
Nru. 76

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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta tad-29 ta' Novembru, 1993.

ATT li jipprovdi biex Malta tirratifika l-Konvenzjoni fuq il-liġi applikabbli għal Trusts u għall-gharfien tagħhom, u biex tagħmel xi emendi lill-Att dwar Offshore Trusts, 1988.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable John Dalli, M.P., Minister of Finance, and read the First time at the Sitting of the 29th November, 1993.

AN ACT to enable Malta to ratify the Convention on the law applicable to Trusts and on their recognition, and to make certain amendments to the Offshore Trusts Act, 1988.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT li jipprovi biex Malta tirratifika l-Konvenzjoni fuq il-liġi applikabbli ghal Trusts u għall- għarfien tagħhom, u biex tagħmel xi emendi lill-Att dwar Offshore Trusts, 1988.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-Awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1993 li jirrikonoxxi *Trusts*.

Titolu fil-qosor u bidu fis-sehh

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' b'avviż fil-Gazzetta jistabbilixxi.

2. (1) F'dan l-Att kemm- il darba r-rabta tal-kliem ma tehtiegħ

Tifsir

xort'ohra:

"il-Konvenzjoni" tfisser il-Konvenzjoni dwar il-liġi applikabbli għal *trusts* u għall-għarfien tagħhom li giet addottata mill-Konferenza ta' l-Ajja dwar id-Dritt Internazzjonali Privat fl-20 ta' Ottubru, 1984, u li dahlet fis-sehh fl-1 ta' Jannar, 1992.

"*trust*" tfisser *trust* kif deskritta fl-artikolu 2 tal-Konvenzjoni.

(2) F'dan l-Att, jekk hemm xi konflitt bejn it-test Ingliż u t-test Malti, it-test Ingliż għandu jipprevali.

3. (1) Id-disposizzjonijiet ta' l-artikoli minn 1 sa 12, 14, 15, 16 (l-ewwel paragrafu biss), 17, 18, u 22 (l-ewwel paragrafu biss) tal-Konvenzjoni kif murija fl-Ewwel Skeda għal dan l-Att għandhom isehhu bhala liġi f'Malta.

Il-liġi applikabbli u l-għarfien ta' *trusts*

(2) Id-disposizzjonijiet msemmija fis-subartikolu (1) ta' dan l-artikolu, għandhom, sa fejn applikabbli, ikollhom effett mhux biss għar-rigward ta' *trusts* mahluqin volontarjament u bil-miktub, iżda wkoll għar-rigward ta' *trusts* kostruttivi jew *trusts* ohra li johorġu mill-liġi jew deċiżjoni ġudizzjarja, kemm jekk f'Malta jew x'imkien iehor, dwar *trusts* mahluqin volontarjament u bil-miktub.

(3) Skond l-artikolu 15 tal-Konvenzjoni, fejn ir-regoli Maltin dwar konflitt ta'ligi jitolbu li jigu applikati l-ligijiet ta' Malta jew ta' Stat barrani fejn ghandhom x'jaqsmu ma' xi wahda mill-hwejjeg li gejjin:-

- (a) il-protezzjoni ta' minuri jew persuni inkapaċi;
- (b) l-effetti personali u partimonjali taż-żwieg;
- (c) drittijiet tas-suċċessjoni, kemm minn testament jew *ab intestato*, speċjalment il-porzjoni riżervati tal-mara u r-raġel u qraba;
- (d) it-trasferiment ta' titolu f'propjeta' u nteressi ipotekarji f'propjeta';
- (e) il-protezzjoni ta'kredituri fi hwejjeg ta' insolvenza;
- (f) il-protezzjoni, f'aspetti ohra, ta' terzi persuni li jaġixxu *in bona fide*,

hekk, hlief kif hemm provdut fis-subartikolu li ġej, daww il-ligijiet ghandhom jigu applikati mill-qrati Maltin b'eskluzjoni ghad- disposizzjonijiet tal-Konvenzjoni sa fejn daww il-ligijiet ma jistghux jigu derogati b'att volontarju u huma nkompatibbli mal-Konvenzjoni.

(4) Jekk persuna domiciljata barra minn Malta tittrasferixxi jew tiddisponi minn proprjeta' mobbli matul hajjitha lil jew favur ta' *trust*.

