.

L-MFSA umilment tissottometti illi t-talba kontenuta fl-appell intavolat mill-appellanti essenzjalment tikkonsisti f'ripetizzjoni ta' l-asserzjoni tal-promoturi tas-soċjetà li huma ma jaqblux mal-konklużjonijiet ta' l-Awtorità. Il-fatt waħdu li l-promoturi ma jaqblux mal-konklużjonijiet tal-Awtorità ma jikkostitwixxix bażi suffiċjenti sabiex fuqha jimbena appell skond l-artikolu 21 tal-Kap. 330. L-oneru li jiġi ppruvat b'mod ċar li d-diskrezzjoni ta' l-Awtorità ma gietx eżerċitata b'mod xieraq huwa fuq l-appellant, u mill-appell intavolat johroġ ċar li din il-prova ma saritx.

Permezz tad-dokumenti li diġa ġew ippreżentati fl-atti u permezz ta' provi oħra li għad iridu jiġu ppreżentati aktar 'l quddiem, l-Awtorità thoss li tinsab f'posizzjoni li turi lit-Tribunal li hija ħadet id-deċiżjoni li tiċhad li tagħti liċenzja lill-kumpannija in kwistjoni wara li studjat bir-reqqa t-talba tal-promoturi tal-kumpannija, liema talba dejjem giet ikkunsidrata bl-akbar serjeta' u in bwona fede. Fit-teħid ta' din id-deċiżjoni, bħal fil-kaz ta' kull deċiżjoni oħra li tieħu l-Awtorità, il-prinċipju bażiku li jiggwida d-deċiżjonijiet tagħha huwa li hija qegħda hemm primarjament sabiex tibza' għal interessi pubbliċi u mhux sabiex takkomoda dawk privati.

L-appell tal-atturi fil-fatt jonqos li jindirizza l-punti kruċjali imqajjma fl-ittra tad-Direttur Ġenerali ta' l-Awtorità (datata 23 ta' Ġunju 2006 u li tinsab annessa mad-dokumenti mmarkati bhala 'APP 4' flimkien ma' l-appell) li insistiet b'mod inekwivoku fuq il-ħtiega ta' ħarsien ta' l-interess tal-pubbliku. F'din l-ittra gie spjegat ampjament kif l-Awtorità, meta tikkunsidra jekk tagħtix jew tiċhadx liċenzja għandha, b'mod partikolari, tikkunsidra l-ħarsien ta' investituri u tal-pubbliku in ġenerali, kif espressament mitlub mill-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 6 ta' l-Att dwar Servizzi ta' Investiment. Il-liġi fl-istess artikolu (speċifikament f'paragrafu (a) tas-subartikolu (1) ta' l-artikolu 6) titlob - anzi tobbliga - lill-Awtorità sabiex ma tagħtix liċenzja għal servizzi ta' investiment jekk ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa biex tipprovdi s-servizzi ta' investiment konċernati u li l-applikant ikun se jħares u josserva kull regoli u regolamenti magħmula taħt dan l-Att u applikabbli għalih.

F'dan il-każ kien jorbot ħafna l-kriterju dwar jekk il-promoturi kienux persuni 'addattati u xierqa' (fit and proper) sabiex jipprovdu dawn is-servizzi ta' investiment partikolari. Mid-'due diligence exercise' irriżultaw żewg fatturi li jimpingu negattivament fuq jekk l-applikant hix persuna addatta u xierqa ai termini ta' l-Artikolu fuq imsemmi :

1. Il-kontijiet bankarji tas-segweni kienu mizmuma b'mod mhux sodisfaċenti –

*(a) Mario W. La Pira għal dak li għandhom x'jaqsmu kemm l-
HSBC Bank Malta p.l.c., kif ukoll il-Lombard Bank;*

(b) Adrian P. Azzopardi mal-Bank of Valletta; u

*(c) Carlton Holdings Ltd (kumpannija li fiha d-diretturi u l-
azzjonisti huma Adrian P. Azzopardi, Peter J. Azzopardi u
Paul S. Azzopardi) mal-Bank of Valletta;*

2. Carlton Holdings Ltd (C 9944) għandha storja twila u negattiva ta' ksur tal-provedimenti ta' l-Att Dwar il-Kumpanniji għal dak li għandu x'jaqsam ma' reġistrazzjoni tal-kontijiet annwali tagħha. Carlton Holdings Ltd filfatt ma rreġistratx il-kontijiet annwali tagħha mar-Registratur tal-Kumpanniji għal dawn l-aħħar ħames snin u naqset ukoll milli tħallas il-penalitajiet li sa s-26 ta' April laħqu s-somma ta' elf tlett mija tnejn u ħamsin liri Maltin u sittin ċentezmu (Lm1,352.60). Dan in-nuqqas da parti ta' Carlton Holdings Ltd baqa' jissussisti minkejja erba ittri li ntbghatu mir-Registratur tal-Kumpanniji jitolbu l-ħlas ta' dawn il-penali. L-aħħar kontijiet li ġew

reġistrati mar-Reġistratur tal-Kumpanniji jmorru lura għas-sena 2000, u juru li l-kumpannija tinsab fi stat ta' insolvenza. Dan kollu huwa ta' rilevanza minħabba l-fatt li Paul, Peter u Adrian Azzopardi huma unikament responsabbli għall-mod kif titmexxa din il-kumpannija, inkluż li l-kumpanija tosserva l-obbligi legali tagħha. Huwa għalhekk li dan kollu għandu konnessjoni diretta mal-kapaċità ta' Paul, Peter u Adrian Azzopardi li josservaw ir-regoli u regolamenti li huwa wieħed mill-aspetti li l-Awtorità trid tkun sodisfatta minnu skond l-artikolu 6(1)(a) ta' l-Att dwar Servizzi ta' Investment.

Għar-rigward ta' punt numru (1) hawn fuq, huwa ċar mir-risposti, li l-Awtorità rċiviet mill-Banek bħala riżultat tad-*'due diligence enquiries'* li jsiru f'każijiet bħal dawn, li l-azzjonisti u d-diretturi proposti għall-kumpannija Sybilline naqsu milli jzommu b'mod sodisfaċenti dawk il-faċilitajiet li ingħatawllhom mill-banek rispettivi. Fil-fatt, f'numru ta' drabi, jirriżulta li arrangamenti speċjali kellhom isiru mal-banek sabiex il-problemi u d-diffikultajiet li nqalgħu minħabba l-fatt li l-kontijiet bankarji ma kienux miżmuma b'mod sodisfaċenti setgħu jigu ndirizzati. Meta dan jiġi meqjus flimkien mat-tieni punt, juri li l-individwi konċernati fil-passat urew nuqqas ta' dixxiplina u affidabbilita' li hija mistennija minn persuni li jkunu nvoluti f'attivattijiet liċenzjabbli, partikolarment meta jkunu f'posizzjoni sensittivi u ta' fiduċja fejn ser jirċievu u jhaddmu flus ta' terzi-kljenti.