(a) dik il-persuna titqies li kienet kapaċi li taghmel hekk, jekk fiz-żmien tat-trasferiment jew disponiment kienet magġorenni u kellha kapaċita' mentali shiha taht il-ligi tad-domicilju taghha; u

(b) ebda regola dwar wirt jew suċċessjoni ghal dik il-propjeta' mobbli (li tinkludi, izda bla hsara ghall- generalita' ta' dak imsemmi qabel, wirt furzat, legittima jew drittijiet simili) tal-ligi tad-domicilju taghha jew ta' xi sistema ta' ligi barranija applikabbli taht ir-regoli Maltin ta' konflitt ta' ligi m'ghandha teffettwa l-gharfien ta' dak it-*trust* mill-qrati ta' Malta.

(5) Skond l-ewwel paragrafu ta' l-Artikolu 16 tal- Konvenzjoni, il-qrati m'ghandhomx jaghtu effett lil *trust* sa fejn id-disposizzjonijiet tat-*trust* ikunu nkompatibbli ma' regoli tal-ligi Maltija li huma mandatarji, bla ma jittiehed kaw tar-regoli Maltin ta' konflitt ta' ligi.

(6) Bla hsara ghall-generalita' ta' l-Artikolu 18 tal-Konvenzjoni, il-qrati m'ghandhomx jaghtu effett lil *trust* meta biex jaghmlu hekk, ikun inkonsistenti mal-ordni bazika pubblika tal-ligi Maltija.

(7) Fl-Artikolu 17 tal-Konvenzjoni, ir-referenza ghal Stat tinkludi referenza ghal kull pajjiż jew territorju (kemm jekk parti fil-Konvenzjoni jew le) li jkollu s-sistema legali tiegħu.

(8) L-Artikolu 22 tal-Konvenzjoni m'ghandux jiflihem bhala li jolqot il-ligi li ghandha tigi applikata rigward xi haġa magħmula jew li naqset li tigi magħmula qabel il-bidu fis-sehh ta'dan l-Att.

(9) Xejn fil-Konvenzjoni ma ghandu jkollu xi effett dwar l-interpretazzjoni jew l-applikazzjoni tal-ligijiet ta' Malta rigward materji fiskali.

4 L-Att dwar l-*Offshore Trusts* ghandu jkollu effett kif emendat fit-Tieni Skeda ghal dan l-Att.

Emenda ta'
l-Att dwar l-*Offshore Trusts*,
Kap. 331

SKEDI

L-EWWEL SKEDA

(Artikolu 3)

KONVENZJONI DWAR IL-LIĠI APPLIKABBLI GHAL *TRUSTS* U DWAR L-GHARFIEN TAGHHOM.

KAPITOLU 1 - SKOP

Artikolu 1

Din il-Konvenzjoni tispeċifika l-liġi applikabbli ghal *trusts* u tirregola l-gharfien taghhom.

Artikolu 2

Ghall-finijiet ta' din il-Konvenzjoni, il-kelma *trust* tirreferi ghar-relazzjoni legali mahluqa - *intervivos* jew b'mewt - minn persuna, is-*settlor*, fejn l-assi jitpogġew taht il-kontroll ta' *trustee* ghall-benefiċċju ta' benefiċjarju jew ghal skop speċifikat.

Trust ghandu dwan il-karatteristiċi:-

- (a) l-assi jikkostitwixxu fond separat u mhumiex parti mill-partimonju tat-*trustee* innifsu;
- (b) it-titolu tal-assi tat-*trust* huma fisem it-*trustee* jew fisem persuna ohra ghan-nom tat-*trustee*;
- (c) it-*trustee* ghandu s-setgħa u d-dmir li, ghar-rigward ta' dak li ghalih hu responsabbli, jamministra, juża, jew jiddisponi mill-assi skond il-kundizzjonijiet tat-*trust* u l-obligazzjonijiet speċjali mposti fuqu mill-liġi.

Sewwa jekk is-*settlor* iżomm xi drittijiet jew poteri, u sew jekk it-*trustee* innifsu jkollu drittijiet bhala benefiċjarju, mhumiex neċessarjament inkonsistenti mal-eżistenza ta' *trust*.

Artikolu 3

Il-Konvenzjoni tapplika biss ghal *trusts* mahluqin volontarjament u bil-miktub.

Artikolu 4

Il-Konvenzjoni ma tapplikax ghal kwistjonijiet preliminarji li jirrelataw għall-validita' ta' testmenti jew ta' atti ohra li bis-saħħa taghhom assi jiġu trasferiti lit-*trustee*.

Artikolu 5

Il-Konvenzjoni ma tapplikax ghal *trusts* jew ghal kategorija ta' *trusts* safejn il-liġi speċifikata fil-Kapitolu II ma tipprovdi għalihom.