In vista tas-suespost, l-Awtorità ma kenitx soddisfatta li d-diretturi proposti għal din is-soċjetà huma kapaċi li jeżerċitaw dik il-kura u attenzjoni meħtiega sabiex imexxu attivattijiet, li il-ligi riedet li jkunu liċenzjabbli u regolati, b'mod prudenti. Dan kollu għalhekk jimpingi negattivament fuq il-kriterju ta' kompetenza li huwa parti mill-*'fit and proper test'*. L-Awtorità lanqas ma hija sodisfatta li d-diretturi proposti tal-kumpannija huma suffiċjentement kapaċi u kompetenti li jizguraw dik it-tmexxija u kontroll finanzjarju li hija meħtiega fil-kumpannija, aspekt li jiffirma parti mill-kriterju ta' *'solvenza'* tal-*'fit and proper test'*. Anke f'dan il-kamp, l-Awtorità ma hijiex sodisfatta li s-soċjetà se tosserva u timxi mar-regoli u regolamenti magħmula taħt l-Att dwar Servizzi ta' Investment u li huma applikabbli għaliha.

Ugwalment importanti huwa l-fatt li kull applikant għal-liċenzja taħt l-Att dwar Servizzi ta' Investment irid jissodisfa lill-Awtorità, bħala parti wkoll mill-*'fit and proper test'*, li huwa għandu dik l-esperjenza, sħarriġ u kwalifiċi meħtiega li jizguraw għalhekk ċertu livell ta' kompetenza. Peter u Paul Azzopardi, li huma ż-żewġ persuni li prinċipalment kienu sejrjn jipprovdu s-servizzi ta' investment proposti mill-kumpannija, baqgħu qatt ma wrew lill-Awtorità li huma jipposjedu esperjenza adegwata f'din l-attività, li qatt irċevew dak l-

istharrig speċjalizzat meħtieġ, jew inkella li għandhom kwalifiċi rilevanti għall-servizzi t'investment u/ jew swieq finanzjarji.

L-Awtorità ikkunsidrat bir-reqqa l-esperjenza li Paul u Peter Azzopardi jsostnu li akkwistaw tramite l-involviment tagħhom ma' 'Global View' u ħadet ukoll kont tar-referenza tal-proprjetarju ta' din il-'web portal', is-sur Jay Meisler. Kif ġie spejgat ampjament f' diversi drabi lill-appellanti, din l-esperjenza hija limitata għall-provvediment ta' 'trading signals' fuq 'web site' f'ambjent li mhux regolat. Konsegwentement, l-Awtorità ma tikkunsidrax din bħala esperjenza adegwata u lanqas mhija konformi ma' daww l-istandards ta' kompetenza normalment meħtieġa. Għar-rigward tar-referenza tas-sur J. Meisler, din hija semplicement referenza mahruga minn persuna fil-kapaċità privata-kummerċjali tagħha u li taħdem f'ambjent li mhux regolat, u għalhekk ma' tiġġusifikax dik l-importanza kollha li qed jattribulha l-appellanti. L-appellanti qatt ma' rnexxielhom jipprovdut lill-Awtorità b'xi referenzi oħra addizzjonali li normalment jkunu aċċettabli, per eżempju minn persuni magħrufa li jaħdmu f'ambjent regolat, u dan minkejja li dan in-nuqqas ġie indikat lilhom diversi drabi.

Għal dak li għandu x'jaqsam ma' kwalifiċi: l-Awtorità ikkunsidrat ukoll ir-relevanza tal-kwalifiċi ta' Peter Azzopardi (B.A. (Hons) degree in Accounting and Economics). Fuq il-bażi tad-dettalji provduti dwar din il-kwalifika, din ma tkoprix xi suġġetti li għandhom relevanza diretta għall-attività proposta tal-kumpannija u għalhekk waħedha mhix suffiċjenti sabiex tikkwalifika lill-Peter Azzopardi sabiex jeżercita l-attività proposta ta' servizzi t'investment.

Fid-dawl tas-suespost, u wara li kkunsidrat b'attenzjoni il-kwalitajiet rilevanti individwali u kollettiva tal-promoturi, l-Awtorità umilment tikkonferma il-posizzjoni tagħha illi r-rekwiżiti meħtieġa mil-ligi ta' kompetenza u solvenza taħt il-'fit and proper test' ma' ġewx sodisfatti mill-promoturi; u illi l-ftit evidenza prodotta mill-atturi f'dan ir-rigward żgur li ma tissoddisfax il-livelli mistennija mil-ligi minn persuni li jippretendu li jidhlu għall-attivitàjiet regolati li tinvolvihom fi tħaddim tal-flus tar-risparmjaturi.

Għaldaqstant, għar-raġunijiet suesposti, l-Awtorità titlob li dan it-Tribunal jiċċad l-appell.

Il-fatti in suċċint u d-disposizzjonijiet rilevanti tal-Kap. 330 u tal-Kap. 370 applikabbli għal dawn il-fatti

3. Illi a tenur ta' l-artikolu 3(1) tal-Att Dwar Servizzi ta' Investment (aktar il quddiem imsejjaħ il-Kap. 370):

“Ebda persuna m’għandha ttipprovdi, jew turi lilha nnifisha li ttipprovdi servizz ta’ investment f’Malta jew minn Malta kemm-il darba ma jkollhix liċenza valida għal servizzi ta’ investment.”¹

4. Illi permezz ta' applikazzjoni datata 26 ta' April 2005 Adrian P. Azzopardi, Paul S. Azzopardi, Peter J. Azzopardi, Mario W. La Pira u Joseph N. Fava² bħala promoturi tal-kumpannija Sibylline Capital Management Company Limited, kumpannija fl-istat li tiġi ffurmata, applikaw a bażi ta' l-artikolu appena ċitat għal liċenza għal servizzi ta' investment kategorija 2 u dan sabiex ikun hemm

*“A public call for investor funds (not by way of unit participation nor issue of shares) ... to Maltese and non-Maltese residents, whether they be Private and Non-Private and Collective Investment Schemes, of which circa 95.24% shall be traded abroad, as per our own **in-house trading philosophy** on the short term (day trading) **Spot Forex Market**, via a trading platform provided by either a prime broker or bank and supported by a written agreement between our applicant company and this same trading platform provider.”³*

5. Fl-applikazzjoni tagħhom u fid-dokumenti akkumpanjanti, l-applikanti spjegaw l-operat tan-negozju li kien fi ħsiebhom jagħmlu. Fi ftit kliem l-għan ta' dan in-negozju kien li jsir profit mill-kambjament kontinwu fil-valur li jkun hemm bejn munita u oħra billi simultanjament jinxtraw u jinbiegħu muniti ewlenin bħall-euro, id-dollaru amerikan, il-yen ġappuniz, l-isterlina, il-frank svizzeru, id-dollaru kanadiż u d-dollaru awstraljan fuq bażi “*short term (day trading)*”. Dan it-tip ta' negozju prattikament ma jieqaf qatt fis-sens li l-ġurnata tibda hekk kif jiftaħ is-suq f’New Zealand u jibqa għaddej bil-ftuh sussegwenti tas-wieq fl-Awstralja, l-Asja tal-Ivant, l-Indja, l-Ewropa u l-Amerika

¹ Skond l-artikolu 2(1) tal-Kap. 370 “servizz ta’ investment” tfisser kull servizz li jaqa’ taħt l-Ewwel Skeda meta jkun provdut in relazzjoni għal strument. Skond l-istess artikolu “strument” tfisser kull strument, kuntratt jew jedd li jinsab fit-Tieni Skeda u sew jekk maħruġ jew le f’Malta.

² Is-Sur Joseph N. Fava sussegwentement irtira l-interess tiegħu f’din l-applikazzjoni.