KAPITOLU II - LIĠI APPLIKABBLI

Artikolu 6

Trust ghandu jkun regolat mill-liġi magħżula mis-*settlor*. L-ghażla ghandha tkun espressa jew implícita kif provdut fid-dokument tat-*trust* jew fil-kitba li turi l-eżistenti ta' *trust*, interpretati, jekk hemm bżonn, fid-dawl ta' ċirkostanzi tal-każ.

Meta l-liġi magħżula skond id-dispożizzjonijiet tal-paragrafu ta' qabel ma tippovdix għal *trusts* jew għal kategorija ta' *trust* inkwistjoni, l-ghażla ma jkollhiex effett u l-liġi speċifikata fl-Artikolu 7 ghandha tapplika.

Artikolu 7

Meta ebda liġi applikabbli ma tkun giet magħżula, *trust* ghandu jiġi rregolat bil-liġi li magħha huwa l-aktar marbut.

Biex jiġi aċċertat ma' liema liġi *trust* huwa l-aktar marbut, ghandha ssir riferenza in partikolari għal:-

- (a) il-post tal-amministrazzjoni tat-*trust* msemmi mis-*settlor*;
- (b) is-*situs* tal-assi tat-*trust*;
- (c) il-post tar-residenza jew tax- xogħol tat-*trustee*;
- (d) l-ghanijiet tat-*trust* u l- postijiet fejn dawn ghandhom jiġu esegwiti.

Artikolu 8

Il-liġi speċifikata mill-Artikoli 6 jew 7 ghandha tirregola l-validita' tat-*trust*, l-interpretazzjoni tiegħu, l-effetti tiegħu u l-amministrazzjoni tat-*trust*.

B'mod partikolari dik il-liġi ghandha tirregola:-

- (a) il-ħatra, riżenja u tneħħija ta' *trustees*, il-kapaċita' li taġixxi bhala *trustee*, u l-passaġġ ta' l-uffiċċju ta' *trustee* minn wieħed għal ieħor;
- (b) id-drittijiet u d-dmirijiet ta' *trustees* bejniethom;
- (c) id-dritt tat-*trustees* li jiddelegaw fl-intier jew in parti t-twerttieq tad-dmirijiet tagħhom jew l-eżerċizzju tas-setgħat tagħhom;
- (d) is-setgħa tat-*trustee* li jamministra jew jiddisponi minn assi tat-*trust*, li jikkreja drittijiet ipotekarji jew ta' garanzija fuqhom, jew li jakkwista assi godda.
- (e) is-setgħa ta' *trustees* li jinvestu;
- (f) restrizzjonijiet fuq it-tul ta' żmien ta' *trust*, u fuq is-setgħa li d-dhul ta' *trust* jiġi akkumulat;

(g) ir-relazzjonijiet bejn it-*trustees* u l-benefiċjarji inkluża ir-responsabbiltà personali tat-*trustees* lejn il-benefiċjarji;

(h) il-varjazzjoni jew terminazzjoni tat-*trust*;

(i) id-distribuzzjoni tal-assi tat-*trust*;

(j) id-dmir ta' *trustees* li jagħtu kont tal-amministrazzjoni tagħhom.

Artikolu 9

Fl-applikazzjoni ta' dan il-Kapitolu aspett tat-*trust* li jista' jinqata' mill-ohrajn, b'mod partikolari hwejjeg ta'amministrazzjoni, jistgħu jiġu rigolati minn liġi differenti.

Artikolu 10

Il-liġi applikabbli għall-validità ta' *trust* għandha tiddetermina jekk dik il-liġi jew il-liġi li tirregola xi aspett li jista' jinqata' mill-ohrajn, jistax jiġi sostitwit b'liġi oħra.

KAPITOLU III - GHARFIEN

Artikolu 11

Trust ikkrejat skond liġi speċifikata mill-Kapitolu ta' qabel dan għandu jiġi mogħti għarfien bħala *trust*.

Dak l-għarfien għandu jimplika, bħala minimu, illi l-proprjeta' tat-*trust* tikkostitwixxi fond separat, illi t-*trustee* jista' jfittex jew jiġi mfittex fil-qorti fil-kwalità tiegħu ta' *trustee*, u illi hu jista' jidher jew jaġixxi f'dik il-kwalità quddiem nutar jew kull persuna li tkun qed taġixxi f'kapacità uffiċjali.

Sa fejn il-liġi applikabbli għat-*trust* tehtieg jew tipprovdi, dak l-għarfien għandu b'mod partikolari jimplika:

(a) illi l-kredituri personali tat-*trustee* ma jkollhom ebda jedd kontra l-assi tat-*trust*;

(b) illi l-assi tat-*trust* m'għandhomx jiffurmaw parti mill-patrimonju tat-*trustee* meta dan ikun fi stat ta' insolvenza jew falliment;

(c) illi l-assi tat-*trust* m'għandhomx jiformaw parti mill-proprjeta' matrimonjali tat-*trustee* u l-konjuġi tiegħu u l-anqas parti mill-assi ereditarji tiegħu ma' mewtu;

(d) illi l-assi tat-*trust* jistgħu jiġu rkuprati meta t-*trustee* bi ksur tat-*trust*, ikun hallat l-assi tat-*trust* ma' l-assi tiegħu jew ikun aljena assi tat-*trust*. B'dana kollu id-drittijiet u obligazzjonijiet ta' terza persuna li jkollha fidejha daww l-assi għandhom jibqgħu regolati bil-liġi determinata skond ir-regoli ta' għażla ta' liġi tal-*forum*.

Artikolu 12

Fejn it-*trustee* jixtieq jirreġistra assi, mobbli jew immobbli, jew dokumenti ta' titolu għalihom, hu jkollu d-dritt, sa fejn dan ma jkunx projbit minn jew inkonsistenti mal-liġi tal-Istat fejn ir-reġistrazzjoni tkun mitluba, li jagħmel hekk fil-kwalita' tiegħu ta' *trustee* jew b'xi mod ieħor li l-eżistenza tat-*trust* tkun murija.

Artikolu 14

Din il-Konvenzjoni m'għandhiex tostakola l-applikazzjoni ta' regoli ta' liġi aktar favorevoli għall-għarfien ta' *trusts*.

KAPITOLU IV - KLAWŻOLI ĠENERALI

Artikolu 15

Il-Konvenzjoni ma tostakolax l-applikazzjoni tad-dispożizzjonijiet tal-liġi speċifikata mir-regoli ta' konflitt ta' liġi tal-*forum*, sa fejn dawk id-dispożizzjonijiet ma jistgħux jiġu derogati b'att volontarju, u li jirreferu b'mod partikolari għall-materji li ġejjin:

- (a) il-protezzjoni ta' minuri u persuni inkapaċi;
- (b) l-effetti personali u patrimonjali taż-żwieġ;
- (c) drittijiet suċċessorji, kemm minn testment jew *ab intestato*, speċjalment il-porzjonijiet riżervati tal-armel jew tal-armla u qraha tal-mejjet;
- (d) it-trasferiment ta' titolu f'proprjeta' u interessi ipotekarji f'proprjeta';
- (e) il-protezzjoni ta' kredituri f'materja ta' insolvenza;
- (f) il-protezzjoni, f'aspetti oħra, ta' terzi persuni li jaġixxu *in bona fede*.

Jekk l-għarfien tat-*trust* ma jkunx jista' jingħata minhabba l-applikazzjoni tal-paragrafu preċedenti, il-qorti għandha tipprova tagħti effett lill-għanijiet tat-*trust* b'mezzi oħra.

Artikolu 16

Il-Konvenzjoni ma tostakolax l-applikazzjoni ta' dawk id-dispożizzjonijiet tal-liġi tal-*forum* li għandhom jiġu applikati anke f'sitwazzjonijiet internazzjonali, irrispettivament mir-regoli ta' konflitt ta' liġijiet.

Artikolu 17

F'din il-Konvenzjoni il-kelma "liġi" tiffisser ir-regoli ta' liġi fis-seħh fi Stat barra mir-regoli ta' konflitt ta' liġijiet.

Artikolu 18

Id-dispożizzjonijiet ta' din il-Konvenzjoni jistgħu jiġu mwarrba meta l-applikazzjoni tagħhom tkun manifestament inkompatibbli mal-ordni pubbliku (*ordre public*).

Artikolu 22

Din il-Konvenzjoni tapplika għal *trusts* irrispettivament mid-data li fiha jkunu ġew ikkrejati.