³ Ara l-applikazzjoni esibita bħala Dok. APP3 ma l-ittra riprodotta fil-paragrafu 1 *supra*.

sakemm, hekk kif dan l-aħħar suq jaghlaq, ikun sar il-hin li jerga jiftah is-suq f'New Zealand.

6. Illi a tenur ta' l-artikolu 6(1) (a) (i) tal-Kap. 370:

(1) L-awtorità kompetenti tista' tagħti jew tiċhad li tagħti liċenza li dwarha tkun saret applikazzjoni skond dan l-Att:

Iżda l-awtorità kompetenti m'għandiex-

(a) (i) tagħti liċenza għal servizzi ta' investiment kemm-il darba ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa ('fit and proper' fit-test ingliz) biex tipprovdi s-servizzi ta' investiment konċernati u li l-applikant ikun se jħares u josserva kull Regola ta' Servizzi ta' Investiment u regolamenti magħmulin taħt dan l-Att u applikabbli għalih;

7. Illi skond il-Glossary of Terms – Annex III tal-formola ta' l-applikazzjoni (Dok. APP3) il-

Fit and Proper Test – *which must be satisfied at the outset and on a continuing basis, focuses on the following criteria:*

Integrity – this requires the licence holder and its employees to act honestly and in a trustworthy fashion in relation to its clients and other parties. In this respect, the MFSA will carry out due diligence enquiries on the information contained in the Individual Questionnaires (which form part of the Application documents). The MFSA must be satisfied that this information indicates nothing adverse about anyone concerned.

Competence – those persons who will be transacting the business of the licence holder must act in a knowledgeable, professional and efficient way, in compliance with the regulations. The extent of the competence required will depend upon the nature of the investment services to be provided. The MFSA will take into account the qualifications, training and experience of those involved. Furthermore, the MFSA has to be satisfied that adequate systems and controls are in place.

Solvency – checks refer to the proper financial control and management of the business. The Applicant should have sufficient financial resources to meet the requirements established by the MFSA and the business' financial demands. Solvency requirements differ on the category of Investments Services Licence.

8. Illi a tenur ta' l-artikolu 6(3) tal-Kap. 370:

Meta tkun qed tikkunsidra jekk tagħtix jew tiċhadx milli tagħti liċenza l-awtorità kompetenti għandha, b'mod partikolari, tikkunsidra-

a. il-ħarsien ta' investituri u tal-pubbliku in ġenerali;

b. il-ħarsien tar-reputazzjoni ta' Malta meta jkunu konsidrati l-obbligi internazzjonali ta' Malta;

c. il-promozzjoni ta' kompetizzjoni u għażla; u

d. fil-każ ta' liċenza għal skema ta' investiment kollettiv, ir-reputazzjoni u kemm ikunu xierqa l-applikant u l-partijiet l-oħra li jkollhom x'jaqsmu ma' l-iskema.

9. Illi skond l-artikolu 8 tal-Kap. 370:

(1) Meta l-awtorità kompetenti jkollha l-ħsieb –

(a) li tibdel xi kundizzjoni li għaliha tkun sugġetta liċenza jew li timponi kundizzjoni magħha; jew

(b) li tiċhad applikazzjoni għal liċenzja jew li tħassar jew tissospendi liċenzja,

għandha tagħti lill-applikant jew, skond il-każ, lid-detentur tal-liċenzja jew lil manager u t-trustee jew il-kustodju ta' skema ta' investiment kollettiv, jew lill-ekwivalenti tagħhom bil-miktub tal-ħsieb tagħha li tagħmel hekk fejn tagħti r-raġunijiet għad-deċiżjoni li tkun bi ħsiebha tiegħu.

(2) Kull avviż mogħti taħt is-subartikolu (1) għandu jgħid li min jirċievi l-avviż jista', f'dak iż-żmien xieraq wara li jirċievi n-notifika kif jingħad fl-avviż (li jkun żmien ta' mhux inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin jum), jagħmel rappreżentazzjonijiet bil-miktub lill-awtorità kompetenti fejn jgħid għaliex m'għandhiex tittiehed id-deċiżjoni proposta u l-awtorità kompetenti għandha tikkunsidra kull rappreżentazzjoni hekk magħmula qabel ma tasal għal deċiżjoni finali.

(3) L-awtorità kompetenti għandha kemm jista jkun malajr tinnotifika d-deċiżjoni finali tagħha bil-miktub lill kull waħda mill-persuni li lihom għandu jingħata avviż taħt is-subartikolu (1).

10. Illi permezz ta' ittra datata 23 ta' Gunju 2006 (esibita mill-appellanti mad-dokumenti mmarkati APP4) l-awtorità appellata nfurmat lill-appellanti li kien fi ħsiebha tiċhad l-applikazzjoni tagħhom. Fl-imsemmija ittra hija tagħthom ir-ragunijiet għad-deċiżjoni tagħha u tagħthom sat-12 ta' Lulju 2006 sabiex jagħmlu r-rappreżentazzjonijiet bil-miktub imsemmija fl-artikolu 8(2) tal-Kap. 370 appena citat.
11. Illi l-appellanti għamlu r-rappreżentazzjonijiet bil-miktub tagħhom permezz ta' ittra datata 7 ta' Lulju, 2006 (esibita minnhom mad-dokumenti mmarkati APP4).
12. Illi l-awtorità appellata, permezz ta' ittra datata 4 ta' Awissu 2006 (Dok. APP2), infurmat lill-appellanti bid-deċiżjoni finali tagħha li kienet qiegħda tiċhad l-applikazzjoni tagħhom.
13. L-appellanti sussegwentement appellaw minn din id-deċiżjoni permezz ta' l-ittra indirizzata lil dan it-tribunal u riprodotta fil-paragrafu 1 *supra*. Dan a bażi ta' dak li jipprovdi l-artikolu 19(2)(d) tal-Kap. 370 li jgħid li jista' jsir appell lil dan it-tribunal dwar kull każ ta' liċenza taħt l-artikolu 8(3).
14. Illi a tenur ta' l-artikolu 19(3) tal-Kap. 370:
- “Id-disposizzjonijiet ta' l-artikolu 21 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta għandhom japplikaw mutatis mutandis għal appelli li jistgħu jingiebu quddiem it-Tribunal taħt dan l-artikolu”*
15. Illi l-artikolu 21 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta - aktar il quddiem msejjaħ il-Kap. 330 - hu l-artikolu li permezz tiegħu dan it-tribunal huwa mwaqqaf.
16. Illi skond l-artikolu 21 (13) tal-Kap. 330:
- Fis-smiġħ ta' appell li jsir lillu taħt xi liġi, it-Tribunal ikollu s-setgħa-*
- a. li jikkonferma, jaqleb jew iwarja d-deċiżjoni ta' l-awtorità kompetenti taħt il-liġi rilevanti u li jagħti direzzjonijiet li jkunu fis-setgħa tiegħu taħt dan l-Att jew xi liġi oħra lill-imsemmija awtorità kompetenti biex timplimenta d-deċiżjoni tat-Tribunal;*

b. li jeħtieġ il-produzzjoni ta' kull dokument jew informazzjoni oħra;

c. li jordna l-ħlas ta' l-ispejjeż minn xi parti fl-appell.