IT-TIENI SKEDA

(Artikolu 4)

Emendi għall-Att dwar l-*Offshore Trusts*, Kap. 331

1. (1) It-titolu fil-qosor ta' l-Att għandu jigi mhassar u sostitwit bil-kliem "Att dwar it-*Trusts*".
 - (2) Fit-titolu fit-tul ta' l-Att il-kelma *Offshore* għandha tithassar.
 2. (1) Fis-subartikolu (1) ta' l-artikolu 2 ta' l-Att:
 - (a) Minflok it-tifsira ta' "l-Att" għandu jidhol dan li ġej:

' "L-Att" ifisser l-Att dwar Ċentru għas-Servizzi Finanzjarji ta' Malta, Kap. 330; '
 - (b) It-tifsira ta' "l-Awtorita" għandha tigi mhassra u wara t-tifsira ta' "benefiċjarju" u qabel it-tifsira ta' "dikjarazzjoni unilaterali ta' *trust*" għandha tidhol it-tifsira li ġejja:

' "iċ-Ċentru" ifisser iċ-Ċentru għas-Servizzi Finanzjarji ta' Malta;'
 - (ċ) Wara t-tifsira ta' "il-Qorti" u qabel it-tifsira ta' "korp ta' persuni" għandha tidhol it-tifsira li ġejja:

' "il-Konvenzjoni" tfisser il-Konvenzjoni ta' l-Ajja dwar il-liġi applikabbli għal *trusts* u l-għarfien tagħhom, muri fil-partijiet materjali fl-Ewwel Skeda ta' l-Att ta' l-1993 dwar l-Għarfien ta' *Trusts*;'
 - (d) Wara t-tifsira ta' "*trust*" u qabel it-tifsira ta' "*trustee*" għandha tidhol it-tifsira li ġejja:

' "*Trust* barrani" tfisser *trust* li l-liġi applikabbli għalih mhix il-liġi ta' Malta;'; u
 - (e) Minflok it-tifsira ta' "Ministru" għandha tidhol it-tifsira li ġejja:

' "Ministru" tfisser il-Ministru responsabbli għall-finanzi;'
 - (2) Hlief kif provdut qabel, minflok il-kelma "l-Awtorita" kull fejn tinsab fl-Att, għandha tidhol il-kelma "iċ-Ċentru".
3. Minflok is-subartikolu (2) ta' l-artikolu 5 ta' l-Att, għandu jidhol dan li ġej:

"(2) Il-liġi applikabbli għal *trust* għandha tigi determinata skond il-Konvenzjoni."
 4. Minflok is-subartikolu (1) ta' l-artikolu 6 ta' l-Att għandu jidhol dan li ġej:

"(1) Il-validita' ta' *trust*, l-interpretazzjoni tieghu, l-effetti tieghu u l-amministrazzjoni tieghu ghandhom jigu regolati b'dan l-Att meta l-ligi applikabbli ghal dak it-*trust* hija l-ligi ta' Malta, u ghandu jigi regolat bl-Att ta' l-1993 dwar l-Gharfien ta' *Trusts* fil-kazijiet l-ohra kollha."

5. (1) Minflok is-subartikolu (1) ta' l-artikolu 43 ta' l-Att ghandu jidhol dan li gej:

"(1) Kull *offshore trust* ghandu jigi registrat maċ-Ċentru."

(2) Is-subartikolu (4) ta' l-artikolu 43 ta' l-Att ghandu jigi emendat kif gej:

"(4) Iċ-Ċentru, malli jkun sodisfatt illi dak rikjest fil-paragrafi (a) u (b) tas-subartikolu (3) ta' dan l-artikolu jkunu attwati u li jkun thallas id-dritt xieraq, ghandu jirregistra l-*offshore trust* u johrog ċertifikat ta' registrazzjoni f'dak is-sens."

6. L-artikolu ġdid 43A ghandu jidhol wara l-artikolu 43 ta' l-Att u qabel it-testatura "Eżenzjonijiet fiskali u oħrajn " kif gej:

"Registrazzjoni
fakultattiva
ta' *trust*
barrani

43A (1) *Trust* barrani li jissodisfa l-kundizzjonijiet tas-subartikolu (2) ta' l-artikolu 6 jista' jigi rregistrat maċ-Ċentru.

(2) *Trustee* (li jkun *nominee* liċenzjat) ta' *trust* barrani li jirregistra maċ-Ċentru bis-sahha tas-subartikolu (1) ghandu, mhux aktar minn xahar wara gheluq kull sena mir-registrazzjoni, javża liċ-Ċentru jekk it-*trust* ghadux jeżisti u jekk huwa ghadux it-*trustee* tieghu jew le.

(3) Ir-registrazzjoni ssir billi tiġi pprezentata liċ-Ċentru:

(a) kopja awtentikata tal-istrument tat-*trust*, u

(b) dikjarazzjoni mill-kumpannija *nominee* liċenzjata li tkun qed taġixxi bhala *trustee* tat-*trust* barrani illi t-*trust* jissodisfa l-kundizzjonijiet tas-subartikolu (2) ta' l-artikolu 6 ta' dan l-Att.

(4) Hekk kif li dak kollu rikjest fis-subartikolu (2) ta' l-artikolu 6 ta' dan l-Att ikun sodisfatt, u li jkun thallas id-dritt xieraq, iċ-Ċentru ghandu jirregistra t-*trust* barrani u johrog ċertifikat ta' registrazzjoni f'dak is-sens.

(5) Kull bdil sussegwenti fl-istrument tat-*trust* ghandu bl-istess mod jigi registrat miċ-Ċentru.

(6) It-*trustee* li jkun *nominee* liċenzjat ghandu bl-istess mod jaghti avviz liċ-Ċentru tat-terminazzjoni tat-*trust*, tkun xi tkun ir-raġuni ta' dik it-terminazzjoni.

(7) Fuq talba ta' *trustee* (li jkun *nominee* liċenzjat) ta' *trust* barrani registrat taht dan l-artikolu, u wara li tigi moghtija prova sodisfacenti liċ-Ċentru, iċ-Ċentru jista' johrog certifikat li jghid, li mill-ahjar taghrif li ghandu, fid-data taċ-certifikat, l-applikant kien *trustee* tat-*trust*. Certifikat taht dan s-subartikolu jinhareg wara l-hlas ta' dritt ta' LM25 jew dik is-somma akbar li iċ-Ċentru jista' minn żmien ghal żmien jiddetermina.

(8) Iċ-Ċentru ghandu jzomm registru tat-*trusts* barranin kollha registrati taht dan l-artikolu u ghandu jdahhal fih kull tibdil relattiv ghalihom notifikata lillu u dawk il-hwejjeg l-oħra li jista' jidhirlu xieraq li jdahhal fir-registru.

(9) Id-dritt li jithallas għar-registrazzjoni jkun ta' LM200.

(10) *Trustee* (li jkun *nominee* liċenzjat) ta' *trust* barrani jista' b'avviż bil-miktub liċ-Ċentru jitlob liċ-Ċentru biex ihassar ir-registrazzjoni tat-*trust* taht dan l-artikolu u malli jirċievi dik it-talba, iċ-Ċentru ghandu jhassar dik ir-registrazzjoni.

(11) Xejn f'dan l-Att ma ghandu jagħmilha bhala kundizzjoni li *trust* barrani irid ikun registrat taht dan l-Att sabiex ikun magħruf taht l-Att ta' l-1993 dwar l-Għarfien ta' *Trusts*".

7. L-artikolu ġdid 46A ghandu jidhol wara l-artikolu 46 ta' l-Att u qabel it-testatura "Kumpanniji *Nominee*", kif ġej:

"Applikabbilita'
għal *trusts*
barranin.

46A *Trust* barrani registrat skond l-artikolu 43A jista', billi jwettaq il-formalitajiet preskritti fl-artikolu 46, jikkwalifika għall-eżenzjonijiet fiskali u oħrajn moghtija bl-artikoli 44 u 45 u l-garanzija moghtija mill-artikolu 50 daqs li kieku kien *offshore trust*".

8. L-artikolu 53 ġdid ghandu jidhol wara l-artikolu 52 ta' l-Att, kif ġej:

" *Offshore*
trusts
eżistenti.

53. Kull *offshore trust*, li l-liġi applikabbli għalih m'hix il-liġi ta' Malta, u li jkun jeżisti fid-data ta' d-dhul fis-sehh ta' l-Att ta' l-1993 dwar Għarfien ta' *Trusts*, jiġi minn dik id-data awtomatikament ri-registrat maċ-Ċentru bhala *trust* barrani taht l-artikolu 43A u minn dik id-data dak it-*trust* jiġi regolat bl-artikolu 43A u mhux l-artikolu 43 hliet illi l-garanzija moghtija bl-artikolu 50 ghandha tkompli għaddejja mid-data tar-registrazzjoni tat-*trust* taht l-artikolu 43."

Ghanijiet u Raġunijiet

L-Abbozz jipprovdi għall-gharfien ta' *trusts* barranin taht ir-regoli li hemm fil-Konvenzjoni tal-Ajja dwar il-ligi applikabbli għal *trusts* u l-gharfien tagħhom, u li jagħmel emendi konsegwenzjali fl-Att dwar *L-Offshore Trusts*, Kap 331.

**A BILL
entitled**

AN ACT to enable Malta to ratify the Convention on the law applicable to trusts and on their recognition, and to make certain amendments to the Offshore Trusts Act, 1988.