17. Illi skond l-artikolu 21 (9) tal-Kap. 330:

It-talba għad-deċiżjoni tat-Tribunal għandha tkun, għar-raġunijiet miġjuba mill-appellant –

(a) *jekk l-awtorità kompetenti tkunx, fid-deċiżjoni tagħha, applikat ħażin xi waħda mid-disposizzjonijiet ta' dan l-Att; jew*

(b) *jekk id-deċiżjoni ta' l-awtorità kompetenti tikkostitwix abbuż ta' diskrezzjoni jew tkunx ingusta manifestament:*

Iżda d-diskrezzjoni ta' l-awtorità kompetenti ma tistax, sakemm tkun giet eżerċitata b'mod xieraq, tkun mistoqsija mit-Tribunal:

Iżda ukoll, ma għandu jkun hemm ebda appell minn deċiżjoni li tkun timponi piena li ma teċċedix mitejn u tnejn u tletin euro u erbgħa u disgħin ċenteżmu (232.94).

It-Tezi ta' L-Awtorità Appellata

18. Mill-ittri ta' l-awtorità appellata tat-23 ta' Gunju 2006 u ta' l-4 ta' Awissu 2006 jirriżulta illi l-applikazzjoni għall-ħruġ tal-liċenza *de quo* giet miċħuda għaliex l-istess awtorità ma kienitx sodisfatta li

(a) l-appellanti huma persuni addattati u xierqa biex jipprovdu s-servizzi ta' investment konċernati billi ma ssodisfawx il-kriterji ta' kompetenza u solvenza tal-*fit and proper test*⁴, u

⁴ Issir riferenza , *inter alia*, għas-segwent i paragrafu ta' l-ittra ta' l-awtorità appellata tal-4 ta' Awissu 2006:

“With regards to the representations made to the ‘integrity’ criterion, it should be noted that the Authority’s 23rd June 2006 letter did not include any reference to conclusions reached by the MFSA specifically submitted on the ‘integrity’ of the promoters and therefore the representations submitted in this regard have no basis. Rather, the reasons why the Authority was not satisfied that the applicant satisfies the fit and proper test

(b) l-appellanti kienu se jharsu u josservaw kull regola ta' servizzi ta investiment u regolarmenti magħmula taht il-Kap 370 applikabbli għalihom.

19. Fl-imsemmija zewġ ittri tat-23 ta' Gunju 2006 u ta' l-4 ta' Awissu 2006 l-awtorità appellata speċifikat is-segwent i raġunijiet li a bażi taġġhom hija waslet sabiex tiġhad it-talba ta' l-appellanti għall-hruġ tal-licenza mitluba minnhom:

- (a) Li s-Sur Mario La Pira ma żammx il-kontijiet bankarji tiegħu mal-HSBC Bank u l-Lombard Bank b'mod sodisfaċenti;
- (b) Li s-Sur Adrian Azzopardi ma żammx il-kontijiet bankarji tiegħu mal-Bank of Valletta b'mod sodisfaċenti;
- (c) Li l-kumpannija Carlton Holdings Ltd, li taġġha s-Sinjuri Adrian Azzopardi, Peter Azzopardi u Paul Azzopardi huma l-uniċi azzjonisti u diretturi, ma żammitx il-kontijiet bankarji taġġha mal-Bank of Valletta b'mod sodisfaċenti;
- (d) Li l-istess Carlton Holdings Limited naqset milli tibġhat lir-Registratur tal-Kumpanniji l-*annual accounts* taġġha għall-ħames snin preċedenti u b'risultat ta' dan sas-26 ta' April 2006 kellha taġġti lir-Registratur tal-Kumpanniji Lm1,352.60 in linja ta' penali;
- (e) Li l-aħħar *accounts* mibġhuta lir-Registratur tal-Kumpanniji għas-sena 2000 juru li l-istess Carlton Holdings Ltd tinsab fi stat ta' insolvenza;
- (f) Li l-appellanti naqsu milli jippruvaw li għandhom **l-esperjenza** relattiva adegwata sabiex jikkonduċu l-attività proposta minnhom. Fuq dan il-punt l-awtorità appellata kkummentat hekk fl-ittra taġġha tat-23 ta' Gunju 2006:

related to the findings which adversely affect the satisfaction of the 'competence' and 'solvency' criteria".

“.....the Authority has considered the experience which Messrs. Paul and Peter Azzopardi claim to have acquired through their involvement with Global View and have also taken into account of the reference by the proprietor of such web-portal, Mr. Meisler. However, taking account of the fact that their experience in this regard is limited to providing trading signals on a web-site in an unregulated environment, the Authority does not consider this to be adequate and in line with the necessary competence standards ordinarily required”

- (g) Li l-appellanti naqsu milli jippruvaw li għandhom **il-kwalifiki** neċessarji fil-qasam tas-servizzi ta' investment u/jew swieq finanzjarji. F'dan ir-rigward l-awtorità appellata qalet hekk fl-ittra tagħha tat-23 ta' Gunju 2006:

“...the Authority has also considered the relevance of Mr. Peter Azzopardi's B.A. (Hons.) degree in Accounting and Economics. On the basis of the details provided in relation to this degree, it was noted that it does not appear to cover directly relevant subjects to the Company's proposed business and as such, is not in itself sufficient to qualify Mr. Peter Azzopardi to carry out the proposed investment services business.”

- (h) Li l-appellanti naqsu milli jippruvaw li għandhom **it-taħriġ** speċjalizzat sabiex jikkonduċu n-negozju propost minnhom.

20. Fir-rigward tal-konsiderazzjonijiet (a,) (b), (c), (d) u (e) elenkati fil-paragrafu preċedenti l-awtorità appellata sostniet li dawn il-konsiderazzjonijiet, apparti milli jinċidu fuq il-kriterju ta' kompetenza (*the ability of the Company's proposed directors to exercise due skill care and diligence required to manage the Company's affairs in a sound and prudent manner – which is an aspect falling under the 'competence' criterion of the 'fit and proper' test*⁵), l-istess konsiderazzjonijiet jinċidu ukoll:

- (i) fuq il-kriterju ta' solvenza *stante* li minhabba fihom *“the Authority is not satisfied of the Company's proposed directors' ability to ensure proper financial control and management of the*

⁵ Ara l-ittra ta' l-awtorità appellata tat-23 ta' Ġunju 2006.

Company – which forms part of the ‘solvency’ criterion of the ‘fit and proper test’ ”⁶, u

(ii) fuq l-abilita' tal-appellanti li jharsu u josservaw kull Regola ta' Servizzi ta' Investiment u regolamenti magħmulin taħt il-Kap 370 u applikabbli għalihom.

21. L-awtorità appellata sostniet illi hija ttrattat l-applikazzjoni ta' l-appellanti bl-akbar serjetà, skond il-prijoritajiet imposti fuqha mill-artikolu 6(3) tal-Kap. 370, u li fil-kors li hija kienet qiegħda teżamina l-istess applikazzjoni hija dejjem tat lill-appellanti l-opportunità “*sabiex jindirizzaw dawk l-aspetti ta' l-applikazzjoni tagħhom li ma kienux konformi ma dak rikjest mill-ligi*”⁷. L-awtorità appellata sostniet ukoll li la applikat hazin xi waħda mid-disposizzjonijiet rilevanti tal-ligi, la abbużat mid-diskrezzjoni tagħha u l-anqas ma d-deċiżjoni tagħha kienet ingusta manifestament. Fi ftit kliem, dejjem skond l-awtorità appellata, ma teżisti l-ebda waħda miċ-ċirkostanzi ikkontemplati mill-artikolu 21(9) tal-Kap. 330 li fihom dan it-tribunal għandu d-dmir li jintervjeni. Mhuwiex biżżejjed u suffiċjenti li sempliciment ma taqbilx sabiex tikkontesta d-deċiżjoni ta' l-awtorità appellata.

It-Teżi ta' L-Appellanti

22. Illi l-appellanti wiegħbu l-ittra ta' l-awtorità appellata tat-23 ta' Gunju 2006, li permezz tagħha l-istess awtorità infurmathom li kien fi ħsiebha tiċhad l-applikazzjoni tagħhom, permezz ta' ittra datata 7 ta' Lulju 2006 u appellaw mid-deċiżjoni finali ta' l-awtorità lil dan it-tribunal permezz ta' l-ittra li giet riprodotta *in toto* fil-paragrafu 1 *supra*.

23. It-tribunal eżamina bir-reqqa dawn iż-żewġ ittri sabiex jara x'kellhom xi jgħidu l-appellanti *a tempo vergine* dwar ir-raġunijiet li wasslu lill-awtorità appellata sabiex tirrifjuta l-liċenzja *de quo*.

⁶ Ara l-ittra ta' l-awtorità appellata tat-23 ta' Gunju 2006.

⁷ Paragrafu 5 tan-nota ta' l-osservazzjonijiet ta' l-awtorità appellata.

24. Għar-rigward il-kriterju ta' kompetenza u r-raġunijiet ta' l-awtorità appellata elenkati fis-subparagrafi (a), (b), (c), (d) u (e) tal-paragrafu 19 *supra* (cioè ż-żamma mhux kif suppost tal-kontijiet bankarji, n-nuqqas li jintbagħtu lir-Registraur tal-Kumpanniji l-*annual accounts* ta' Carlton Holdings Limited u l-istat ta' insolvenza ta' l-istess Carlton Holdings Limited) l-appellanti ma qalu xejn speċifiku f'dawn iż-żewġ ittri. Aktar tard⁸ issottomettew:

“L-allegat nuqqas ta' thaddim soddisfaċenti tal-kontijiet bankarji, n-nuqqas li jiġu segwiti regoli dwar preżentata ta' avvizi jew returns taht l-Att dwar is-Socjetajiet huma ilkoll konsiderazzjonijiet irrilevanti u ċertament bl-ebda mod ma kellhom u ma setgħu jinċidu negattivament fuq ir-raġġunġiment tal-kriterju ta' kompetenza.”

25. Dejjem fir-rigward tal-kriterju ta' kompetenza, pero speċifikament għar-rigward ir-raġunijiet ta' l-awtorità appellata elenkati fis-subparagrafi (f), (g) u (h) tal-paragrafu 19 *supra* (cioè esperjenza, kwalifiki u taħriġ), fl-ittra ta' l-appell lil dan it-tribunal, l-appellanti għamlu sottomissjonijiet dettaljati. Qalu:

According to the competence criteria set in the Investment Services Guidelines my clients had to prove that they had an acceptable amount of knowledge about the activity they were requesting a licence for and clearly from objectively verifiable evidence submitted this can easily be established and confirmed. My clients also had to prove professional expertise and again they have clearly proven that they have the required professional expertise to undertake the licensable activity they applied for since persons capable of providing trading signals with very positive and satisfactory comments to back the successfulness of these signals surely qualify as experts in their field. The comment contained in your 23rd June 2006 letter, that providing trading signals on a web-site in an unregulated environment counters any claim for professional expertise is clearly a very superficial way of motivating a decision and is clearly a blatantly and highly biased view. It is clear that the MFSA has not tried to establish who the frequent users of this web-site are and what degree of importance these give to the signals which are provided. Nor did the MFSA attempt to investigate and establish what the comments provided by the vast users of the Global View web-site to the signals furnished by Messrs. Paul and Peter Azzopardi were. Clearly the MFSA based its judgment on other considerations rather than those clearly established and set in the Investment Services Guidelines. A clear indication of this is the MFSA's comment regarding Peter Azzopardi's degree. The MFSA

⁸ Ara paragrafu 14 tan-nota ta' sottomissjonijiet ta' l-appellanti.

should know that Spot FX market is not specifically covered in any syllabus leading to an Investment Services Business degree and is based on the application of technical factors and/or economic fundamentals. Moreover the competence criteria does not envisage a specific qualification in the particular activity but speaks of qualifications of a licence holder in general. The specific criteria lays importance on the knowledge, professional expertise and experience in the field. It may also be very pertinent if the MFSA had to delve through and investigate licences granted in the past to establish whether its treatment of my clients' application with reference to this specific criteria of the fit and proper test is consistent with its treatment of other applications for which licences were granted. This is being said since the MFSA as a regulator and also a provider of the required financial services licences must ensure equality of treatment in the processing of every licence submitted to it.

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Competence is assessed on qualifications, training and work experience, in this order. These three criteria are however to be solely relevant and judged by reference to that type of market one intends to deal in. Judging these criteria by reference to markets which one does not intend to deal with would clearly mean that one is to bring into the exercise of his discretion irrelevant considerations.

The Spot FX market is distinct and separate from the derivatives market and therefore qualifications for the latter in no way apply to the former. Spot FX traders simply make decisions using technical factors and / or economic fundamentals. Mr Peter Azzopardi, a UK graduate in Economics and Accountancy, therefore without doubt satisfies the 'qualifications' criteria.

On the other hand, a person can be 'qualified' without having a degree or diploma. Mr. Jay Meisler's letter submitted with the applicants' letter confirms that Mr Paul Azzopardi is qualified in providing trading signals. This was evident from the beginning; one hardly expects that a premiere FX site like Global-View.com would allow an 'incompetent' to manage a pay service on their esteemed site. The provision of consistently correct trading signals, coupled with a multi-defence risk management strategy, are the sole keys to successful FX trading.

Furthermore, 'track-records' can also serve as a 'qualification', especially if the results achieved are favourable. Whilst it is accepted that consistent profitable past performances can never be assessed as a guide to future achievements, the opposite is to be also more than true. Therefore, unprofitable past performances automatically signify

'incompetence'. A verifiable accumulation of 'pips' attained for years 2002, 2003 and 2004 respectively would prove this. Regrettably, applicants offer for an audit, to be conducted by a prime audit firm, confirming net 'pip' acquisitions, together with their respective monetary value, under the protective umbrella of their highly effective risk management strategy, was dismissed as almost irrelevant by the MFSA.

The other two criteria namely training and experience, coupled with qualifications, are more than inter-linked, in fact either cannot exist without the other. One cannot have work-experience without having undergone training. Furthermore, for one to undergo training means that one must have a knowledge of the subject matter. This knowledge on the other hand cannot be simply restricted to information acquired from books, courses etc., but must be more profound, as we have demonstrated above, vis-à-vis positively consistent trading signals, coupled with our risk-management strategy.

In this respect, research conducted on the System in 1998, using data extrapolated from the 6 previous years, confirmed that the results yielded in 1998 were no fluke and that the system maintained a notable level of accuracy. This massive exercise served as a pseudo form of training for both Mr. Peter Azzopardi and Mr. Paul Azzopardi considering that the trading environment was an important factor of this research.

Work-experience can, on the other hand, be said to have initiated during 2001, precisely when Paul Azzopardi and Peter Azzopardi started posting trading recommendations on the Forex Forum of Global-View.com. Since 2002 Paul Azzopardi and Peter Azzopardi were invited to start a trading signal recommendation service, which is still active to date.