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:

1. (1) This Act may be cited as the Recognition of Trusts Act, 1993.

Short title and commencement

(2) This Act shall come into force on such date as the Minister responsible for finance may by notice in the Gazette appoint.

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

Interpretation

"the Convention" means the Convention on the law applicable to trusts and on their recognition which was adopted by the Hague Conference on Private International Law on 20 October 1984, and which came into force on 1 January 1992.

"trust" means a trust as defined in Article 2 of the Convention.

(2) In this Act, if there is any conflict between the English and Maltese texts, the English text shall prevail.

3. (1) The provisions of Articles 1 to 12, 14, 15, 16 (the first paragraph only), 17, 18 and 22 (the first paragraph only) of the Convention as set out in the First Schedule to this Act shall have the force of law in Malta.

Applicable law and recognition of trusts

(2) The provisions referred to in subsection (1) of this section shall, so far as applicable, have effect not only in relation to trusts created voluntarily and evidenced in writing, but also in relation to any constructive or other trusts arising by operation of law or by virtue of a judicial decision, whether in Malta or elsewhere, in connection with trusts created voluntarily and evidenced in writing.

(3) In accordance with Article 15 of the Convention, where Maltese conflicts rules require the application of the laws of Malta or of a foreign state with regard to any of the following matters-

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;

- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith,

then, save as provided by the following subsection, such laws shall be applied by the Maltese courts to the exclusion of the provisions of the Convention in so far as such laws cannot be derogated from by voluntary act and are incompatible with the Convention.

(4) If a person domiciled outside Malta transfers or disposes of movable property during his lifetime to a trust:

- (a) such person shall be deemed to have had capacity to do so if at the time of such transfer or disposition he was of full age and of sound mind under the law of his domicile; and
- (b) no rule relating to inheritance or succession to such movable property (including, but without prejudice to the generality of the foregoing, forced heirship, legitim or similar rights) of the law of his domicile or of any other system of foreign law applicable under Maltese conflicts rules shall affect the recognition of such trust by the courts of Malta.

(5) In accordance with the first paragraph of Article 16 of the Convention, the courts shall not give effect to a trust in so far as the provisions of the trust are incompatible with the rules of Maltese law which are mandatory regardless of Maltese conflicts rules.

(6) Without prejudice to the generality of Article 18 of the Convention, the courts shall not give effect to a trust to the extent that to do so would be inconsistent with the fundamental public policy of the law of Malta.

(7) In Article 17 of the Convention, the reference to a State includes a reference to any country or territory (whether or not a party to the Convention) which has its own system of law.

(8) Article 22 of the Convention shall not be construed as affecting the law to be applied in relation to anything done or omitted before the coming into force of this Act.

(9) Nothing in the Convention shall have any effect on the interpretation or application of the laws of Malta relating to fiscal matters.

4. The Offshore Trusts Act, shall have effect subject to the amendments set out in the Second Schedule to this Act.

Amendments to the
Offshore Trusts Act,
Cap 331

FIRST SCHEDULE

(Section 3)

CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION

Chapter 1 - Scope

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term "trust" refers to the legal relationship created - inter vivos or on death - by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics-

- (a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II - APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:-

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

In particular that law shall govern-

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III - RECOGNITION

Article 11

A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust.

Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity.

In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular -

- (a) that personal creditors of the trustee shall have no recourse against the trust assets;
- (b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

Article 14

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV - GENERAL CLAUSES

Article 15

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters-

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Article 16

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

Article 17

In the Convention the word "law" means the rules of law in force in a State other than its rules of conflict of laws.

Article 18

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy (*ordre public*).

Article 22

The Convention applies to trusts regardless of the date on which they were created.

SECOND SCHEDULE

(Section 4)

Amendments to the Offshore Trusts Act, Cap. 331

1. (1) The short title of the Act, shall be deleted and substituted by the words "Trusts Act".
 - (2) In the long title to the Act, the word "Offshore" shall be deleted.

2. (1) In subsection (1) of section 2 of the Act:
 - (a) The definition of "the Act" shall be substituted by the following:

"The Act" means the Malta Financial Services Centre Act, Cap 330;";
 - (b) The definition of "the Authority" shall be deleted and after the definition of "breach of trust" and before the definition of "company" there shall be inserted the following definition:

"the Centre" means the Malta Financial Services Centre;";
 - (c) after the definition of "company" and before the definition of "the Court" there shall be inserted the following definition:

"the Convention" means the Hague Convention on the law applicable to trusts and on their recognition, set out in all material parts in the First Schedule to the Recognition of Trusts Act, 1993;";
 - (d) after the definition of "the Court" and before the definition of "immovable property situated in Malta" there shall be inserted the following definition:

"foreign trust" means a trust the proper law of which is not the law of Malta;"; and
 - (e) the definition of "Minister" shall be substituted by the following:

"Minister" means the Minister responsible for finance.".