Furthermore it is not correct to argue as MFSA have done and continue to do, that in the absence of training / qualifications and in order to satisfy the competence test, one must prove undergoing relative work experience of a minimum number of years with an authorised financial institution. In the first instance there is an unlimited number of authorised financial institutions, but only a select few can be deemed to be specifically authoritative on the subject matter. In the second instance one must discern exactly what designation the word 'trader' implies. The majority of so called 'traders' simply follow 'in-house' signals and can be simply termed as 'deal-executors'. A sound and authoritative financial institution would have a team of 'technical and economic' advisors, whose sole purpose would be to generate trading signals. Traders and advisors work independently of each other, with the latter

enjoying the only onerous role. It would therefore be correct in saying that traders working for a top notch financial institution cannot be considered as competent to generate trading signals and this irrespective of the number of years in the institution's employment. On the other hand advisors, by MFSA's standards, would not qualify as being competent, primarily because they have never actually traded.

In the case of the applicants however MFSA was informed that both Mr. Peter Azzopardi and Mr. Paul Azzopardi had positive signalling skills and the art of actual trading, the latter coupled with an effective risk management strategy.

26. Dwar l-element ta' esperjenza, kwalifiki u taħriġ, l-appellanti, fin-nota ta' sottomissjonijiet tagħhom żiedu jgħidu:

L-istess jista' jingħad għall-kwalifiki; il-linji gwida jitekellmu dwar kwalifiki b'mod ġenerali u mhux kwalifiki li għandhom ikollhom rabta qrib u diretta mas-servizz li għalih tkun qiegħda tintalab il-liċenzja. L-appellant Peter Azzopardi għandu kwalifiki akkademiċi u huma kwalifiki akkademiċi li għalkemm ma' jirreferux b'mod qrib u dirett għall-attività ta' Spot Forex Trading (infatti tali kwalifiki akkademiċi ma jeżistux) – l-attività li għaliha l-appellanti ressqu l-applikazzjoni tagħhom – għandhom rabta valida u importanti billi jkopru is-suġġetti tal-matematika u ta' l-ekonomija, żewġ suġġetti li għandhom valenza xejn żgħira għall-attività in kwistjoni. Dwar l-esperjenza ta' Paul Azzopardi u Peter Azzopardi fl-attività ta' lis-Spot Forex l-appellata tiċhad li teżisti din l-esperjenza minhabba li l-imsemmija individwi jfornu trade signals fuq website f'ambjent mhux regolat. Kif spjegaw kemm Peter Azzopardi u b'mod aktar dettaljat Paul Azzopardi fix-xhieda tagħhom, is-suq ta' lis-Spot Forex ma huwiex fih innifsu suq regolat. Il-website li jikkontribwixxu fiha hija website rikonoxxuta bħala waħda mill-aktar importanti u l-kontribut tagħhom huwa possibbli kawża u b'riżultat kemm tat-tagħrif li kuma jippossjedu fis-suġġett u kemm ta' l-esperjenza li huma akkwistaw matul iż-żmien. L-aħwa Peter u Paul Azzopardi spjegaw li t-tagħrif f'lis-Spot Forex ma jigix minn taħriġ akkademiċu. Dan l-istess fatt huwa rikonoxxut mix-xhieda ta' James Farrugia u l-Avukat Dottor Andre Camilleri u joħroġ mix-xhieda traskritta tagħhom, kif joħroġ mix-xhieda ta' dawn l-istess xhieda li f'din l-attività hija l-esperjenza l-fattur determinanti. Paul Azzopardi fix-xhieda tiegħu u b'riferenza diretta għall-informazzjoni akkwizibbli minn fuq l-internet spjega kif hafna mill-aktar operaturi kbar u importanti fis-settur ma kellhomx taħriġ akkademiċu iżda akkwistaw dak li jafu billi haddmu fis-suq u esponew ruħhom għall-elementi kollha ta' dak is-suq. Paul Azzopardi fix-xhieda tiegħu wera kemm ir-riferenza li huwa kellu minghand Jay Meisler kellha tingħata piż billi kienet ġejja minghand persuna li huwa awtorita mondiali fis-

suq partikolari. Huwa sinjifikattiv dak li sqarr James Farrugia fix-xhieda tiegħu meta kien mistoqsi dwar ir-referenza ta' Meisler u wieġeb li referenza ta' persuna waħda ma kinitx biżżejjed u kien meħtieġ li jkun hemm mill-anqas żewġ referenzi oħra u li dawn iż-żewġ referenzi intalbu iżda qatt ma ingħataw. Dan juri kemm l-appellata u l-uffiċċjali tagħha kienu qegħdin jiehdu atteġjament kapriċċuż u arbitrarju fil-konfront ta' l-appellanti billi barra li qatt ma talbu referenzi addizzjonali tali talba kienet tikkonferma l-arbitrarjeta u l-kapriċċozzita tal-eserċizzju tad-diskrezzjoni da parti ta' l-appellata speċjalment meta kellha quddiemha referenza ta' persuna li huwa awtorita mondiali fis-suq speċifiku. Fis-suq ta' lis-Spot Forex l-aktar elementi importanti huma li wieħed ikun kapaċi jagħti trading signals korretti marbut ma' sistema sikura u affidabbli ta' risk management li jkollha insita magħha ukoll sistema ta' protezzjoni u difiża multipla tal-investment. Ċertament li kemm Peter Azzopardi u aktar u aktar Paul Azzopardi għandhom u urew li jippossjedu taħriġ, taħrif u esperjenza fl-għoti ta' trading signals u flimkien ma' l-appellanti l-oħra pproponew fl-applikazzjoni tagħhom sistema ta' risk management bil-protezzjoni kollha meħtieġa tal-investment.

27. Dwar iċ-ċaħda tal-liċenzja *stante* li ma giex sodisfatt il-kriterju ta' solvenza għar-raġunijiet mogħtija mill-awtorità appellata kif riprodotti fil-paragrafu 20 *supra*, fl-ittra ta' l-appell tagħhom l-appellanti ssottomettew:

*With respect to the **solvency criteria** according to the Investment Services Guidelines this criteria is intended to ensure that proper financial control and management of liquidity and capital are applied meaning also that the business should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements established by the MFSA. It is clear from MFSA's letters of the 23rd June, 2006 and the 4th August, 2006 that no reason has been given why the Supervisory Council is not satisfied that this criteria (solvency) has been met. This means that again on this very specific criteria of solvency the MFSA has exceeded its discretionary authority and acted in a manifestly unjust and unfair manner when it clearly based its decision on wrong and unlawful considerations since it has ignored altogether the fact that my clients have clearly provided a system of operation which will apply and guarantee a proper financial control and management of liquidity and capital. Furthermore the MFSA is also in breach of the rules of fair hearing since as an authority vested with the power to decide whether to grant or not to grant a licence it is legally required to provide the full and clear reasons why the specific criteria required for the acceptance or refusal of the licence has been considered not to have been fulfilled.*

28. Fin-nota ta' sottomissjonijiet tagħhom l-appellanti komplew jgħidu:

Applikata ir-raġuni tal-appellata fuq esposta għal dak mitlub mill-linji gwida kwantu l-indaġini dwar jekk il-kriterju ta' Solvenza ġiex soddisfatt wieħed jerga' jara kemm l-analiżi u l-konsiderazzjoni ta' l-appellata hija waħda assolutament approssimattiva u tiegħu kont ta' fatturi u konsiderazzjonijiet irrilevanti. Filwaqt li l-linji gwida jitolbu analiżi dwar jekk l-appellanti joffrux assikurazzjoni dwar kontrol finanzjarju adegwat u korrett u dwar il-ġestjoni tal-likwidita u tal-kapital użat kwantu is-servizz propost minnhom l-appellata ħasset li wara l-analiżi li għamlet u ma ġiex raġġunt il-kriterju tas-solvenza min-naħa ta' l-appellanti peress li l-appellanti allegatament ma ħadmx il-kontijiet bankarji tagħhom b'mod soddisfaċenti u peress li s-soċjeta' Carlton Holdings Limited kienet tinsab fi stat ta' insolvenza fis-sena 2000. Dan jerga' juri kemm l-appellata naqset serjament fl-esserċizzju tad-diskrezzjoni tagħha billi la qagħdet għal dak li jitolbu l-linji gwida kemm litteralment u lanqas fl-ispirtu tagħhom, striedet fuq konsiderazzjonijiet irrilevanti u għamlet valutazzjoni arbitrarja u assolutament kapriċuża. Minn qari tal-linji gwida kellu jirriżulta ċar lill-appellata li l-analiżi tal-kriterju tas-solvenza kellu jsir fl-isfond tas-servizz propost u tar-riżorsi finanzjarji rikjesti mill-appellata għas-servizz propost. L-ebda analiżi f'dan il-kuntest ma saret jew hekk saret l-inferenza naturali hija li r-riżultat kien wieħed positiv għax kieku l-appellata kienet tindika ir-raġunijiet għala dawn il-ħtieġijiet espressi fil-linji gwida ma ġewx raġġunti.

29. Dwar iċ-ċaħda tal-liċenzja *stante* li, skond l-awtorità appellata, l-appellanti naqsu milli jissodisfaw il-kondizzjoni li huma kapaċi li jharsu u josservaw kull Regola ta' Servizzi ta' Investiment u regolamenti magħmulin taħt il-Kap. 370 u applikabbli għalihom, l-appellanti ma qalu xejn specifiku fl-imsemmija żewġ ittri tagħhom.

30. In suċċint l-appellanti qegħdin jgħidu li l-awtorità appellata, meta rrifjutat l-liċenza mitluba minnhom, applikat hazin id-disposizzjonijiet tal-Kap. 370, abbużat mid-diskrezzjoni tagħha u li d-deċizjoni tar-rifjut tal-liċenza *de quo* hija ingusta manifestament.

II-Konsiderazzjonijiet tat-Tribunal

31.L-artikolu 21(9) tal-Kap. 330⁹ jillimita ferm iċ-ċirkostanzi li fihom dan it-tribunal jista jicċensura deċiżjoni ta' l-awtorità kompetenti. Mhuwiex biżżejjed li, għal kwalsijasi raġuni, t-tribunal ma jaqbilx mad-deċiżjoni ta' l-awtorità kompetenti. Sabiex dan it-tribunal jintervjeni jrid jirriżulta jew

- a) li fid-deċiżjoni tagħha l-awtorità kompetenti applikat hazin xi wahda mid-disposizzjonijiet tal-Kap. 370 jew tal-Kap. 330; jew
- b) li d-deċiżjoni ta' l-awtorità kompetenti tikkostitwixxi abbuż ta' diskrezzjoni; jew
- c) li d-deċiżjoni ta' l-awtorità kompetenti tkun ingusta manifestament.

It-tribunal ma jistax jissindaka d-diskrezzjoni ta' l-awtorità kompetenti jekk din tkun giet eżerċitata b'mod xieraq.

32.Jinkombi fuq minn jallega xi wiehed jew aktar mit-tlett nuqqasijiet ta' l-awtorità kompetenti elenkati fl-artikolu 21(9) tal-Kap. 330 – f'dan il-każ l-appellanti - li jipprova tali nuqqas. Dan a bażi tal-prinċipju stabbilit mill-artikolu 562 tal-Kap. 12¹⁰.

33.Issa meta l-awtorità kompetenti tkun qiegħda tikkonsidra applikazzjoni għall-ħruġ ta' liċenza għal servizzi ta' investiment bħal dik *de quo* hija **għandha**, skond l-artikolu 6(3) tal-Kap. 370¹¹, b'mod partikolari tikkonsidra il-ħarsien ta' l-investituri u tal-pubbliku in generali.

34.Dan neċessarjament ifisser illi, *inter alia*, l-awtorità kompetenti hija obbligata bil-liġi li tistabbilixxi l-*standards* u l-kriterji li jeħtieġ li jkunu sodisfatti sabiex liċenza tinħareġ. Il-livell li jrid jiġi milhuq

⁹ Riprodott fil-paragrafu 17 *supra*.

¹⁰ Artikolu 562: Bla ħsara ta' kull disposizzjoni oħra tal-liġi, l-obbligu tal-prova ta' fatt imiss dejjem lil min jallegah.

¹¹ Riprodott fil-paragrafu 8 *supra*.

- għall-hruġ ta' kull tip ta' liċenza ta' servizzi ta' investiment jiġi stabbilit mill-awtorità kompetenti mwaqqfa b'ligi speċifika għal dan il-ghan; f'dan il-każ l-Awtorità għas-Servizzi Finanzjarji ta' Malta¹². Għoli kemm hu għoli l-livell stabbilit, id-diskrezzjoni ta' l-awtorità kompetenti f'dan ir-rigward hija assoluta u sakemm il-kriterji stabbiliti huma rilevanti għal liċenza partikolari u japplikaw *erga omnes* m'għandhomx jiġu misthargha għaliex l-entita li tistabbilhom hija bil-liġi l-imsemmija awtorità kompetenti u hadd aktar.
35. Ikkunsidrat dan kollu jmiss issa li dan it-tribunal jindaga jekk, mill-provi prodotti mill-appellanti, irriżultax li l-awtorità kompetenti kkommettix xi waħda mit-tlett nuqqasijiet ikkontemplati mill-artikolu 21(9) tal-Kap. 330.
36. It-tribunal eżamina r-raġunijiet li tagħat l-awtorità kompetenti appellata għaċ-ċaħda minnha tal-liċenza mitluba mill-appellanti, liema raġunijiet ġew sintetizzati fil-paragrafu 20 *supra* kif ukoll l-argumenti u s-sottomissjonijiet ta' l-appellanti għal kull waħda mill-imsemmija raġunijiet, liema argumenti u sottomissjonijiet ta' l-appellanti huma riprodotti estensivament fil-paragrafi 25, 26, 27, 28, 29 u 30 *supra*.
37. Minn dan l-eżami t-tribunal jikkonkludi li r-raġunijiet li tagħat l-awtorità kompetenti appellata għaċ-ċaħda minnha tal-liċenza mitluba mill-appellanti huma msejsa fuq *standards* u kriterji li huma kollha rilevanti għall-ghoti tal-liċenza mitluba mill-istess appellanti. Applikant jista', forsi, jhoss li xi *standards* u kriterji stabbiliti mill-awtorità kompetenti huma għoljin, però dan mhux biżżejjed sabiex jadixxi lil dan it-tribunal u jitolbu jissostitwihom b'*standards* u kriterji anqas onerużi għaliex jekk jagħmel hekk it-tribunal ikun qiegħed jużurpa l-funzjoni ta' l-Awtorità għas-Servizzi Finanzjarji ta' Malta u jagħmel lilu nnifsu l-awtorità kompetenti in materja minflokha.
38. Kif ġa ngħad it-tribunal għandu l-obbligu li jiċċensura lill-awtorità kompetenti fit-tlett każijiet elenkati fl-artikolu 21(9) tal-Kap. 330.
39. Ġaladarba

¹² Imwaqqfa bl-artikolu 3 tal-Kap. 330.