(2) Save as provided above, for the word 'the Authority' wherever it occurs in the Act, there shall be substituted the words 'the Centre'.

3. Subsection (2) of section 5 of the Act shall be substituted by the following:

"(2) The proper law of the trust shall be determined in accordance with the Convention.".

4. (1) Subsection (1) of Section 6 of the Act shall be substituted by the following:

"(1) The validity of a trust, its construction, its effects and the administration of the trust shall be governed by this Act when the proper law of the trust is the law of Malta, and shall be governed by the Recognition of Trusts Act, 1993 in all other cases".

5. (1) Subsection (1) of section 43 of the Act shall be substituted by the following:

"(1) Every offshore trust shall be registered with the Centre."

- (2) Subsection (4) of section 43 of the Act shall be substituted by the following:

"(4) The Centre, on being satisfied that the requirements of paragraphs (a) and (b) of subsection (3) of this section have been complied with and that the appropriate fee has been paid, shall register the offshore trust and issue a certificate of registration accordingly."

6. New section 43A shall be inserted after section 43 of the Act and before the title "Fiscal and other exemptions" as follows:

" Optional registration of
foreign trusts

43A.(1) A foreign trust which satisfies the conditions of subsection (2) of section 6 may register with the Centre.

(2) A trustee (being a licensed nominee) of a foreign trust which registers pursuant to subsection (1) shall, not later than one month after every anniversary of registration, advise the Centre whether the trust is still in existence and whether or not he is the trustee thereof.

(3) Registration shall be effected by filing with the Centre:

- (a) a certified copy of the trust instrument; and
- (b) a declaration by the licensed nominee company acting as a trustee of the foreign trust that the trust satisfies the conditions of subsection (2) of section 6 of this Act.

(4) The Centre, on being satisfied that the requirements of subsection (2) of section 6 of this Act are satisfied and that the appropriate fee has been paid, shall register the foreign trust and issue a certificate of registration accordingly.

(5) Any subsequent change in the trust instrument shall likewise be registered with the Centre.

(6) The trustee being a licensed nominee shall likewise give notice to the Centre of the termination of the trust, irrespective of the cause or reason of such termination.

(7) At the request of a trustee (being a licensed nominee) of a foreign trust registered under this section, and on adequate proof being given to the satisfaction of the Centre, the Centre may issue a certificate stating that, to the best of its knowledge, on the date of the certificate, the applicant was a trustee of the trust. A certificate under this subsection shall be issued on the payment of a fee of Lm25 or such higher amount as the Centre may from time to time determine.

(8) The Centre shall keep a register of all foreign trusts registered under this section and shall enter therein any change relative to them notified to it and such other matters as it may deem appropriate to register.

(9) The fee payable for registration shall be Lm200.

(10) A trustee (being a licensed nominee) of a foreign trust may by notice in writing request the Centre to cancel the registration of the trust under this section and upon receipt of such request, the Centre shall cancel such registration.

(11) Nothing in this Act shall be deemed to make registration of a foreign trust a condition of recognition under the Recognition of Trusts Act, 1993."

7. New section 46A shall be inserted after section 46 of the Act and before the title "Nominee Companies", as follows:

"Application to foreign trusts

46A. A foreign trust which is registered pursuant to section 43A may, by accomplishing the formalities prescribed by section 46, qualify for the fiscal and other exemptions provided by sections 44 and 45 and the guarantee provided by section 50 as though it were an offshore trust."

8. **New section 53 shall be inserted after section 52 of the Act, as follows:**

"Existing offshore trusts

53. An offshore trust, the proper law of which is not the law of Malta, and existing at the date of entry into force of the Recognition of Trusts Act, 1993, shall, as from such date, be automatically re-registered by the Centre as a foreign trust under section 43A and from such date such trust shall be governed by section 43A and not by section 43 except that the guarantee provided by section 50 shall continue to be determined by reference to the date of registration of the trust under section 43."

Objects and Reasons

The Bill provides for the recognition of foreign trusts under the rules set out in the Hague Convention on the law applicable to trusts and their recognition, and makes consequential amendments to the Offshore Trusts Act, *Cap 331*