- (a) ma rriżultat li l-awtorità kompetenti applikat hażin xi waħda mid-disposizzjonijiet tal-liġi – per eżempju ma tatx l-opportunità lill-appellanti sabiex jagħmlu s-sottomissjonijiet tagħhom fiċ-ċirkostanzi imsemmija fl-artikolu 8(1) tal-Kap. 370¹³, jew
- (b) ma rriżultat li l-awtorità kompetenti abbużat mid-diskrezzjoni tagħha - per eżempju użat kriterji u *standards* differenti fir-rigward ta’ applikazzjonijiet identiċi minn persuni differenti, jew
- (c) ma rriżultat illi d-deċiżjoni ta’ l-awtorità kompetenti kienet ingusta manifestament - per eżempju billi insistiet fuq xi kondizzjoni li tkun assolutament irrilevanti,

it-tribunal ma jistax jintervjeni. Anzi a tenur ta’ l-istess artikolu 21 (9) tal-Kap. 330 “*d-diskrezzjoni ta’ l-awtorità kompetenti ma tistax, sakemm tkun giet eżerċitata b’mod xieraq, tkun mistoqsija mit-Tribunal*”.

40. Mill-provi prodotti irriżulta illi l-awtorità kompetenti segwiet skrupolożament id-dispożizzjonijiet rilevanti tal-liġi, eżerċitat d-diskrezzjoni tagħha b’mod xieraq u waslet għal deċiżjoni ġusta a bażi ta’ *standards* u kriterji rilevanti.

41. B’mod speċifiku t-tribunal ma jistax jaqbel mas-sottomissjoni ta’ l-appellanti li “*n-nuqqas ta’ thaddim soddisfaċenti tal-kontijiet bankarji*” tas-Sur Mario La Pira, is-Sur Adrian Azzopardi u tal-kumpannija Carlton Holdings Ltd (li diretturi tagħha huma s-Sinjuri Adrian Azzopardi, Peter Azzopardi u Paul Azzopardi) huma “*konsiderazzjonijiet irrilevanti*”¹⁴ meta dawn is-Sinjuri kienu se jmexxu l-kumpannija li applikat għall-liċenza *de quo*. L-istess haġa tingħad għall-insolvenza tal-kumpannija Carlton Holdings Ltd. Din hija konsiderazzjoni rilevanti.

42. Fil-fatt dawn huma kollha fatturi li jinċidu direttament fuq il-kriterji ta’ kompetenza u solvenza tal-*fit and proper test*. Skond il-*jargon* użat

¹³ Riprodott fil-paragrafu 9 *supra*.

¹⁴ Ara paragrafu 14 tan-nota ta’ l-osservazzjonijiet ta’ l-appellanti

fin-negozju finanzjarju, il-passat (tajjeb) mhuwiex garanzija tal-futur. Però passat (mċajpar) ta' nuqqas ta' thaddim sodisfaċenti ta' kontijiet bankarji kif ukoll insolvenza ta' kumpannija ġustament jagħtu lok għal thassib għall-futur u huma konsiderazzjonijiet ferm rilevanti meta jkun qiegħed jiġi propost servizz finanzjarju li se jkun immexxi minn persuni li fil-passat haddmu kontijiet bankarji b'mod insodisfaċenti u huma involuti direttament f'kumpannija li ma haddmitx kif suppost il-kontijiet bankarji tagħha u li tinsab fi stat ta' insolvenza. Il-protezzjoni ta' l-investituri u tal-pubbliku in ġenerali huwa obbligu impost bil-liġi fuq l-awtorità kompetenti. Għalhekk l-istess awtorità tkun qiegħda taġixxi b'mod irresponsabbli jekk ma tqisx ċircostanzi bħal dawn fl-ghoti ta' liċenza għal servizzi ta' investment.

43. Huwa rilevanti ukoll il-fatt kif l-appellanti, li kienu jafu minn ferm qabel ma ġie intavolat dan l-appell bil-preokkupazzjoni ta' l-awtorità kompetenti dwar (a) il-kontijiet bankarji li ma kienux ġew miżmuma b'mod sodisfaċenti u (b) l-insolvenza tal-kumpannija Carlton Holdings Limited, naqsu milli jindirizzaw din il-preokkupazzjoni b'spjegazzjonijiet ċari bħal, per eżempju, bix-xhieda tar-rappresentanti tal-banek in kwistjoni u ta' l-awditur ta' Carlton Holdings Limited. Wara kollox jista jkun hemm raġuni valida 'l għala kontijiet bankarji inżammu b'ċertu mod jew għala kumpannija tinsab fi stat ta' insolvenza. Dan kif ammetta James Farrugia, manager ma l-awtorità appellata, waqt li kien qiegħed jixhed.

44. L-istess jista' jingħad għall-kunsiderazzjonijiet ta' l-awtorità kompetenti appellata fir-rigward ta' l-esperjenza, il-kwalifiki u t-taħriġ tal-persuni li l-promoturi ta' Sibylline Capital Management Company Limited (in formation) ipproponew sabiex imexxu n-negozju *de quo*. Filwaqt illi l-appellanti ma qablux ma l-*standards* u l-kriterji użati mill-awtorità kompetenti, it-tribunal ma jikkondividix it-teżi tagħhom illi dawn l-*standards* u l-kriterji huma irrilevanti. Wieħed jista jargumenta li l-*standards* u l-kriterji stabbiliti mill-awtorità kompetenti f'dan il-qasam huma għoljin, pero irrilevanti ċertament mhuwiex. L-awtorità kompetenti għandha l-obbligu li tistabilixxi *standards* u l-kriterji għoljin jekk hi tal-fehma li dan hu neċessarju sabiex thares l-interessi ta' l-investituri u tal-pubbliku in ġenerali. Dment li dawn l-*standards* u l-kriterji huma rilevanti, dan it-tribunal ma jistax jintervjeni u jekk jintervjeni f'dawn iċ-ċirkostanzi jkun qiegħed jikser il-liġi.

45. Mill-kumulu ta' l-informazzjoni li kellha a disposizzjoni tagħha, l-anqas ma wiehed jista' jlum lill-awtorità kompetenti li tiddubita serjament mill-abbilita ta' l-appellanti li jharsu u josservaw kull Regola ta' Servizzi ta' Investiment u regolamenti magħmula taħt il-Kap 370 applikabbli għalihom; dan kif ikkontemplat fl-artikolu 6(1)(a)(i) tal-Kap. 370¹⁵.

Decizjoni

Għal dawn il-mottivi t-tribunal jirrespingi l-appell ta' tal-promoturi ta' Sibylline Capital Management Company Limited (in formation) Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira u jikkonferma d-decizjoni ta' l-Awtorità għas-Servizzi Finanzjarji ta' Malta fl-interità tagħha, bl-ispejjez kontra l-istess appellanti.

¹⁵ Riprodott fil-paragrafu 6 *supra*.